



# INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

## ARBITRABILITY OF INTELLECTUAL PROPERTY DISPUTES IN INDIA

CO AUTHOR'S NAME

DR AVISHEK CHAKRABORTHY

ASSISTANT PROFESSOR

SCHOOL OF LAW

CHRIST (Deemed to be University)

AUTHOR'S NAME

HIMA JOSEPH

LLM STUDENT

SCHOOL OF LAW

CHRIST (Deemed to be University)

### INTRODUCTION

The subject of arbitrability has become a central concern in the constantly changing field of intellectual property (IP) law, capturing the interest of academics, practitioners, and legislators in equal measure. Parties involved in intellectual property issues have an alternative to traditional litigation: arbitration, a private dispute settlement process. Nonetheless, there has been much discussion and disagreement about whether arbitration is compatible with the complexities of intellectual property rights, legal requirements, and public policy issues.

In the global economy, intellectual property is becoming more and more important. The fact that no nation is self-sufficient in technology adds to the intellectual property's globalization. Because of this, industrialized nations buy and export large amounts of technology, which contributes significantly to the volume of global intellectual property transactions. A trademark's capacity to safeguard and enhance a market image across linguistic and cultural distributors of goods and services has increased, even as the demand for patent protection has increased due to a growing reliance on technology in the production of goods and the rise of high-tech industries. This paper establishes the background by outlining the core ideas of intellectual property law and arbitration. Based on the ideas of procedural efficiency and party autonomy, arbitration enables opposing parties to settle their differences out of court, frequently more quickly and discreetly. Conversely, intellectual property law covers a wide range of rights, including as trade secrets, copyrights, patents, and trademarks, and it is intended to balance the conflicting interests of consumers, artists, and the general public while encouraging innovation and creativity.

Unique opportunities and problems arise when arbitration and intellectual property are combined. These include concerns concerning the preservation of statutory rights, the enforcement of arbitral rulings, and how to strike a balance between the demands of public policy and private interests. The arbitrability question has many facets, including legal, economic, and sociological aspects, as this introduction demonstrates.

The goals and structure of this research paper, is mainly to offer a thorough examination of the arbitrability of intellectual property conflicts. By analyzing academic literature, legal precedents, and comparative jurisprudence, this study aims to clarify how various countries are changing in their views about the

arbitrability of intellectual property issues. In addition, it looks at how arbitration could affect parties' substantive rights and remedies in practice as well as how it might affect the IP ecosystem's innovation, competitiveness, and accessibility to justice. This paper aims to provide a deeper understanding of the arbitrability of intellectual property disputes by exploring these complexities, controversies, and emerging trends. The insights provided will be useful for scholars, legal practitioners, and policymakers who are tackling the difficulties of deciding IP rights in the twenty-first century.

## **Aspects of intellectual property and trade related to global governance and dispute resolution**

IPRs may now be enforced both nationally and internationally thanks to the combination of international trade law institutions with international intellectual property protection. In other words, a legal structure to preserve intellectual property rights matches the financial incentive for global licensing and joint ventures. The majority of IP standardization worldwide is managed by the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO) under the terms of the TRIPS Agreement.<sup>1</sup>

When it comes to the cross-border transfer of intellectual property rights, disagreements are bound to arise despite the many protection regimes available on an international scale. At first, it was also claimed that these conflicts resulted from the various degrees of intellectual property protection that various nations offer. It is believed that richer nations frequently provide more thorough and effective IP rights protection regimes at the local level, whereas less developed nations' protection frameworks are still far behind.<sup>2</sup> Because they have a competitive edge in technology-related goods and services, developed nations have also worked to increase the minimum levels of protection for intellectual property rights (IPRs). This has allowed them to better access markets and attract investment for goods and services that interest them.

