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ABOUT US

"Journal of Unique Laws and Students" (JULS) which shall provide law students, young lawyers and legal professionals to deliberate and express their critical thinking on impressionistic realms of Law. The JULS aims to provide cost free, open access academic deliberations among law students and young lawyers. The ISSUE III of Volume I focuses on three themes i.e. (i) Arbitration Law (ii) Competition Law, and (iii) Criminal Law.

The journal strives to contribute to the community with quality papers on a vast number of legal issues and topics written by authors from various groups that have been reassessed and revised by our editorial team to reach the highest possible standard.

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PREFACE

On looking at today's scenario, there are numerous issues to know about. Our journal`s Issue III of Volume I has work on three crucial themes namely ***Criminal Law***, ***Arbitrational Law*** and ***Competition Law***. We would like to express our deep appreciation of the co-operation of the contributors, who so willingly devoted their time and energies.

We have tried to cover these wide topics with the relevant research and landmark judgments. We have used standard of words for the explanation, evenly attempted to clear the concepts and presented captivating writing to the readers. The works also contains some suggestions in respective fields.

The views expressed in the articles are purely and solely of the authors and the entire team of the Journal has no association with the same. Although all attempts have been made to ensure the correctness of the information published in the articles, the Editorial team shall not be held responsible for any errors that might have been caused due to oversight or otherwise. It is up to the rest of us to help make the journal a success story in the next several years.

FOREWORD

As a member of the Advisory Board of Journal of Unique Laws and Students (JULS) which seeks to support student dynamism in action, I take pride in writing this very brief Preface to **Issue III of Volume I** of the Journal. Through this sturdy student-led initiative, the Journal provides young lawyers and law students of the opportunity to deliberate on legal issues of contemporary interest and to express their well-researched conclusions in the form of double-peer reviewed articles.

In this issue of the JULS I am happy to see a wide array of articles on *Alternate Dispute Resolution (ADR), Arbitrability, Competition Law, Juvenile Delinquency, Gender Crime, Cybercrime, Criminalisation of Politics, Sedition and Witness Protection*. Laws and legal systems are dynamic in nature and laws evolve or are enacted to suit the changing needs of society. Young lawyers and law students can contribute to this dynamic process and even recommend law reform or analyse existing laws including case law. Young lawyers can also contribute to society as civil society activists engaged in efforts to improve the quality of law and its administration. The inculcation of critical thinking, which is one of the main objectives of the JULS, can no-doubt stand in good stead to young lawyers in moulding their future careers.

While I am happy that the very first issue of the inaugural volume of JULS was a tremendous success and its wide array of articles on diverse topics were well received by the legal fraternity, I take this opportunity to thank the contributors of articles as well as the vigilant and hardworking Editorial Board and my colleagues in the Advisory Board for the high standards achieved. In this Foreword, I take the opportunity to thank the publisher for coming out with another issue of JULS almost in time despite the trying conditions in which lawyers work and law students are placed, and I am glad that JULS through its on-line presence, is able to contribute immensely to this process of dissipation of legal knowledge and skills.

Justice Saleem Marsoof PC

Judge of the Supreme Court of Fiji

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EDITOR'S NOTE

Unique Law was established in the month of April 2020 and cheerfully brings **Volume 1 Issue III** of **Journal of Unique Laws and Students (JULS)**. This journal has become a successful climb in reaching to our goal of gaining visibility in the academic front and becoming a great platform in education community.

The journal aims to present merit papers on the numerous legal issues and these topics are authored by various groups of individuals that have been reappraise and emended by our team of editors to attend the highest possible excellence. These research papers, case analysis and shortnotes are the result and we feel privileged to have been able to act as editors.

We thank to all our authors for their obedient submission to the third issue of the Journal by Unique Law and also for their productive cooperation with the editorial team to garnish their work with perfection. We would also like to express our gratitude to our diligent editorial board, whose restless support and commitment made this Journal's Issue III a success.

