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INTELLECTUAL PROPERTY DISPUTE RESOLUTION THROUGH ADR MECHANISM

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Abstract

This article discusses some of the strategies that can be used to tackle IP- related difficulties, as the field of intellectual property continues to advance and encounter new challenges on a daily basis. This article's primary goal is to highlight the different patterns (mechanisms) that the intellectual community uses to resolve disputes. The essay will highlight more research as well as the viability of ADR on a national and worldwide scale. The article will go on to explain why alternative dispute resolution (ADR) is a favoured method of resolving issues involving intellectual property rights, whether they belong to the owner or user. ADR is the dispute resolution process truly widely used and approved by the many economies throughout the world, and is there a need for more potent ADR mechanisms than those we already have? To what extent does WIPO succeed in preserving peace through alternative dispute resolution? Does ADR provide any advantages for both intellectual property owners and users?

Keywords: alternative, Intellectual, dispute, property, conciliation

1.1 Introduction

Disputes relating to intellectual property protection are gradually escalating in the Indian legal setting. Intellectual property protection is available for a limited period for the intellectual property creator who has to enforce it in an effective manner. Because of the excessive delays in the judicial system, there is a need to look for other solutions and mechanisms for sharing the burden of the judiciary. This is particularly relevant because the aggrieved person enjoys limited rights and the only remedy available is that which is prescribed under substantive legislation. Alternative dispute resolution measures are gaining prominence for enforcing the protection of intellectual property. This article explores the use of alternative legal mechanisms for the protection of intellectual property rights in India.

Alternative dispute resolution (ADR) is a technique through which the disputes can be settled without intervention of court proceeding. The main purpose of existence of ADR is to make available economical, easy, speedy and reachable justice.[1] ADR techniques are non-judicial body in nature which always deals with all controversial issues which can be resolved in the law through conformity among the parties and this idea inspired by most approved faith i.e. justice delayed is justice denied. Alternative dispute resolution has a great importance to the corporate community which needs speedy and transparent method to litigation because it does not have time, patience, resources to waste on time taking justice delivery system. That is why alternative to litigation should be considered as a most important part of policy of the company. It has been shown that arbitration and mediation alternative to the litigation make good business sense and that the inclusion of arbitration and mediation clause in contract will help to ensure that dispute will be dealt with a timely and cost-effective way. In this backdrop, the present paper focuses on the legality of different mechanism adopted for alternative dispute resolution in India.

Meaning of Alternative Dispute Resolution:

The term alternative dispute resolution has been explained as a dispute resolution methods that are very small of or alternative to costly and time consuming justice delivery system. The ADR refers to the whole thing which encourages settlement negotiation in which parties are encouraged to discuss without deviation to each other any other lawful method, to arbitration method or mini-trials that is similar to the court proceeding system. This method has planned to handle all the problems of society or to make possible societal development issues within the ambit of ADR. [2]. Ultimately ADR system wishes to make available inexpensive, easy, rapid and easy

[1] Sameer chaudhary, alternative dispute resolution-.https://www.manupatrafast.com last visited (22-12-2023)

[2] *Mr.arvind agrawal , knowing: alternative dispute resolution.* https://www.russianlawjournal.org last visited on (05-08-2022)

to get to justice. ADR method is non-judicial body in nature and suitable for all litigious issues which can be resolved under the law by agreement between the parties.

Need for Alternative Mode of Dispute Resolution in Intellectual Property Disputes

The intellectual efforts of the creators of intellectual property are valued on the basis of the sign of the rights affixed to 'intellectual output'. Intellectual property protection provides a pointer to the creator to exert his powers over third parties, who, without his permission, try to use the fruits of his labour. The rationale for the creation of rights gets defeated if they cannot be enforced. The owners of intellectual property have to be their own watchdogs and take recourse to the Courts for the infringement of their rights. Indian Courts have taken a giant leap towards the development of an intellectual property regime in India; however, the available resources could be put to better and proper use by the Courts in India if the alternate dispute resolution is deployed. Matters related to patent law and copyright law, which involve intersection with science and an understanding of technology, need special adjudicating officers, who can comprehend the interdisciplinary nature of the case at hand with sufficient ease. The limited nature of protection given to the owner of intellectual property rights, calls for developing mechanisms to execute immediate and swift justice.

While evaluating the performance shown by the Indian judiciary in cases related to intellectual property rights, the Supreme Court of India has in the case of ShreeVardhman Rice & Gen Mills v. Amar Singh Chawalwala[3] held that "…Without going into the merits of the controversy, we are of the opinion that the matters relating to trademarks, copyrights and patents should be finally decided expeditiously by the Trial Court instead of merely granting or refusing to grant injunction. In the matters of trademarks, copyrights and patents, litigation is mainly fought between the parties about the temporary injunction and that goes on for years and years and the result is that the suit is hardly decided finally. This is not proper…In our opinion, in matters relating to trademarks, copyright and patents, the proviso to Order XVII Rule 1(2) C.P.C. should be strictly complied with by all the Courts, and the hearing of the suit in such matters should proceed on a day to day basis and the final judgment should be given normally within four months from the date of the filing of the suit."