Problems with infringement might arise in the nations where the items are only in transit as well as in the country of origin and destination. Due to these differences in the ways that intellectual property was transferred and traded globally, the TRIPS trade law framework was created, which has improved commerce between countries. Contractual agreements pertaining to the transfer of intellectual property open the door to more complicated conflicts as a result of parties' failure to fulfil their commitments.<sup>3</sup> Collectively, these establish the framework for settling intellectual property conflicts, which might manifest as allegations of infringement or failure to fulfil contractual duties.

In today's globalized world, intellectual property disputes are common, and efficient alternative dispute resolution (ADR) techniques are replacing court-based litigation as the primary means of resolving these disputes. This raises an intriguing query: can matters pertaining to intellectual property be successfully filed under the arbitration regime is the question here. If so, what kinds of conflicts fall under the purview of arbitration? Stated differently, the inquiry pertains to the efficacy of arbitration as a mechanism for settling cross-border conflicts concerning intellectual property. Various legal systems have approached this issue in different ways. Then, given these inconsistent behaviours, to what extent can we see such a medium as a successful way to settle conflicts at the international level.<sup>4</sup>

Due to the dynamic nature of commerce, both domestically and internationally, international commercial arbitration and the regulations governing it found in the UNCITRAL Model Laws have been one of the most efficient ways for international gatherings. There are still questions, nonetheless, about the arbitrability of conflicts involving intellectual property rights. Although intellectual property rights (IPRs) cannot be arbitrated upon in and of themselves since they are rights in rem, arbitration has been used to contractual disputes deriving from IPRs on several occasions. But there's still a lack of consistency in this area, particularly in India.<sup>5</sup>

<sup>1</sup> Journal of the Indian Law Institute, Vol. 39, No. 2/4 (APRIL-DECEMBER 1997), pp. 238-259

<sup>2</sup> Coopers & Lybrand, EC Commentaries, : Dec. 22, 1994, § 14.1.

<sup>3</sup> <http://wtocentre.iift.ac.in/FAQ/english/TRIPS.pdf>

<sup>4</sup> Press Release No. 93, World Intellectual Property Organization, Oct. 1, 1993.

<sup>5</sup> Tom Arnold Ef., Patent ADR Handbook, (1991).

Among the many benefits that arbitration provides are financial and time savings, preservation of the privacy of business dealings, and particularly pertinent in cross-border contracts the ability of arbitration to avoid a plethora of litigation in multiple nations having authority over the subject. Nonetheless, there are unique challenges associated with commercial arbitration. There can be purely technical questions about the arbitration location, law choice, and other matters. Public policy issues will also provide obstacles to the execution of awards before domestic courts. Nonetheless, intellectual property conflicts require particular elements that appear complicated and difficult to prove in court.

## **AN OVERVIEW OF ARBITRATION AS A MODE OF DISPUTE RESOLUTION**

Considering that arbitration dates back to the early 14th century, it is not a very modern method of resolving disputes. The Anglo-American legal system of the time did, in fact, accept commercial arbitration as a means of resolving disputes. Arbitration was also used in England by a number of organizations and institutions, including the stock exchange, insurance markets, and even the church, to settle conflicts that developed among their own members. But ever since, arbitration has grown in popularity as a venue for resolving disputes regarding parties' private rights. Early methods of addressing conflicts of interest between merchants resulting from their trading transactions included arbitration and various forms of alternative dispute resolution (ADR), such as mediation.<sup>6</sup>

After the United Nations Commission for International Trade Laws (UNCITRAL) was established and its rules were adopted, Arbitration procedure has become increasingly significant on a worldwide scale. Model Laws for International Commercial Arbitration known as Model laws provides Particular technical and theoretical guidelines for the applicability of arbitration and arbitral procedures are provided by the Model Laws. The Model Laws provide a useful legal framework for settling conflicts in cross-border business dealings.<sup>7</sup>

According to the definition of arbitration, the existence of an agreement designating the parties for arbitration in the case of a disagreement is the most important and required prerequisite to begin the arbitration process between two parties. The same emphasizes that arbitration is limited to resolving conflicts deriving from rights in persona, or disagreements involving parties' contractual rights and responsibilities. According to Article 1 of the Model Laws, which describes their applicability, international commercial arbitration is covered by the Model Laws, subject to any agreements made between States.<sup>8</sup>

