

An Indian perspective on Alternative Dispute Resolution and Intellectual Property Rights

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Abstract

Intellectual property rights (IPR) are the legal rights granted to the inventor or creator to safeguard his or her invention or production for a specified period of time. Alternative dispute resolution (ADR) refers to the many methods through which individuals can resolve conflicts without going to court. Mediation, arbitration, settlement and conciliation are examples of common ADR methods. The recognition and protection related to intellectual property rights are of recent origin in India as compared to protection under other laws. Disputes over intellectual property protection are rapidly rising in India's judicial system. Intellectual property protection is accessible for a specified time for the inventor of intellectual property who must enforce it effectively. Alternative dispute resolution procedures are

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gaining popularity for enforcing intellectual property protection. Alternative dispute resolution is a critical remedial tool for providing speedier justice. As a result, it is important in the development of people and the advancement of social justice in society. Alternative dispute resolution as a unique technique to resolve disputes at the grassroots level and promote peace and security. This research paper is an attempt to understand the use of Alternative dispute resolution method to resolve the issues relating to intellectual property rights. The study evaluates the Alternative Dispute Resolution approach at the national and international levels, as well as the issues associated with enforcement. The study's goal is to examine the benefits and procedures of the Alternative Dispute Resolution body.

Research Questions

- Whether ADR helps in implementation of various theories of the Intellectual Property rights
- Why the ADR mechanism in IP disputes is the need of the hour?

Literature Review

- The paper written on Alternative Disputes Resolution and Intellectual Property Rights: Indian Perspective by Dr. Arti and Dr Anu Mutneja focuses on Alternative Dispute Resolution as a

Versatile Remedy in the Field of Intellectual Property Rights, the Need for Awareness, and the Implementation of Door to Door.

- Alternate Dispute Redressal in Intellectual Property written by Khushboo Singh & Manjari Mishra With the evolution of intellectual property, various challenges arise on a daily basis; some of the processes for resolving IP concerns are covered in this article. The major goal of this article is to concentrate on the many patterns utilised in the realm of intellectual for conflict settlement. The paper also emphasises on the effectiveness and viability of ADR on a national and worldwide scale.
- Alternative Disputes Resolution and law of Intellectual Property written by Madhu Sweta focuses on the use of alternative legal mechanisms for the protection of intellectual property rights in India.

Introduction

The Intellectual Property issues are advancing day by day in the country because of the development of this field. With advancements in practically every industry, intellectual property (IP) has established itself as the most valuable asset in the international market, and as a result, there is a high level of disputes in the sector.

Intellectual property is only available to the inventor for a short time and thus, it sparks controversy. The issue then proceeds to court, resulting in unnecessary delay; there is a need to consider alternative solutions and systems for sharing the load of the courts.² The ADR mechanism is also preferred as it can provide speedy justice³. Article 21⁴ of the Indian Constitution enumerates rapid justice as a basic right of individuals and persons, and Article 51⁵ of the Indian Constitution enumerates alternative dispute resolution as a unique technique to resolve disputes at the grassroots level and promote peace and security. These articles are emphasizing on the need of ADR for dispute resolution.

The *Ubi jus ibi remedium* concept states that where there is a right, there is a remedy, hence intellectual property rights grant various rights to a person who is evolved and generates innovative ideas, inventions, procedures, and so on. It contributes more to the growth

² Maurer Bill, The Disunity of Finance: Alternative Practices to Western Finance, 413 The Oxford Handbook of the Sociology of Finance, (2012)

³ Ankur Singhal & Vasavi Janak Khatri, Recent Developments Concerning Arbitrability of IPR Disputes in India: a Need for Reform, 1-18, Vol. 5 Indian Law Review, (2020)

⁴ THE CONST. OF INDIA, Art. 21

⁵ THE CONST. OF INDIA, art. 51(d)

of industries, businesses, and an effective educational system in both the public and private sectors.⁶

Theories discussing significance of IP rights:

There are three main theories that have discussed the significance of Intellectual Property rights and its implementation:

Utilitarianism Principle:

The developers of utilitarian principle, J S Mill and Jeremy Bentham believes that IP rights is a crucial part of social resource. They believed that providing such rights gives liberty to people to accrue the benefits arising out of such rights and thus their mental ability is also developed. The concepts of intellectual property rights and protection through ADR is a mechanism to foster the innovation and invention while balancing social welfare and the loss of monopolistic exploitation.⁷ Thus, ensuring that the main motto of the system i.e.,

⁶ Professor (Dr.) Ranbir Singh, Dr. Vishwas Devaiah, Theoretical Justifications for Intellectual Property, An MHRD Project under its National Mission on Education Through ICT(NME-ICT), available at: <https://epgp.inflibnet.ac.in/Home/ViewSubject?catid=20>(last visited on 19/05/2021).