Reiterating its stance in Bajaj Auto Ltd. v. TVS Motor Company Ltd[4]., the Supreme Court of India held that experience has shown that in our country, suits relating to the matters of patents, trademarks and copyrights are pending for many years and litigation is mainly fought between the parties over temporary injunction. This is a very unsatisfactory state of affairs, and hence, we had passed the above quoted order in the above-mentioned case to serve the ends of justice. We direct that the directions in the aforesaid order be carried out by all courts and tribunals in this country punctually and faithfully. It is evident that due to unwarranted delay in the disposal of cases and the costly litigation which could prolong the protection accorded to the work,

[3] (2009)10 SCC 257
[4] (2009) 9 SCC 797

rather than promoting the progress of intellectually protected work, the aggrieved parties are opting for alternate dispute resolution mechanisms for the advancement of intellectual property rights in India. Moreover, the commercial nature of the transactions involved in majority of intellectual property based litigations, solicits such an approach.

Alternate Dispute Resolution Machinery

Alternate dispute resolution embodies within its garb different modes of resolving a dispute, other than that provided by the traditional model of litigation. Arbitration, mediation, settlement and conciliation are some of the models which are the alternatives to court based litigation. The Arbitration and Conciliation Act, 1996 has been the main statute in India dealing with the two cited alternate forms of dispute resolution. The Civil Procedure Code, 1908 also provides for settlement of dispute outside the court. Even where the alternative dispute resolution methods fails to be the effective choice for the determination of disputes related to intellectual property rights, they can be used for narrowing down the issues for contestability in a traditional model of litigation.

In the case of A. Ayyasamy v. A. Paramasivam & Ors.[5], the Supreme Court expanded its view and further categorised disputes relating to patents, trademarks, copyright, anti-trust/competition laws, fraud, bribery, corruption matters as inarbitrable disputes. It is pertinent to note that in this case, the main issue before the Court was to decide the arbitrability in matters involving fraud. Thus, the categorization of Intellectual Property disputes as inarbitrable was only obiter dictum, as no such reasoning has been put forth to support such categorisation.

The test of arbitrability of disputes as laid down in the case of Booz Allens holds good as it envisages that arbitrability of dispute is dependent upon the nature of the claim made in a dispute and enables disputes pertaining to rights of parties in personam involving IPR, to be referred to arbitration.

Alternative Dispute Resolution Measures for Intellectual Property: Need of the Hour

The solution lies in the introduction of alternative dispute resolution mechanisms, for the redressal of grievances related to infringement of protected rights of an intellectual property holder. Alternative dispute resolution mechanisms are less time consuming, efficient and provide flexibility to the right holder. It is important to note that in all the commercial transactions, the route of alternate dispute resolution has already shown its majority over the traditional modes of litigation. Nowadays, contracts related to transfer of intellectual property mostly include the arbitration-mediation clause. This highlights the weight of arbitration in commercial intellectual property transactions.

[5] AIR 2016 SC 4675

In a landmark judgment in the case of Bawa Masala Co. v. Bawa Masala Co. Pvt. Ltd. and Anr.[6], where a number of legal disputes were already resolved through a process of alternate dispute resolution, the Delhi High Court passed orders for adoption of a process known as early neutral evaluation, in an intellectual property based litigation suit. The Court in this case, under the umbrella of section 89 of the Civil Procedure Code, 1908 mooted for the inclusion of such procedures for amicable settlement of disputes. The Court further said that the early neutral evaluation procedure shares the same features as a mediation process…the difference is that in case of mediation the solutions normally emerge from the parties and the mediator makes an endeavour to find the most acceptable solution whereas in case of early neutral evaluation, the evaluator acts as a neutral person to assess the strengths and weaknesses of each of the parties. The Court further made a distinction between early neutral evaluation and arbitration by stating that in early neutral evaluation there is no testimony or oath or examination and such neutral evaluation is not recorded. The Court also held that early neutral evaluation is confidential and cannot be used by any of the parties against the other. There is no award or result filed. This stands as a seminal case, where, Indian Courts have tried to bring alternative dispute resolution machinery for solving intellectual property infringement related matters. This case also highlights the inclination, which Indian Courts have started sharing, towards involvement of alternate dispute resolution measures in resolving of such disputes.

However, use of alternative modes of dispute resolution for determination of intellectual property related disputes, may face some problems. Firstly, since the protection of intellectual property is territorial in nature, the public policy consideration as set down by the Supreme Court of India in the case of O.N.G.C v. Saw Pipes[7], can pose a hurdle towards enforceability of arbitral awards, if made on the mandate of intellectual property related disputes. Secondly, the issue of validity of intellectual property points towards determination of right against everyone, may pose another roadblock for the use of alternative dispute resolution machinery in intellectual property related disputes. Notwithstanding the aforesaid problems, the infringement of intellectual property being actions in personam as it determines the rights between two parties, can certainly be adjudicated by the use of alternative dispute resolution machinery.

This view has been propounded in the case of Eros International Media Limited v. Telemax Links India Pvt Limited[8] where the Bombay High Court distinguished Intellectual Property Rights as having an element of right in rem in contrast to right in personam as espoused by Booz Allen case. The Court held that the element of right in personam in a private dispute between two parties arising out of commercial contracts, where an infringement claim is involved in Intellectual Property disputes could be decided through arbitration. Where there are matters of commercial disputes and parties have consciously decided to refer these disputes arising from that contract to a private forum, no question arises of those disputes being non-arbitrable. Such actions are

[6] AIR 2007 Delhi 284
[7] AIR 2003 SC 2629
[8] 2016 (6) BomC R321

always actions in personam, one party seeking a specific particularized relief against a particular defined party, not against the world at large.