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ARBITRABILITY OF IPR DISPUTES

Author: *Aishani Navalkar*[*]

ABSTRACT

Intellectual Property Rights disputes are increasing at a gradual rate. Similarly, the means to use arbitration as a commercial dispute resolution mechanism is also increasing. Many liberalized and globalized countries in the world have adopted a pro-arbitration approach when it comes to arbitrability of IPR disputes. However, the judgments given by the Indian courts and their stance towards arbitration of IPR disputes have remained scattered. This paper navigates through the various judicial pronouncements set forth by the courts in India and identifies the dynamic nature of the same. It also recognizes lacuna present in the legislations and precedents regarding the scope of IPR arbitrability. Given the Indian judiciary's recent pro-arbitration stance, there is a strong probability that additional lawsuits originating from IPR agreements would be resolved through arbitration.

Keywords: *Arbitration, Intellectual property, Disputes, India*

INTRODUCTION

The Indian statues do not define Intellectual Property Rights (hereinafter referred to as IPR). In India, the following include the most widely used IPR: copyrights, trademarks, patents and industrial marks. However, the courts have referred to it as a 'negative right', which is the right of the registered owner to prevent others from utilizing the property, he or she has generated[1]. IPRs are intangible and incorporeal properties. India is a signatory to the TRIPS Agreement of the WTO.

In Institute of Chartered Accountants of India v. Shaunak H. Satya & Ors.[2], the Supreme Court of India referred to the definition of Intellectual Property from the Black Law's Dictionary[3],

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[1] Gurukrupa Mech Tech Pvt. Ltd. vs. State of Gujarat and Ors. (2018) 4 GLR 3324

[2] Institute of Chartered Accountants of India v. Shaunak H. Satya & Ors. 2011 (4) SCT 76 (SC)

[3] B. A. Garner, Black's law dictionary 813 (7th ed. 1999) 7th ed

"the *term 'intellectual property' refers to a category of intangible rights protecting commercially valuable products of human intellect comprising primarily trade mark, copyright and patent right, as also trade secret rights, publicity rights, moral rights and rights against unfair competition*"

The High Court of Delhi in, McDonalds India Pvt. Ltd. and Ors. vs. Commissioner of Trade & Taxes, New Delhi and Ors.[4],described IPR as rights that are only genuine and effective if they allow the owner or transferee to "keep out" those who are not allowed to utilize them.

The importance of IPRs was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). The above two are administered by the World Intellectual Property Organization (WIPO).

Rights in rem refer to rights against the world whereas rights in personam refer to rights against an individual. Right in rem also refers to 'a legal action directed against a property' rather than an individual. According to the judiciary in India, IPRs are considered to be rights in rem, since it can be exercised against the world at large. Rights in personam can arise in contractual agreements. Thus the matter of arbitrability depends on the "right to rem v. right to personam."

The IPR regime is governed under The Copyright Act, 1957; The Patents Act, 1970; The Trade Marks Act, 1999; and The Designs Act, 2000.

Arbitration, in its most basic form, is a non-judicial method for resolving disputes in which a third person, known as an arbitrator, makes judgments on the subject matter which binds the parties. Arbitration is the process of an independent third party deciding a dispute in a private, judicial setting. A single arbitrator or a tribunal may be used in an arbitration proceeding.

In India, the matter of arbitration is administered by the Arbitration and Conciliation Act, 1996. The act has been amended in order to keep up with the evolution of disputes. It shadows the UNCITRAL Model Law on International Commercial Arbitration.

Arbitration has been utilized as an Alternative Dispute Resolution (ADR) technique to help resolve commercial disputes in a timely manner. Even though there are numerous advantages to arbitration, certain disputes can only be resolved through litigation. None of the acts and

[4] McDonalds India Pvt. Ltd. and Ors. vs. Commissioner of Trade & Taxes, New Delhi and Ors. *2017 VIIAD (Delhi) 350*

legislation in India (relating to arbitration and IPRs) lay down the scope of the subject matters which can be considered to be arbitrable.