It is stated that the term "commercial" in this clause will be understood to include "anything arising from relationships of a commercial nature," regardless of whether they are contractual in form. The Model Laws provides a long list of other transactions that qualify as business interactions. These encompass a range of operations such as leasing, licensing, and exploitation agreements, as well as any commerce transaction involving the supply or exchange of commodities or services. In addition to allowing member states to design their own domestic arbitration rules in accordance with the Model rules and their public policy concerns, the Model Laws provide a number of fundamental principles that govern commercial arbitration. The liberty accorded to nations to create their own public policy concerns has resulted in significant variations concerning the execution of awards within specific territories and the identification of arbitrable topics. Because these issues are of public interest, the majority of nations expressly specify in their legislation or court rulings which problems are not subject to arbitration.

While arbitration is a long-standing conflict resolution method, expanding its application to include intellectual property problems is still a developing body of legal precedent. At first, a lot of legal systems did not take into consideration sending intellectual property conflicts to a private forum for resolution since these issues belonged only to public government. Due to the dynamic nature of commerce, both domestically and internationally, one of the most efficient methods of resolving disputes between parties involved in

<sup>6</sup> William Catron Jones, History of Commercial Arbitration in England and the United States: A Summary View, INT'L TRADE ARB. 127, 129 (Martin Domke ed., 1958).

<sup>7</sup> Resolutions adopted by the General Assembly, 11 December 1985

<sup>8</sup> Explanation 2 under Article 1, UNCITRAL Model Laws on International Commercial Arbitration

international trade is International Commercial Arbitration and the regulations governing it found in the UNCITRAL Model Laws.

## **THE CONCEPT OF ARBITRABILITY**

The most important factor to take into account in any arbitration process is the issue of "arbitrability." Although arbitration is a very popular method for resolving disputes, used in business dealings, it occasionally turns out not to be the best course of action because some conflict issues cannot be arbitrated. The notion of arbitrability can be interpreted as an attribute of a disagreement that renders it susceptible to resolution through a private adjudicatory forum. When a disagreement may be settled by arbitration, it is said to be arbitrable. It is a necessary requirement that the dispute's subject matter be found to be eligible for arbitration by the tribunal before any arbitral proceedings.<sup>9</sup>

Whether an issue is in reality better suited for the jurisdiction of a public forum, such as the courts, as opposed to an arbitral tribunal, is determined by arbitrability. The foundation of the non-arbitrability theory is the idea that certain issues contain public matters. Agreements to settle conflicts through private arbitration that entail public rights or the interests of third parties, who are subject to special governmental power, should not be enforceable.<sup>10</sup>

The arbitrability of a subject matter is important because it does not automatically follow that a dispute is arbitrable just because the parties have submitted it for arbitration. When engaging in a business transaction, parties may not have given any thought to the arbitrability of a possible dispute. The majority of agreements have a general clause stating that arbitration will be used to settle any disputes arising from the agreement and that the applicable law will be prescribed. Parties only encounter issues with arbitrability when they attempt to use the arbitration provision in the event of a dispute and discover, in some circumstances, that the disagreement cannot be resolved by a private forum, such as an arbitral tribunal.<sup>11</sup>

There are differences in the definition of public policy throughout municipal law systems. Elements include social, political, and economic State-adopted public policy circumstances which are influenced by cultural contexts within the society. Nonetheless, a minimal level of consistency may be found in the methods used by the governments to decide public policy, which helps to further classify topics as arbitrable or not.<sup>12</sup>