Patent Law and Alternative Dispute Resolution

Law related to patent channelizes the field of technology with law. As the patent disputes involve an understanding of technical knowledge related to the dispute in question, the biggest hurdle, which the Indian Courts face, is with respect to streamlining the trial of the dispute in a cost effective and prompt manner. Every dispute in the domain of patent law in India has revolved around the nitty-gritty of interim injunctions and the appeals related to those injunctions. In fact many countries have endorsed the inclusion of arbitration as a model for the resolution of patent disputes. The Patent Act, 1970 particularly under section 103 of the Act makes use of arbitration as a procedure for resolution of disputes. Closer integration of alternate dispute resolution mechanisms in patent infringement suits could be the way forward for appropriate dispensation of justice.

Trademarks and Alternative Dispute Resolution

In India, trademark litigation covers an overwhelming landscape in the intellectual property related litigation. The trademark litigation is an inter partes adjudication. That being the case, the modes of alternative dispute resolution can certainly provide an appropriate recourse to the ailing judiciary. Moreover, it is germane to note that in cases of cybersquatting, arbitration plays an eminent role in the streamlined procedure outlined under the Uniform Domain Name Dispute Resolution Policy, 1999 and the Indian Domain Name Dispute Resolution Policy for the adjudication of disputes. This brings to fore the importance of arbitration and the use of other alternate dispute resolution measures for reconciliation of the interests of the trademark owner and the impugned party.

The fact that the Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS)[9] has a part exclusively dedicated to the enforcement of IPR (Part III) and, within it, an entire section on 'civil and administrative procedures and remedies', suggests that dispute resolution has a central place in IP law. Accordingly, members of the World Trade Organization (WTO) are obligated to ensure that enforcement procedures are made available under domestic law.[10] This is not surprising, as TRIPS mandates WTO members to afford specific *minimum standards*[11] of protection with regard to the substantive rights set out in Part II. However, without an effective enforcement mechanism, the standards set out in Part II would remain

[9] Agreement on Trade-Related Aspects of Intellectual Property Rights, 15 April 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994)

[10] TRIPS, *supra* note 7, at art. 41(1)

[11] Jan Busche, *Introduction II: The Concept of the TRIPS Agreement*, *in* WTO: Trade-Related Aspects of Intellectual Property Rights 30 (Jan Busche et al. eds., 2009)
(internal quotation marks omitted).

toothless,[12] and the efforts undertaken in TRIPS to approximate national IP laws would be defeated.[13] Indeed, if a WTO member falls short of its TRIPS obligations, including the mandate to provide for effective domestic enforcement measures, such a violation is subject to the WTO's dispute settlement mechanism,[14] with the possibility of the aggrieved WTO member adopting measures in cross retaliation.

The enforcement measures envisaged by TRIPS include civil and administrative procedures,[15] border measures,[16] and criminal procedures.[17] The focus of this chapter is on civil and administrative procedures, which deal with civil enforcement. Although art. 42(1) of TRIPS obligates WTO members to '*make available* to right holders *civil judicial procedures* concerning the enforcement of any intellectual property right',[18] TRIPS does not require WTO members to 'put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general'.[19] This means that adjudication of IP disputes may take place within a country's existing framework for the administration of justice.

The expectation under art. 42 of TRIPS is for WTO members to 'make available' civil judicial procedures to 'right holders'. Two points are worth noting here. First, a WTO Dispute Settlement Panel has interpreted 'make available' to mean 'have access to judicial procedures which are *effective* in terms of bringing about the enforcement of their rights covered by the Agreement when this is warranted'.[20] After all, TRIPS requires all enforcement measures to be 'effective'.[21] According to the WTO Panel,[22] for civil judicial procedures to be effective, right holders must have the entitlement to '*substantiate* their claims and to *present* all relevant evidence'.[23] Secondly, the use of the term 'right holders' as opposed to 'owner' is deliberate and expands on the standing of parties who may bring legal action in respect of IP.[24] This, no doubt, reflects the commercial reality of a global marketplace. In the same dispute, although the WTO's Appellate Body disagreed with the Panel on the merits, it endorsed the Panel's interpretation of art. 42 and, importantly, added that TRIPS reserves a degree of discretion to WTO members as regards the availability of civil judicial procedures taking into account differences in national legal systems.

[12] Ibid

[13] Christopher Heath, *Methods of Industrial Property Harmonisation in Europe*, *in* Intellectual Property Harmonisation within ASEAN & APEC 46 (Christoph Antons et al. eds., 2004)

[14] TRIPS, *supra* note 7, at art. 64(1).

[15] TRIPS, *supra* note 7, at arts. 42–50.

[16] *Id.* at arts. 51–60.

[17] *Id.* at art. 61.

[18] *Id.* at art. 42(1)

[19] *Id.* at art. 41(5)

[20] United States–Section 211 Omnibus Appropriations Act of 1998, ¶ 8.95, WTO Doc. WT/DS176/R (circulated 6 August 2001)

[21] TRIPS, *supra* note 7, at art. 41(1).