⁷ Peter S. Menell, Intellectual Property: General Theories, available at: <http://www.dklevine.com/archive/ittheory.pdf> (last visited on 19/05/2021).

welfare or well-being of all the people with an effective remedy can be achieved.

Personality theory:

Hegel the developer of this theory believes that personality of anyone must be protected by the law and system and the development of any intellectual property reflects the personality of the person and thus, IP rights are very crucial.⁸ Therefore, developing mechanisms like ADR to ensure the protection of these rights in a convenient manner also becomes equally important.

Labour Theory:

John Locke's theory also explains the concept of protection of IP rights as one who has put the labour and hard work to achieve something should also be given the opportunity to enjoy the fruits of his success.⁹ In ISKCON Apparel Pvt. Ltd. case it was propounded that IP rights deserve the highest degree of protection.¹⁰ In Bajaj Auto Limited v. TVS Motor Company Limited the apex court has observed

⁸ Mazer v. Stein, 347 U.S. 201 (1954)

⁹ M Du Bois, Justificatory Theories for Intellectual Property Viewed through the Constitutional Prism, PER / PELJ 2018(21) Open Access Online Law Publications (2018).

¹⁰ International Society for Krishna Consciousness v. ISKCON Apparel Pvt. Ltd., Commercial IP Suit (L) No. 235 of 2020

that an effective remedy plus immediate remedy mechanism is needed for the disputes of intellectual property rights.¹¹

Alternate Dispute Resolution Mechanism:

In addition to the traditional model of litigation, ADR provides different ways of resolution like Arbitration, conciliation, mediation, judicial settlement, etc. The Civil Procedure Code, 1908 also provides for the use of several models for the rapid adjudication of disputes. The virtues of the forms of alternate conflict resolution are not only limited to rapid redress, but also, to the flexibility, cost efficiency, secrecy and business-oriented results. The Indian judiciary has effectively endeavoured to incorporate mediation and resolution for intellectual property conflicts in the conventional form of litigation, through the reading of Section 89 of the Civil Procedure Code, 1908¹².

ADR mechanisms differ from one country to the next. For example, the United States has sixteen hybrid forms of ADRs, but the World Intellectual Property Organization (WIPO) only has three, implying

¹¹ Bajaj Auto Limited v. TVS Motor Company Limited, (2008)36 PTC 417

¹² Civil Procedure Code, 1908, S. 89

that ADR mechanisms are highly country specific. The two most common mechanisms are as follows:

Arbitration

Arbitration is one of the most well-known and widely used forms of ADR. This final and binding private adjudication method provides clients with an alternative to courtroom litigation.¹³ In arbitration, the parties may select one private arbitrator or a panel of three private arbitrators, who often have a particular expertise in the area of the dispute.¹⁴ General rules and regulations on arbitration have been promulgated by various specialised organisations; however, parties may agree to tailor the regulations to fit their individual situations.¹⁵

¹³ Endispute Inc., ADR Processes 4-18 (1994)

¹⁴ Institute for Dispute Resolution, Center for Public Resources, Inc., CPR Model ADR Procedures and Practices: Arbitration I-5 to I-18 (1995)

¹⁵ Gregg A. Paradise, Arbitration of Patent Infringement Disputes: Encouraging the Use of Arbitration Throughout Evidence Rules Reform, 64 Fordham L. Rev. 247, 270-78 (1995)

Mediation

Mediation has the distinct benefit of allowing the parties to create their own settlement through a mutually agreed-upon solution.¹⁶

The mediator acts as a facilitator, assisting the parties in reaching an agreement. The mediator increases the parties' available resources by giving a knowledge of the complex problems at hand, as well as an objective examination of the underlying problem.¹⁷ Mediation shifts the emphasis of the conflict away from rights, winners, and losers. Therefore, giving an opportunity to the parties to resolve the conflict and even have an opportunity to be in good terms with each other.¹⁸

ADR in IP regime

The following is an examination of how alternative dispute resolution (ADR) techniques may be utilised to address different copyright, patent, trade mark, and licence problems.