## **ARE CERTAIN PARTS OF INTELLECTUAL PROPERTY RIGHTS ARBITRABLE? AS DO CLAIMS DERIVED FROM THEM?**

Intellectual property is defined by the WIPO as "works of art, literary and creative compositions, inventions, and names, symbols, images, and designs used in commerce." They are intangible, and the owner's exclusive use and licensing are what give them worth. Because of their value in the economy, they have become one of the most precious commodities of today. The definition of intellectual property was given by Article 2(viii) of the Convention Establishing the World Intellectual Property Organization on July 14, 1967. This definition covered a wide range of creations and inventions, such as literary, artistic, and scientific works; performances by performing artists, phonograms, and broadcasts; inventions in all fields of human endeavour; scientific discoveries; industrial designs; trademarks, service marks, and commercial names and designations; protection against unfair competition; and all other rights resulting from intellectual activity in the industrial, scientific and other fields.<sup>13</sup> On a global scale, the WIPO established the WIPO, while the WTO provides a dispute settlement process. Centre for Arbitration and Mediation. Although intellectual property rights cannot be arbitrated in and of themselves since they are rights in rem, arbitration has been used on several occasions to settle contractual disputes originating from intellectual property rights.

<sup>9</sup> 1 Christos Petsimeris, *The Scope of the Doctrine of Arbitrability and the Law under which it is determined in the context of International Commercial Arbitration*, 58 RHDI, 435 (2005).

<sup>10</sup> William Grantham, *The Arbitrability of International Intellectual Property Disputes*, 14 BERKELEY J. INT'L L. 173, (1996).

<sup>13</sup> 5 Matthew R Reed, Ava R Miller, Hiroyuki Tezuka and Anne-Marie Doernenburg, *Wilson Sonsini Goodrich & Rosati and Nishimura & Asahi, Arbitrability of IP Disputes*, GAR, 09 February 2021.



To guarantee that the rights of third parties who could have an interest over the matter in question do not conflict with one another, the categorization of in rem and in personam was acknowledged as a means of determining arbitrability.<sup>14</sup> Public policy considerations frequently inhibit intellectual property rights arbitration. Among these worries is the less comprehensive the arbitration process's less stringent evidentiary procedures and fact-finding procedure. Another cause might be a limited scrutiny of arbitral awards.<sup>15</sup>

There is no mention of an express, general prohibition on the arbitration of intellectual property rights, notwithstanding these difficulties. In actuality, arbitration's prominence and growth as a dispute settlement method have grown significantly in recent years. This is because of the casting traditional litigation as an unappealing choice because of the high expenses and protracted proceedings.

## **PUBLIC POLICY CONCERNS**

Regarded as the foundation of both international commercial arbitration and the execution of its rulings, the concept of party autonomy addresses the freedom of contracting parties to agree on any terms and conditions, provided that the topic does not encroach on areas specifically designated for states. This is a widely observed practice among many jurisdictions. As a result, public policy is sometimes seen as a restriction on party autonomy as it limits the parties' ability to present certain claims for arbitration.

The Priority one should give to investigate how intellectual property as a subject matter is subject to public policy restrictions about its arbitrability. As far as we are aware, intellectual property rights are recognized by the government. This is how the intellectual property right's validity is ultimately determined by the state. Nonetheless, the state is also the source from which the legitimacy of every other legally recognized right comes. This does not render any property or subject matter that the holder of a state-granted right exercises non-arbitrable. For example, private property rights, which come from the State, also apply to corporeal property. However, conflicts over who owns real estate and whether a title is legitimate are often resolved by arbitration, in many times in front of English courts. Therefore, even though real property and intellectual property rights are comparable, the Public Policy is not brought up in arbitration proceedings involving real property ownership. The idea that intellectual property conflicts are inherently non-arbitrable stems from the belief that intellectual property possesses inherent characteristics that push the state to the forefront, triggering public policy requirements.<sup>16</sup>

The second common public policy problem that is brought up has to do with the sovereign function of intellectual property rights; this is the public interest that nations have in awarding monopolies. Many people believe that monopoly rights, including intellectual property rights, cannot be created not an aim in and of itself, but rather a means of advancing some public interests connected to the entire intellectual property protection system. First and foremost, states safeguard intellectual property to support a larger public interest goal which is advancing research, technology, and innovation in society.