[22] US–Section 211 Panel Report, *supra* note 19, at ¶ 8.96.

[23] TRIPS, *supra* note 7, at art. 42.

[24] US–Section 211 Panel Report, *supra* note 19, at ¶ 8.98.

The issue of arbitrability of IP disputes is worldwide. In India too, with the persistent strain between rights in rem and rights in personam results to believe that it is difficult to decide. Judicial trend is also seems acute to judge.[25] Kinds of disputes arising from IP disputes are like, Infringements of trademark, cross-licences infringements in patents, broad-casting copyrights issues, information and communication technology outsourcing issues etc. The arbitral tribunal can adjudicate upon every dispute that can be adjudicated upon by a court, except a few that are not considered to be 'arbitrable'.[26] IP rights of the owner, by their very nature, stand against the world at large, i.e. right in rem. However, the IP landscape in the present commercial world is writ large with a web of rights of other parties intertwined with the rights of the originator. And these subordinate rights acknowledge the owner's right and it operates between two private parties without involvement of State.[27] And hence, it is challenging for courts/arbitral tribunals to identify the thin line between rights in rem and subordinate rights arising out of rights in rem in order to ascertain arbitrability of an IP dispute.41 In India, arbitrability is not defined under arbitration statute. The landmark case of Supreme Court, Booz-Allen Hamilton v SBI Home Financein India, has summarised the conceptual jurisprudence regarding arbitrability. In this case, Supreme Court culled out three facets of arbitrability as under: '(i) whether the disputes, having regard to their nature, could be resolved by a private forum chosen by the parties or fall within the exclusive domain of public fora; (ii) whether the disputes are enumerated as matters to be decided through arbitration; and (iii) whether the parties have submitted disputes to arbitration that fall within the scope of the arbitration agreement.

The Court also cited well-examples of non-arbitrable disputes like those relating to rights and liabilities arising out of criminal offences, matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody, guardianship, etc. but, it did not contain a reference to IP disputes, specifically. In Mustill and Boyd's Commercial Arbitration, commentary stated that, 'for example, rights under a patent licence may be arbitrated, but the validity of the underlying patent may not. An arbitrator whose powers are derived from a private agreement between A and B plainly has no jurisdiction to bind anyone else by a decision on whether a patent is valid, for no-one else has mandated him to make such a decision, and a decision which attempted to do so would be useless.'[28] In another case, Madras High Court in 2017 in Lifestyle Equities C V v Q D Seatoman Designs (P) Ltd has more clearly dealt with the traditional in rem versus in personam debate. Herein, it was held that patent disputes can be arbitrable if the dispute is about the licensing of a patent or infringement of a patent, but a dispute challenging the validity of the patent will not be arbitrable.[29] In the case

[25] Loya K A & Gokhale G, Arbitrability of intellectual property disputes: A perspective from India, Journal of Intellectual Property Law & Practice, 14 (8) (2019) 632

[26] Loya K A & Gokhale G, Arbitrability of intellectual property disputes: A perspective from India, Journal of Intellectual Property Law & Practice, 14 (8) (2019) 634.

[27] Booz Allen & Hamilton v SBI Home Finance Ltd. & Ors. (2011) 5 SCC 532, Para 21; Loya K A & Gokhale G, Arbitrability of intellectual property disputes: A perspective from India, Journal of Intellectual Property Law & Practice, 14 (8) (2019) 634.

[28] Loya K A & Gokhale G, Arbitrability of intellectual property disputes: A perspective from India, Journal of Intellectual Property Law & Practice, 14 (8) (2019) 635.

[29] Ghatak C, Arbitrability of IP Disputes in India: Lessons from Hong Kong, IndiaCorpLaw, March 2019, https://india corplaw.in/2019/03/arbitrability-ip-disputes-india-lessonshong-kong.html

of Eros International Media Limited v Telemax Links India Pvt. Ltd. and Ors.[30] The Court held that 'IP Dispute arising out of a commercial contract, like between two claimants to a copyright or a trademark in either an infringement or passing off action, that action and that remedy can only ever be an action in personem and hence such IP disputes are arbitrable in nature. It was observed that the Section 62(1) of The Copyright Act should not be read down to mean the ousting of the jurisdiction of an arbitral panel.' In Steel Authority of India Ltd[31] (SAIL) in 2014, the Bombay High Court considered an issue of infringement of trademarks and held that the disputes were not arbitrable, despite existence of arbitration clause in the contract.

National Intellectual Property Rights Policy of India, 2016 is a roadmap for the future of IP rights. Objective 3 of the policy is said to balance between interest of right holder and larger public interest. It has mentioned to review the existing IP laws, where necessary, to update and improve them or to remove anomalies and inconsistencies, if any, in consultation with stakeholders.[32] In fact, an Indian IPR policy may be deemed inclusive if and only if it succeeds in providing sustainable solutions to the problems the most critical being.[33] It suggests review and update IP related rules, guidelines, procedures and practices for clarity, simplification, streamlining, transparency and time bound processes in administration and enforcement of IP rights. It recommends examining the issues of technology transfer, know-how and licensing relating to SEPs on fair and reasonable terms and provides a suitable legal framework to address these issues, as may be required. The objective 4 of the Policy, suggests the administration of the Copyright Act, 1957 under the Department of Higher Education, and the Semiconductor Integrated Circuits Layout Design Act, 2000, under the Department of Electronics and Information Technology is being brought under the aegis of the Department of Industrial Policy and Promotion leading to synergetic linkage between various IP offices under one umbrella, streamlining processes, and ensuring better services to the users.