¹⁶ Howard C. Anawalt & Elizabeth E. Powers, IP Strategy: Complete Intellectual Property Planning, Access and Protection § 5:26 (2003).

¹⁷ Danny Ciraco, Forget the Mechanics and Bring in the Gardeners, 9 U. Balt. Intell. Prop. L.J. 47, 60 (2000).

¹⁸ Kathy L. Cerminara, Contextualizing ADR in Managed Care: A Proposal Aimed at Easing Tensions and Resolving Conflict, 33 Loy U. Chi. L.J. 547, 557 (2002)

Copyright Disputes and ADR

Copyright restricts any other person to copy someone's creation. However, the major cause of the dispute is the extent of copying someone's idea and creating your own work out of it. It should be such that it can be easily and clearly differed from other's work.¹⁹

The main aim of the work is to find the difference between the two works. Thus, it can be easily resolved through ADR mechanism as the third party responsible for the dispute resolution is qualified enough to reach the judgement and pass a valid award.²⁰ Even the disputes which have issues which are complex and involves technical expertise to be resolved can be solved through ADR as the expert's assistance can be taken in such cases when either of the party or the person resolving the dispute believes that the matter is needed to be referred to an expert.²¹

¹⁹ Atari Games, 975 F.2d at 844.

²⁰ Hupp v. Siroflex of Am., Inc., 122 F.3d 1456, 1464 (Fed. Cir. 1997)

²¹ Jay E. Grenig, Alternative Dispute Resolution § 1.2 (2d ed. 1997 & Supp. 1998).

ADR in Commercial Patent Disputes

Many of the patents issued and in litigation today are in the fields of biotechnology, pharmaceuticals, computer hardware, and software as these are very technical in nature. Thus, appointing person "skilled in the art" of patent as an expert can be a boon to easily solve these cases.

According to experts' arbitration cost less than half the expense of a patent infringement action²², this clearly shows that ADR mechanism is the best way to get rid of the exorbitant pricing of litigation suits.

ADR and Commercial Trade Mark Disputes

When the mark of one party is very similar to the other party that it can make the general public believe that both are very similar in nature then it leads to these disputes. The resolution through ADR in these cases can help the parties in coming to a middle ground and making slight changes in the mark of the party who has the mark resembling the other party's mark and therefore ensuring that there is no complete damage done to any party and creating the difference

²² Tom Arnold, Contracts to Arbitrate Patent and Other Commercial Disputes, CPR's Alternatives to the High Cost of Litigation, December, 1992

between the two marks such that they can be identifiable s different marks.²³

International Intellectual Property Disputes & ADR

The diversity of legal systems and tribunal processes is the major reason that the nature of international disputes lends itself to conflict. Furthermore, international intellectual property disputes frequently involve nations with very different ideas about intellectual property and the level of protection that it should be afforded²⁴; thus, the dispute mechanisms provided by the General Agreement on Tariffs and Trade (GATT) and WIPO serve as the standard for the method and procedures to be followed when resolving international disputes.

²³ Eg. Dawson v. Hinshaw Music, Inc., 905 F.2d 731, 737 (4th Cir. 1990)

²⁴ Eileen Hill, Trade-Related Aspects of Intellectual Property Rights: General Agreement on Tariffs and Trade, Business America, September 10, 1990, at 17

WIPO and Indian Laws for IP rights and ADR:

The WIPO Convention has played a critical role in the international protection and promotion of intellectual property rights. It enumerates several rules for the protection of writers, inventors, and holders of intellectual property rights, among others.²⁵

The Indian Constitution encourage arbitration for international peace. Article 51(d)²⁶ requires the state to make efforts to support the resolution of international conflicts through arbitration; it also includes the resolution of domestic problems. Article 19 (1)(a) of the Indian Constitution protects intellectual property rights, however it is not absolute. Article 19(2) discusses acceptable constraints on free speech and expression rights, including intellectual property rights.²⁷

ADR is an alternative remedy that aims to provide everyone justice as soon as possible since justice delays justice denial. Article 21²⁸ and personal liberty are built on speedy justice.

²⁵ Summaries of Conventions, Treaties and Agreements Administered by WIPO, World Intellectual property Organization, (2013).