The sovereign role of intellectual property rights—that is, the public interest that governments have in granting monopolies—is the subject of the second often raised public policy issue. Many individuals think that the creation of monopoly rights, such as intellectual property rights, is not an end in and of itself but rather a way to further public interests related to the intellectual property protection system as a whole. States protect intellectual property primarily in order to further a goal of greater public interest, namely the advancement of science, technology, and innovation in society.<sup>17</sup>

Although the aforementioned issues are among the few frequently highlighted ones in public policy notions that prevent intellectual property conflicts from being arbitrated, there are other reasons why these worries are not at all credible and that IP disputes can really be arbitrated. First of all, the application of the public policy concepts previously described is mostly limited to situations in which the legitimacy, ownership, or registration of an intellectual property is in doubt. It is uncommon for concerns of validity to be taken into consideration in an intellectual property dispute because arbitration is only used as a mechanism of dispute

<sup>14</sup> Christopher John Aeschlimann, *The Arbitrability of Patent Controversies*, 44 J.PAT.OFF. SOC'Y 655, 662 (1962)

<sup>15</sup> Supra Note @ 48

<sup>16</sup> 7 Doed. Morris v. Rosser, 3 East 15, 102 Eng. Rep. 501 (K.B. 1802)

<sup>17</sup> French Intellectual Property Code, Art. L. 121-1

resolution in the context of commercial agreements. The majority of IP contracts involve licensing or assigning of such rights, which might result in a violation of the conditions of the license, which is well suited to be regarded as equal to violation of any kind of contract in general. Given this, it is possible to argue that public policy may not even be relevant in the majority of situations involving contractual agreements involving intellectual property because these characteristics may not even be of relevance to public authorities.

The tribunal may only decide the validity issue in order to reach a final decision and conclusion as on the award, which might address a question of a contract's provisions being broken. In reality, it has been decided in several countries that disputes pertaining to the validity of intellectual property rights may be arbitrated if they arise as ancillary issues in a contract dispute that is binding exclusively between the parties. In this case, it was decided that even if the arbitrator decided in favor of the patent's validity, third parties might still assert the patent's nullity. One such nation that adopted this stance as early as the 1950s is Italy.<sup>18</sup> In *Giordani v. Battiati*,<sup>19</sup> the Italian Supreme Court acknowledged that arbitral tribunals might decide patent validity disputes as long as the invalidity was incidental (*incidenter tantum*) to resolving the primary problems at hand. A similar discovery was also found in *Scherk v. Grandes<sup>20</sup> Marque* about trademark rights.

## **ARBITRABILITY OF IP DISPUTES IN INDIA**

It is not expressly stated in the 1996 Arbitration and Conciliation Act that some conflicts or topics cannot be arbitrated. Sections 34(2)(b) and 48(2) of the Act, which address the non-enforcement of an arbitral ruling, give rise to the lone case of in arbitrability. On a case-by-case basis, Indian courts formulate the rules regulating the arbitrability of intellectual property rights.<sup>21</sup>

*Mundipharma AG v. Wockhardt Ltd.*<sup>22</sup> was one of the first instances to address the arbitrability of an intellectual property dispute. In this instance, a pharmaceutical company with headquarters in Switzerland and an Indian corporation are engaged in a cross-border transaction. The contract for the the Petitioner's pharmaceutical preparations using PVP-I and secret information on the process of producing goods containing PVP-I were covered by the intellectual property license. Additionally, the Petitioner granted the Respondent trademark rights to the term "WOKADINE" so that it may be used to promote the sale of a specific medication that included PVP-I. Following the Respondent's purported breach of the terms of the contract, the parties received a dispute, and the Petitioner requested an injunction to stop the Respondent from handling PVP-I preparations and from misrepresenting or violating the Petitioner's copyright in the labels that the Respondent had previously used to sell the goods in accordance with the agreement. Section 20 of the Arbitration and Conciliation Act, 1940 was cited by the petitioner.