IP arbitrations are uncommon, for a variety of reasons, including the fact that most IP disputes do not include a pre-existing contractual arrangement. Arbitration, on the other hand, necessitates a written agreement to arbitrate. Using ADR to resolve IPR issues has been a long-standing practice. It is particularly the arbitration of disputes; institutional arbitration is becoming increasingly crucial for India's developing industries in the environment of liberalization and globalization. IPRs are only as powerful as the enforcement mechanisms available. In this context, arbitration is becoming more popular as a private and confidential method of resolving disputes over intellectual property rights, especially when parties are from different jurisdictions.

LITERATURE REVIEW

Kumar and Mishra (2015)[5] state that Intellectual property rights (IPR) have become a valuable weapon for gaining economic supremacy. For all those involved with research and academic communication, copyright has become a hot topic and a complex one. In the digital era, the nature and usage of copyright content differs from that in the print environment. The increased exploitation potential in the digital world has created new problems for copyright holders to safeguard their material from unlawful usage in the digital environment.

Vaderu (2018)[6] explains that the following are the general principles of arbitration: The fundamental goal of establishing arbitration is to get a fair settlement through a third party without incurring excessive costs or delays. The parties are given the opportunity to determine how their issues should be handled through arbitration. Finally, the courts are not required to intervene in the arbitration procedure.

[5] Satish Kumar and Anil Kumar Mishra, IPR in India: Status, Strategies and Challenges for Digital Content. Transforming Dimension of IPR: Challenges for New Age Libraries, (2015), http://14.139.58.147:8080/jspui/bitstream/123456789/374/1/Original%20Transforming%20Dimension%20of%20IPR%20-%20Challenges%20for%20New%20Age%20Libraries.pdf#page=16 (Sept. 7, 2021, 9:20 pm)

[6] Nikita Vadrevu, *Arbitration and IPR*, LEGAL DESIRE, (Sept. 7, 2021, 9:29 pm), https://legaldesire.com/arbitration-and-ipr/

Using alternative dispute resolution to resolve Intellectual Property Rights issues has been a long-standing practice. It is particularly the arbitration of conflicts; institutional arbitration is becoming increasingly crucial for India's developing industries in the environment of liberalization and globalization. Intellectual property rights are only as powerful as the enforcement mechanisms available. Arbitration is increasingly being used to resolve disputes concerning intellectual property rights as a private and confidential method, particularly when parties are from different jurisdictions.

When it comes to international IPR issues, arbitration is still favored over litigation, despite the problems it poses. It eliminates several lawsuits and has inherent benefits in dealing with commercial conflicts, such as flexibility, secrecy, and finality.

Even while Indian law has not yet matured to the point where it expressly allows for the arbitration of IPR issues, it does not prohibit it either, as mentioned by Garg (2019)[7]. Arbitration of IPR issues is still in its infancy in India. Adopting the arbitration mechanism used in Switzerland or the United States is not a smart option since the nations' dynamics are not the same.

Despite the fact that arbitration has been the favoured method of resolving disputes, there is a severe lack of framework in the arbitrability of IPR issues. IPR has risen in importance as a result of technological advancements. India's intellectual property laws are extensive and are updated on a regular basis. Arbitration is a faster and less expensive alternative to litigation when it comes to IPR issues. The growing reliance of the global economy on intellectual property necessitates even stronger IP protection through strict implementation of IP laws.

The Indian IP Laws are not unified, and various legislations govern distinct types of IP Laws. The IP Law system in India is governed by many laws such as the Trademark Act, Copyright Act, and others. Procedures for resolving disputes have been created under each Act in line with the Procedural Laws (CPC, Cr. PC). However, the length of time taken by the courts and the formality of the system add to the applicant's unhappiness, and such considerations favor arbitration over litigation.