²⁶ Supra note 4

²⁷ THE CONST. OF INDIA, A. 19

²⁸ Supra note 5

Section 89 of the Civil Procedure Code, 1908²⁹, indicates and analyses the relevance of mediation, conciliations, and Lok Adalat's, among other things. The basic goal of the ADR procedures under Section 89 is to establish a simple and efficient judicial system and equal access to justice for all.³⁰

Section 130(5) of the Patent Act of 1970 refers to the use of ADR in the resolution of disputes involving Intellectual Property Rights. The provision states that the High Court may -

- At any moment, ordering the entire procedure or
- Any questions or concerns?
- Any factual problem that arises must be brought to an official referee, which entails
- The term "commissioner" or "arbitrator" should be interpreted accordingly.

The Need for an ADR Mechanism in IP Disputes

²⁹ Dr. Marisport A, Resolving Pending Cases Through Alternative Dispute Resolution Under Section 89 Of Civil Procedure Code: A Case Study, Department of Justice, Ministry Of Law And Justice, Government Of India, (2019).

³⁰ Civil Procedure Code, S. 89

- Indian Courts have taken a great step toward the formation of an intellectual property system in India; nevertheless, the current resources might be put to better and effective use if other dispute resolution is used. Patent and copyright cases, which include the junction of science and a grasp of technology, require specific adjudicating officials who can appreciate the multidisciplinary character of the matter at hand with ease.
- The Supreme Court of India, in the case of *Shree Vardhman Rice & Gen Mills v. Amar Singh Chawal Wala*³¹, has evaluated the performance of the Indian court in matters involving intellectual property rights. The court in this case held that, *“In our opinion, all Courts should strictly comply with the proviso to Order XVII Rule 1(2) C.P.C. in matters relating to trademarks, copyright, and patents, and the hearing of the suit in such matters should proceed on a day-to-day basis, with the final judgement normally being given within four months of the date of the filing of the suit.”*
- The Supreme Court of India reiterated its position in *Bajaj Auto Ltd. v. TVS Motor Company Ltd.*, holding that "experience has shown that in our country, suits relating to patents, trademarks, and

³¹ *Shree Vardhman Rice & Gen Mills v. Amar Singh Chawal Wala* (2009)10 SCC 257

copyrights are pending for many years and litigation is primarily fought between the parties over temporary injunction."³²

- It is clear that, in promoting the advancement of intellectual property rights in India, the aggrieved parties are opting for alternative dispute resolution mechanisms due to unjustified delays in the disposition of cases and the costly litigation that could prolong the protection accorded to the work.
- In the landmark case of *Bawa Masala Co. v. Bawa Masala Co. Pvt. Ltd. and Anr.*³³, where a number of legal problems had already been addressed through an alternate dispute resolution procedure, the Delhi High Court issued instructions for the implementation of an early neutral evaluation process in an intellectual property-based litigation challenge. Under the provisions of Section 89 of the Civil Procedure Code of 1908, the Court in this instance advocated for the inclusion of such mechanisms for peaceful conflict resolution.

Conclusion

In conclusion, ADR for intellectual property rights disputes is likely to benefit more parties and provide a speedier resolution. It creates new opportunities for parties and has developed constructive

³² (2009) 9 SCC 797

³³ AIR 2007 Delhi 284

methods to assist business entities and innovative ideas, thoughts, and so on. However, the lack of direct legislative provisions regarding ADR in IP disputes has created many difficulties in understanding how ADR is an efficient dispute resolution method for IP.

Most intellectual property disputes would benefit in some way from the vast spectrum of ADR processes, whether via settlement, limiting the problems, increased communication, or case-planning support. One of the primary advantages of ADR is the freedom of the parties to choose a procedure that is appropriate for their case and modify it to their needs. To get the most out of ADR, lawyers should assist their clients make educated judgments about which ADR method to use and how to tailor it to their specific situation, and they should carefully prepare themselves and their clients to participate meaningfully in the ADR hearing.

Suggestions

- To adapt ADR to mediate a disagreement over Intellectual Property Rights, a modern framework is required. Because of the extreme business climate and the preservation of intellectual property rights, a simple and adaptable remedial body is necessary.

- Such regulation should be formed where referring the matter to ADR mechanism should be a pre-requisite and only after it, if the parties are unhappy with the decision they should be allowed to go for suit.
- Patent and copyright cases, which include the junction of science and a grasp of technology, require specific adjudicating officials who can appreciate the multidisciplinary character of the matter at hand with ease.