One of the various claims made by the petitioner, which they want to have arbitrated, concerned whether the respondent's actions violated the petitioner's copyright. The *Mundipharma* court decided that any claim of copyright infringement and any remedy sought in the form of injunction damages against such infringement would only ever be heard by civil courts and would never be the topic of an arbitral tribunal. The court's perspective on the arbitrability of intellectual property disputes was limited since it was based on the wording of Chapter XII of the Copyright Act, 1957, which was interpreted as expressly forbidding the presentation of intellectual property disputes before an arbitral tribunal. Nonetheless, the *Mundipharma* ratio was a welcomed precedent, and as a result, it was cited in a number of case laws.

In the case of *Common Cause v. Union of India & Others*<sup>23</sup>, the Supreme Court of India rendered the the note that, despite the fact that the matter at hand having nothing to do with the arbitrability of conflicts, a breach of intellectual property rights, which are effectively rights in rem, should be regarded as a tortious action, the remedy against which shall lay solely before a civil court. It was widely held that issues pertaining to

<sup>18</sup> Dario Moura Vicente, 'Arbitrability of Intellectual Property Disputes : A Comparative Survey' (2015) 31 *Arbitration International* 151, 155

<sup>19</sup> *Giordani v. Battiati*, 3 Oct. 1956, No. 3329. 1956

<sup>20</sup> *Scherk v. Grandes Marque*, 5 September 1977, No 3989 SU

<sup>21</sup> Badrinath Srinivasan, *Arbitrability of Intellectual Property Disputes in India: A Critique*, 2020 *NLS BUS. LAW REV.* 29 (2020)

<sup>22</sup> *Mundipharma AG v. Wockhardt Ltd.*, (1991) ILR 1 Delhi 606

<sup>23</sup> *Common Cause v. Union of India & Others*, (1999) 6 SCC 667

intellectual property rights could not be brought before an arbitral tribunal since these rights are essentially rights in rem and may only be adjudicated by a public forum.

The 2011 ruling in *Booz Allen Hamilton Inc. V. SBI Home Finance Limited*<sup>24</sup> gave rise to a chance for a thorough examination of the legislation controlling the arbitrability of conflicts. According to the distinction between rights in personam and rights in rem. The purpose of this decision was to provide some clarification on the theoretical aspects of "Arbitrability" and to make a somewhat clear distinction between objective and subjective arbitration. The case was noteworthy because it addressed a number of topics, including defining three characteristics of arbitrability, defining principles of arbitrability, and elucidating which authority has the capacity to judge whether a thing is arbitrable. The "Triple Test for Arbitrability" was developed using these three factors, which have also served as the basis for other case laws.

The three requirements established by court to decide if a subject issue is arbitrable is that the matter, by definition, adjudicative by a private forum or exclusively by a public forum; if the disagreement is covered by an arbitration agreement; additionally if arbitration was requested by the parties to resolve their disagreement. The conventional idea of rights in rem and in personam is followed in the first stage of determining the nature of the dispute. This distinction establishes the parameters of the arbitral tribunal, which makes it crucial to assess arbitrability.

The case of *EuroKids International Private Limited v. Bhaskar Vidhyapeeth Shikshan Santha*<sup>25</sup> serves as a reminder of the inadequate authority surrounding arbitrability. Under Section 9 of the Arbitration Act, the petitioner franchisor had requested injunctive action against the In the event that the franchise agreement is not renewed, the respondent franchisee is prohibited from using the mark, logo, and trade name of EuroKids School. The court acknowledged that the petitioner had relied on the negative covenant, which forbade the franchisee from exploiting the franchisor's copyrighted materials and trademarks in the event that the agreement was terminated. The Respondent may always bring up the question of jurisdiction before the knowledgeable arbitrator, the court concluded, should the Petitioner seek any such remedy in rem.