The Arbitration (protocol and convention) act 1937:

The Arbitration (protocol and convention) Act 1937 was passed with the intention of giving effect to the protocol and enabling the convention to become operative in India. The Geneva Protocol on Arbitration Clauses 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards 1927 has been implemented in India by the Arbitration (Protocol an Convention) Act, 1937.[34]

[30] 2016 (6) ARBLR 121 (BOM)

[31] Steel Authority of India Ltd. v SKS Ispat& Power Ltd. &Ors. Notice of Motion (L) No. 2097 of 2014 in Suit No 673 of 2014., Loya K A & Gokhale G, Arbitrability of intellectual property disputes: A perspective from India, Journal of Intellectual Property Law & Practice, 14 (8) (2019) 635, Srinivasan B, Arbitrability of Intellectual Property Disputes in India: A Critique, NLS Business Law Review.

[32] National Intellectual Property Rights Policy of India, 2016.

[33] Ganguly S, Towards a Model National IPR Policy for India, IIM Ahmedabad, 11, https://www.academia.edu/ 17885663/Towards_a_model_National_IPR_Policy_for_ India.

[34] Rao P.C & William Sheffield, alternative disputes resolution pg.34, pub. Universal law publishing co.pvt.Ltd.

The Arbitration Act of 1940:

During the colonial rule the more definite arbitration act was passed on fourteenth march 1940 which came into effect from first July 1940, named as Arbitration Act 1940. This is only one act which was extended to whole of India including Pakistan and Baluchistan. In the few cases it has been noticed that the arbitration act 1940, distinguish between arbitration an application for setting aside an arbitral award and one for a decision that is a nullity. [35]

Arbitration and Conciliation Act, 1996:

This Act, 1996 was based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 and UNCITRAL Conciliation Rules, 1980.

A report was prepared by the law commission of India on the basis of the Act, 1996 and suggested several amendments. Arbitration and Conciliation (Amendment) Bill, 2003 was in the Parliament on the basis of the recommendations of the law commission. The Arbitration and Conciliation Act, 1996 which deals with the domestic arbitration. The Act was amended in 2015 and further amendments have been made in 2019.

The Arbitration and Conciliation (Amendment) Bill, 2015

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The motivation of the Government in amending the Arbitration Act, and in bringing adjacent changes thereto, is to make India a more attractive destination for commercial arbitration, as well as to compete with the likes of Singapore and London as hubs of international commercial hub. The other causa proxima for the amendment is India's abysmal ranking in the World Bank's Ease of Doing Business Index released in 2014 (142 out of 189 countries) and the Prime Minister's effort to better it.

These amendments seek to make of commercial disputes more user-friendly and cost effective which in turn will lead to expeditious disposal of cases. Key Provisions of Bill Mandatory for arbitrators to settle disputes within 12 months. This period can be extended by 6 months only by a court on sufficient cause.

The Arbitration and Conciliation (Amendment) Act, 2019

The Arbitration and Conciliation (Amendment) Act, 2019 was enacted with the view to make India a destination for institutional arbitration for both domestic and international arbitration. It was done to not be left behind the international practices on arbitration.

[35] http://www.dhirassociates.com Evolution-of-Arbitration-in-India.last visited on (24-08-2022)

The Arbitration and Conciliation (Amendment) Act, 2021

This is the third and the latest amendment in the past six years in the Arbitration Act of 1996. The promulgation of the Arbitration and Conciliation (Amendment) Ordinance, 2020 was done on 4th November 2020. As the 2019 amendments were treated and received by the people as a classic case of two steps forward and two steps backward, this is yet another amendment with the aim to set its path right.

The amendments are circumscribing provisions related to both domestic and international arbitration also, it has shed light on conciliation proceedings law provisions.

Now, the 2021 amendment has deleted the Eight schedule and substituted the Section 43J making the parties free to appoint arbitrators not taking into account their qualifications and that the norms for it will be specified by regulations.

Role of WIPO in dispute resolution by using ADR

The World Intellectual Property Organization (WIPO) plays a significant role in resolving intellectual property (IP) disputes through Alternative Dispute Resolution (ADR) methods. ADR refers to methods of resolving disputes outside of traditional litigation, often offering more efficient, flexible, and cost-effective solutions.

Here's how WIPO contributes to ADR in IP disputes:

Arbitration and Mediation Services: WIPO provides specialized arbitration and mediation services tailored to resolving IP disputes. These procedures are designed to be more expedient and less formal than traditional court litigation.

WIPO Mediation and Arbitration Center: WIPO operates a dedicated center for mediation and arbitration. This center administers procedures specifically adapted to resolve IP disputes, such as domain name disputes, patent conflicts, copyright issues, and more.

Panel of Experts: WIPO maintains a panel of neutrals, comprising experts in IP law and ADR techniques. Parties involved in disputes can select mediators or arbitrators from this panel, ensuring a knowledgeable and neutral third party to oversee the resolution process.

Customized ADR Procedures: WIPO allows parties to design their own ADR procedures suited to the specifics of their dispute. This flexibility enables them to craft a process that aligns with their needs and the nature of the IP dispute.