Following a 2015 modification to the Arbitration Act of 1996, a discussion about arbitration vs. litigation has emerged. The Supreme Court has not issued any precedential case law on the

[7] Nidhisha Garg, Arguing for the Arbitrability of IPR Disputes, 10 INDIAN J. INTELL. PROP. L. [36] (2019)

arbitrability of IPR issues. Because India's IP regime lacks a particular authority, special arbitral courts might be established to settle disputes. Because of the ambiguity surrounding questions of right in rem and public policy, arbitral tribunals have a difficult time deciding on their jurisdiction.[8]

The Arbitration and Conciliation Act of 1996 should be construed in a way that aligns the ideas that underpin its interpretation with current methods in the common law world. In India, jurisprudence must change in order to improve the institutional efficacy of arbitration. Respect for a forum chosen by the parties as a comprehensive remedy for resolving all of their claims is only one example of this progression. The reduction of judicial interference is an acknowledgment of the same concept. With the aid of appropriate laws, India may also enhance and encourage arbitration in IP disputes while maintaining a balance between anonymity and public interest[9].

Rights–in–rem (rights one has in opposition to the entire universe) are unsuitable for private arbitration and hence fundamentally non-arbitrable, according to popular wisdom. The Booz-Allen decision defined six types of conflicts that were previously considered non-arbitrable. However, such courses did not specifically include conflicts over intellectual property rights. However, based on the criteria set out in the ruling, we can reasonably conclude that the question of arbitrability of issues involves.[10]

Arbitration is a conflict resolution procedure in which the parties in a disagreement have their issue decided by a third party called an arbitrator rather than going through the regular court of law process. Arbitration, as one of the techniques of dispute resolution, has lately gained a lot of traction and is now widely acknowledged as a tool for resolving conflicts on a global scale. One of the major goals of the Arbitration and Conciliation Act, 1996 was to reduce the courts' supervisory role in the arbitral procedure.

Arbitration and Conciliation (Amendment Ordinance) 2015: The most recent amendment to the Act of 1996 made substantial improvements, primarily by attempting to limit judicial

[8] Aakash Laad & Mayank Gaurav, Arbitrating IPR and Competition Law Disputes in India: Issues, Scope and Challenges, 6 INDIAN J.L. & PUB. POL'y 26 (2019)

[9] Sankalp Udgata & Ayush Chaturvedi, Contours of Commercial Arbitration: A Disquisition into the Arbitrability of IP Disputes in India, 25 Annals FAC. L.U. ZENICA 127 (2020)

[10] Nikhil Bhatia, *Amenability of Intellectual Property Rights to Arbitration in India,* JGLR (Sept. 9, 2021, 10:01 am)

interference in arbitration cases and to address other flaws that cause excessive delay in arbitration-related court procedures.[11]

IP issues have always been viewed as non-arbitrable. Arbitrability of any subject matter, including IP issues, is determined by a country's public policy to arbitrate, and whether or not an IP dispute should be arbitrated varies by jurisdiction. Various current domestic IPR laws in India have been modified from time to time to satisfy international responsibilities under the TRIPS. Arbitrability of IP disputes is a global concern. With the ongoing conflict between rights in rem and rights in personam in India, it is difficult to make a decision.

The owner's IP rights, by their very nature, stand in opposition to the rest of the world, i.e. right in rem. However, in today's commercial world, the IP landscape is writ big, with a web of other parties' rights entwined with the rights of the originator. India's National Intellectual Property Rights Policy of 2016 provides a road map for IP rights in the future. The policy's third objective is to strike a balance between the rights holders' interests and the greater public good.

When considering conflicts between states and corporate players, a wide interpretative approach will allow investment tribunals to include applicable concepts from other areas of international law, such as international intellectual property law. This public-interest strategy might result in long-term benefits in the public interest[12].

Intangible property, or that which is created by the mind, is protected under intellectual property law. The foundation for protecting such property has a direct bearing on the arbitrability of such property disputes. Arbitration is a confidential and private method of resolving disputes. First, there's no reason why arbitrability criteria for IP issues shouldn't be comparable to those for real estate disputes. Second, the world is heading toward the liberalization of intellectual property dispute arbitrability.

Given the large amount of investment and the need for quick resolution of disputes emerging from it, India would be wise to explore liberalizing the arbitrability of IP issues in the near

[11]Sumit Kumar, *Historical Growth of Arbitration Law in Indi*a, 11 IJITKM 127, 118-135 (2017)

[12]Vikas Gandhi, *Intellectual Property Disputes and Resolutions*, 26 J. Intellect. Prop. Rights 16, 14-19 (2021)

future. At the same time, arbitration should not be used to trample on the rights of stakeholders who aren't necessarily party to the arbitration agreement[13].