## RECENT TRENDS IN ARBITRATION

The 2020 ruling by the Supreme Court in *Vidya Drolia v. Durga Trading*<sup>26</sup> offered a fresh perspective on the arbitrability debate in India. The court outlined four situations in which the subject matter or cause of action was not amenable to arbitration:

- ” 1. when the cause of action relates to an action in rem that does not relate to subordinate rights in personam;
2. when the cause of action affects third party rights;
3. when the cause of action relates to inalienable sovereign and public interest functions of the State;
4. when the cause of action is expressly or by necessary implication non arbitrable under a statute.”

This strategy differs significantly from the narrow strategy put out in *Booz Allen*, where disagreements were deemed non-arbitrable on the basis of just two principles: the nature of rights and the sole forum for adjudication. The notion of the exclusive forum of adjudication, used in the *Mundipharma*, *IPRS*, and *Ayyaswami* instances, prohibited arbitration as a means of resolving disputes under laws giving specific/special venues or tribunals exclusive jurisdiction. According to *Vidya Drolia*, any disagreement over intellectual property rights resulting from a contractual relationship that is protected by such an agreement should be settled through arbitration. But it's crucial to consider a particular situation, notably the defenses posited in an infringement lawsuit, which can prevent an arbitration from taking place.

India lacks jurisprudence on the arbitrability of intellectual property issues, and judges have not consistently applied the same standards when making this determination. Although *Vidya Drolia* appears to provide a more

<sup>24</sup> *Booz Allen Hamilton Inc. V. SBI home finance Limited*, (2011) 5 SCC 532

<sup>25</sup> *Eros International Media Ltd. v. Telemax Links India (P) Ltd*, 2016 (6) ARBLR 121 (BOM)

<sup>26</sup> *Vidya Drolia v. Durga Trading*, Civil Appeal No. 2402 of 2019

lucid understanding of the jurisprudence, it is unclear if this judgment helps to come to a clear conclusion about the matter.

## CONCLUSION

There are legal loopholes and divergent views among Indian judges on the arbitrability of intellectual property. It is impossible to ignore, nevertheless, that the situation in India is changing. A shift from a stringent prohibition on intellectual property arbitrability to a more lenient approach to IP disputes arising from contracts is seen in many of the case laws covered in this article. A lot of the time, decisions that have an impact on the public interest like forcing someone to issue a patent license or registering a trademark are viewed as unavoidable.

The restricted approach to IP arbitrability used in earlier cases has generally been abandoned in more recent rulings. The first was supplied by the Booz Allen decision, which established the three-prong test for figuring out whether a dispute is amenable to arbitration. However, because it doesn't precisely specify the bounds of arbitrability, this method has been criticized for being overly generic and nebulous. Nonetheless, the concept established a foundation for differentiating between rights conflicts pertaining to rights in personam and in rem; this differentiation has gained significance in India's growing corpus of case law regarding the arbitrability of disputes.

The ruling in Vidya Drolia by the Supreme Court upholds the general understanding that intellectual property rights issues resulting from contractual relationships can be resolved through arbitration and acknowledges the arbitral tribunal's jurisdiction to make such choices. Arbitration was to be used to settle the dispute based on the merits of the cause of action rather than just its subject matter. This approach is a drastic change from the constructive one suggested by Booz Allen. A complaint alleging violation of intellectual property is governed by the provisions of a contract between the parties and that is under the purview of that contract's arbitration clause can nevertheless be settled by arbitration on the theory of appropriately in personam. Indian courts, however, have not yet recognized this concept as a legally-binding principle or a uniform set of procedures; instead, the specific facts of each case will determine whether or not arbitration may be used to resolve an IPR dispute resulting from a contract.

Enhancing the efficacy of the enforcement and adjudicatory procedures for handling intellectual property rights infringement is one of the main objectives of the National Intellectual Property Rights Policy 2016. However, the Indian legal system has done little to promote the arbitration of IP disputes in spite of these suggestions. India, therefore, lags well behind her peers and the global community in offering clear answers, either via national policy or legislation, to the question of the arbitrability of intellectual property conflicts.