Technical Expertise: WIPO's involvement brings access to a wealth of technical expertise in various domains of intellectual property, aiding in the resolution of complex issues involving patents, trademarks, copyrights, and other forms of IP.

Global Reach: WIPO's global presence and recognition facilitate international IP dispute resolution. It provides a platform for parties from different jurisdictions to resolve conflicts efficiently and effectively.

Overall, WIPO's role in ADR for intellectual property disputes is pivotal. It offers a structured framework, expert guidance, and a neutral platform for parties to resolve their conflicts outside of traditional court systems. This contributes significantly to the efficient resolution of IP disputes worldwide.

The WIPO Arbitration and Mediation Center

The WIPO Arbitration and Mediation Centre (WIPO Centre) was established in 1994 on a non-profit basis to promote the time and practical goals of IP and associated issues through ADR. It is regarded as a global and neutral discussion forum, particularly suited to cross-border and culturally diverse arguments, and it directs techniques under the WIPO Mediation, Expedited Arbitration, Arbitration, and Expert Determination Rules (WIPO Rules).

The WIPO Rules include particular provisions that are especially appropriate for IP and associated discussions, such as those regulating secrecy and specialised proof. In any case, their application is not limited to such questions, and they may and have been successfully applied in a variety of settings. The WIPO Centre makes model conditions and understandings available in several dialects that gatherings can employ as a rationale for expressing their disputes to WIPO.

The WIPO Centre also serves as an asset community, bringing concerns to light about the crucial role ADR can play in numerous sectors. It provides ADR counsel to interested private and open elements, as well as preparation in IP-related ADR via seminars and meetings. Recently, the WIPO Centre collaborated with the WIPO Academy to deliver an online seminar on Arbitration and Mediation under the WIPO Rules.

Certain provisions in the WIPO Rules, like those pertaining to confidentiality and technical evidence, are especially well-suited for intellectual property and related disputes. But their application is not restricted to these kinds of conflicts; they can, and have, been, successfully used in other contexts. The WIPO Centre provides model agreements and clauses in various languages that parties can use as a guide when submitting their disputes to WIPO.

Experience has demonstrated that the calibre of the mediator, arbitrator, or expert has a significant impact on the efficacy of ADR. The WIPO Centre helps with the appointment of neutrals in each case and keeps a database of more than 1,500 qualified neutrals from 70 countries, with additional candidates added based on case needs.

The WIPO Centre serves as a resource hub to promote awareness of the beneficial role alternative dispute resolution (ADR) can play in various industries. Through conferences and workshops, it offers ADR guidance to interested public and private entities as well as training in IP-related ADR. Recently, the WIPO Academy

and the WIPO Centre worked together to launch an online course on arbitration and mediation under the WIPO Rules.

Services of the wipo arbitration and mediation center

Mediation: a process wherein one or more impartial mediators help the parties identify their interests and facilitate communication in order to help them reach a resolution of the conflict. There is no decision made by the mediator.

Arbitration is a process where a disagreement is brought before one or more impartial arbitrators who then render a legally-binding ruling. The 1958 New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards makes the arbitrator's ruling enforceable across international borders.

Expedited arbitration is a type of arbitration that often uses a single arbitrator and has shorter deadlines and expenses. The New York Convention makes the award enforceable.

Expert Determination: a process wherein a particular query is sent to one or more impartial experts who render a verdict on the subject at hand. Unless the parties agree otherwise, the decision is final.

Trends in WIPO mediation and arbitration

With more than 80 mediations and 110 arbitrations under its belt, most of which were filed within the last four years, the WIPO Centre has seen a number of changes and trends in IP dispute resolution. Of the procedures it has handled, 41% were mediation cases, 49% were standard arbitrations, and 10% were expedited arbitrations.

WIPO procedures and clauses are frequently found in a combined model. For instance, the WIPO clause that stipulates that "mediation, followed in the absence of a settlement by (expedited) arbitration" is the one that is most commonly used. Its benefit is that before going to arbitration, parties can choose to resolve their dispute in a less formal setting.

WIPO standard arbitration typically lasts 12 to 18 months and is used in more complicated cases like patent disputes. WIPO expedited arbitration is typically utilised in cases involving software and trademark disputes, where there is typically less technical evidence involved, a lower stakes, and a need for a speedy resolution. The expedited arbitration process can take up to six months in total.

Patent infringement and licences, information technology transactions, telecommunications, pharmaceutical product distribution agreements, copyright issues, research and development agreements, knowledge transfer, trademark coexistence agreements, art marketing agreements, joint venture agreements, engineering disputes, life sciences, sports, entertainment, domain name disputes, and cases arising out of agreements in settlement of prior multi-jurisdictional IP litigation are just a few of the fields in which WIPO mediation and arbitration have

been used. In non-IP disputes like general contractual matters, insurance, construction, and employment (at an IP law firm), parties have also utilised the Center's services.

1.2 Significance of the study

The meaning of concentrating on Intellectual Property (IP) debate goal through Alternative Dispute Resolution (ADR) components lies in a few key perspectives.

ADR instruments, for example, assertion or intercession frequently offer speedier goal contrasted with customary prosecution. To avoid financial losses and maintain market competitiveness, swift dispute resolution is essential in the field of intellectual property, where innovation moves quickly. Methods of alternative dispute resolution (ADR) emphasize collaboration and can aid in maintaining or even enhancing business relationships between IP dispute parties. This is especially important in businesses where it are crucial for progressing coordinated effort or associations.

In ADR, confidentiality is a significant benefit. Dissimilar to court procedures, which are in many cases public, ADR cycles can be kept secret. This secrecy can safeguard delicate business data and developments associated with IP questions. ADR systems permit gatherings to tweak the goal interaction to accommodate their particular necessities. This adaptability can incorporate picking the area, language, and rules overseeing the interaction, giving a more fitted way to deal with settling questions. Protected innovation questions frequently include worldwide companies or substances working across borders. ADR systems give a stage to settling debates in a cross-line setting, considering consistency and consistency in settling IP clashes. Fast and proficient goal of IP questions through ADR components can defend development by forestalling superfluous postpones in putting up new items or advances for sale to the public. ADR systems line up with worldwide guidelines and works on, elevating a blended way to deal with settling licensed innovation questions in a way predictable with worldwide assumptions

Understanding the nuances of using ADR mechanisms in intellectual property disputes is crucial for stakeholders, policymakers, legal practitioners, and businesses to streamline dispute resolution processes, protect innovation, and maintain the integrity of intellectual property rights in a rapidly evolving global landscape.

1.3 Review of literature

V.D. Mahajan, Ancient India 557, S. Chand & Company Pvt. LTD New Delhi, Reprint Edition, 2015:- The author has written in detailed about the vedic literature, later vedic civilization, age of sutras and dharam Sastras, the epic age, Kautalyas Arthasastra, Asoka’s kingship, Mauryan Administration, Mauryan Judicial Administration / Jails / welfare state, Sakas, Kushan Empire, Gupta Empire, Joint Family System during Gupta period, Cholas etc.

M.P. Jain, Outlines of Indian Legal and Constitutional History, Lexis Nexis, Butterworths, Wadhwa, 6th edn., reprint 2009 :- The author has arranged the different stages of legal institution, given their brief information, discussed their co-relation and also mentioned about their contribution for the development of legal system in India. The author has cited various case laws.

Durga Das Basu, Shorter Constitution of India, Lexis Nexis, Butterworths, Wadhwa, 14th edn., 2009 :- The Author has incorporated almost every decision of the Supreme Court touching the constitutional Jurisprudence. It is a two-volume book. It carries an exhaustive account of protection of life and personal liberty (Article 21) and the free legal aid (Article 39A) and highlighted the Supreme Court's directions to achieve the object of Article 21 & 39A.

Nayan Joshi, Speedy and Fair Trial, Kamal Publishers New Delhi, 2019: - The Author has given an insight into right of accused and Prisoners for speedy and fair trial. The author has mentioned all the related case laws.

In no case, the Lok Adalat can dispose of any matter by affixing and signing a pre-prepared award stamp. Lok Adalat's award is nothing, but assimilation of compromise and settlement terms of parties arrived in the form of enforceable order. The compromise or settlement terms cannot be same for all the cases. Hence, there is no scope for disposing of a matter by the Lok Adalat by affixing a pre-prepared award stamp.[36]

But it cannot be said there are no benefits attached to the ADR System. The recent data17 of the disposal of matters in Lok Adalat and Mediation shows that poor, downtrodden, and socially & economically disadvantaged groups are benefiting through the ADR, and that ADR is reducing the pendency as well. The Cases must be solved with the help of alternative conflict resolution procedures before and after they enter the gates of court, to save the court time.[37]

Study of literature[38] shows that Indian courts are facing tremendous workloads. As compared to roaring pending cases, the strength/number of judges is very less in India. One cannot expect change in the scenario or speedy reduction in pendency without having enough judges to tackle it. The national and regional strength of judges, and the vacancies is one of the related issues requiring attention. The Appendices (Appendix at 11.8 to 11.11) shows the actual number of posts, strength of judges and the vacant posts in the courts of different cadres in India.

[36] Urmila Masomat vs The State of Bihar, Criminal Writ Petition No.1105 of 2015, by Patna High Court
[37] Abul Hassan And National Legal vs Delhi Vidyut Board & Other, AIR 1999 Delhi 88 by Delhi High Court
[38] Supreme Court's official magazine 'COURT NEWS', Vol-XIV Issue no.2, April-June, 2019

1.4 Statement of the Problem

Intellectual property (IP) disputes, encompassing patents, trademarks, copyrights, and trade secrets, often arise due to conflicting claims over ownership, infringement, licensing, or misuse of protected intellectual assets. Traditional litigation processes for resolving these disputes tend to be time-consuming, costly, and may not always align with the dynamic nature of technological advancements and global business practices. In the context of intellectual property disputes, the efficacy, challenges, and implementation of Alternative Dispute Resolution (ADR) mechanisms—such as arbitration, mediation, or negotiation—require critical examination and analysis.

- How effective are ADR mechanisms in resolving complex intellectual property disputes compared to traditional litigation?
- What are the adoption rates of ADR mechanisms in IP dispute resolution among different industries, jurisdictions, and types of intellectual property?
- What are the key challenges faced in utilizing ADR methods specifically tailored to intellectual property disputes? These might include the lack of specialized expertise among mediators/arbitrators, enforcement issues, or confidentiality concerns.
- How can the need for confidentiality in resolving IP disputes through ADR be balanced with the public's interest in transparent legal proceedings and precedent-setting decisions?
- What are the cost implications of using ADR mechanisms compared to traditional litigation in intellectual property disputes, and how does this impact accessibility to justice for various stakeholders?
- To what extent are ADR decisions in intellectual property disputes enforceable, and how does this compliance compare to court rulings?
- How do ADR mechanisms cater to cross-border intellectual property disputes and align with global standards and treaties governing intellectual property rights?

1.5 Objectives of the Study

This study aims to critically evaluate the effectiveness, challenges, and implications of using Alternative Dispute Resolution (ADR) mechanisms in resolving intellectual property disputes. It seeks to provide insights into improving the application of ADR methods to address the complexities inherent in the protection and enforcement of intellectual property rights.

1. Analyze compare the effectiveness of various ADR mechanisms (such as arbitration, mediation) in resolving different types of intellectual property disputes.
2. Investigate the extent of adoption and utilization of ADR methods in intellectual property disputes across different industries, geographical regions, and types of intellectual property rights.

3. Study about the key challenges and limitations encountered in implementing ADR mechanisms tailored to intellectual property disputes. This could encompass issues related to expertise, enforcement, confidentiality, or compliance.
4. To study the cost-effectiveness of ADR compared to traditional litigation methods concerning intellectual property disputes. Examine how cost considerations impact access to justice for diverse stakeholders.
5. Investigate the enforceability of ADR decisions in intellectual property disputes and compare their compliance rates to court rulings.
6. To study about the mechanisms to balance the need for confidentiality in ADR proceedings while considering the public's interest in transparent legal processes and precedent-setting decisions.
7. To analyze how ADR mechanisms cater to cross-border intellectual property disputes and align with international standards and treaties governing intellectual property rights.

1.6 Hypothesis

H1: ADR mechanisms, such as arbitration and mediation, offer more expeditious resolution of intellectual property disputes compared to traditional litigation methods.

H2: Certain industries, particularly those heavily reliant on innovation and technology, exhibit higher adoption rates of ADR mechanisms in resolving intellectual property disputes compared to others.

H3: ADR methods are more cost-effective in resolving intellectual property disputes when considering legal fees, time, and resource expenditure compared to court litigation.

H4: Enforceability of decisions rendered through ADR mechanisms in intellectual property disputes exhibits comparable compliance rates to court judgments.

H5: ADR mechanisms for resolving cross-border intellectual property disputes align with international standards, offering a uniform approach to dispute resolution across diverse jurisdictions.

H6: ADR mechanisms in intellectual property disputes contribute significantly to preserving business relationships between disputing parties compared to adversarial court proceedings.

1.7 Methodology

Research methodology for studying intellectual property dispute resolution through Alternative Dispute Resolution (ADR) mechanisms involves a systematic approach to gather, analyze, and interpret data. Employ a mixed-methods approach integrating quantitative and qualitative techniques for comprehensive analysis. Initiate with exploratory research to understand the landscape, existing literature, and prevalent practices in IP dispute resolution through ADR. Administer surveys to legal professionals, businesses, and stakeholders involved in intellectual property disputes to gather quantitative data on ADR utilization, challenges, and

preferences. Conduct in-depth interviews and focus group discussions to gather qualitative insights from experts, arbitrators, mediators, and parties involved in IP disputes.

Conduct a comprehensive review of existing literature, case studies, legal precedents, and reports on ADR in intellectual property disputes to establish a theoretical framework. Stratify samples based on industry sectors, geographical locations, types of intellectual property disputes, and stakeholder categories to ensure representation across diverse groups. Employ statistical tools to analyze survey data, determining adoption rates, cost-effectiveness, and compliance levels of ADR mechanisms in IP dispute resolution. Conduct thematic analysis of qualitative data from interviews and focus groups to identify emerging patterns, challenges, and best practices. Analyze specific intellectual property dispute cases resolved through ADR mechanisms to provide detailed insights into practical challenges, successes, and unique circumstances. Ensure adherence to ethical guidelines concerning participant consent, confidentiality, and responsible data handling throughout the research process. Analyze and interpret the collected data to draw conclusions regarding the efficacy, challenges, and implications of ADR in intellectual property dispute resolution. This research methodology aims to comprehensively investigate the multifaceted aspects of intellectual property dispute resolution through ADR, offering insights, recommendations, and contributions to the field of IP law and dispute resolution practices.

1.8 Sources of Information

Researching intellectual property dispute resolution through Alternative Dispute Resolution (ADR) mechanisms involves sourcing information from various reliable and diverse channels. Access peer-reviewed legal journals focusing on intellectual property law, ADR, and dispute resolution. Examples include the "Journal of Intellectual Property Law" and "Journal of Dispute Resolution." Explore academic articles and papers discussing ADR methods in resolving intellectual property disputes. Access legal databases for case law, statutes, and precedents related to intellectual property disputes resolved through ADR. Utilize online legal libraries for access to legal documents and scholarly articles. Access reports, publications, and guidelines related to intellectual property dispute resolution and ADR mechanisms. Refer to government publications, reports, and guidelines on ADR practices in intellectual property disputes from relevant authorities or regulatory bodies.

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