In the absence of any legislative insight or direct judgment by the Supreme Court of India on the arbitrability of intellectual property rights disputes, the overall Indian law on the subject is fragmented. There are significant variations in the laws that regulate patents, trademarks, and copyrights. With the complexities of arbitration law, the courts are confronted with the difficult task of harmonizing arbitration law with the various scenarios that intellectual property law might provide. "Arbitration, like consummated romance, is based on consent."[14]

The confidentiality of arbitration is one of the primary reasons for its use. If confidential information and corporate secrets protected by intellectual property rights were made public, they would lose their value. Court processes, as a result, offer a challenge in settling these conflicts[15].

OBJECTIVES

1. To understand the judicial pronouncements set forth by the High Courts and the Supreme Court of India with respect to the arbitrability of IPR disputes
2. To interpret the current position of the Indian judiciary in matters relating to arbitration of IPR disputes.
3. To find out the position of various other countries when it comes to the subject of IPR arbitration- whether they follow a pro or anti arbitration approach.
4. To provide recommendations to ensure that the courts have a precedent to follow.

RESEARCH METHODOLOGY

The research is purely based on secondary information collected from various articles published in the newspaper reports, books, journals, magazines and interviews.

[13]Badrinath Srinivasan, *Arbitrability of Intellectual Property Disputes in India: A Critique*, 2020 NLS Bus. L. REV. 29 (2020)

[14]Utkarsh Srivastava, *Putting the jigsaw pieces together: an analysis of the arbitrability of intellectual property right disputes in India,* 33 ARBITR 640, 631-646 (2017)

[15]Njegoslav Jović, *Benefits and Limitations of International Arbitration in Intellectual Property Law Disputes*, (Sept. 12, 2021, 5:23 pm)

The data collected herein is primarily concerned with, but not limited to the arbitrability of IPR disputes in India. The research also includes the judgments of various High Courts and the Supreme Court of India, along with the stand of other major countries with respect to the subject matter of arbitration of IPR disputes. The analysis obtained can be used to understand the stand of India along with other countries, at present.

FINDINGS AND DISCUSSIONS

Important Judicial Pronouncements in India

Before delving into the topic of whether arbitrability of IPR disputes must be conducted or not, it is essential to follow the judicial pronouncements set forth by the Courts.

In one of the first cases on IPR raised, Mundipharma AG v. Wockhardt Ltd.[16], an issue of copyright infringement had taken place. The Delhi High Court stated that civil remedies for the same under Chapter XII of the Copyright Act, 1957 would exempt Arbitration. Thus, such cases can be decided under the jurisdiction of a competent court, and not via an arbitrator. No set-in -stone precedent was cited in this case and neither did the court provide a detailed justification for its judgment.

However, in Ministry of Sound International Ltd. v. Indus Renaissance Partners Entertainment Pvt. Ltd.[17], the court held that it is possible for an IPR dispute to be decided by arbitration.

In the landmark case of, Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. and Ors.[18], wherein the courts have to decide whether it is possible for an arbitral tribunal to adjudicate on a lawsuit for mortgage enforcement by sale. The Hon'ble court ruled that conflicts involving rights in personam can be arbitrated, but that disputes involving rights in rem must be handled by courts and public tribunals. Despite the fact that this case involves a mortgage by sale, the courts also addressed the arbitrability of IPR disputes.

[16] Mundipharma AG v. Wockhardt Ltd (1991) ILR 1 DELHI 606

[17] Ministry of Sound International Ltd v. M/S. Indus Renaissance Partners Entertainment Pvt. Ltd. 156 (2009) DLT 406

[18] Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. and Ors. AIR 2011 SC 2507

In Vini Verma v. Sanjay Verma & Ors.[19], the Hon'ble High Court of Delhi allowed for the arbitration of a trademark infringement since an arbitration clause was present in the MoU clause of the parties. The court kept in mind that since the settlement agreement expressly stated that arbitration proceedings could be followed, it allowed for the same.

The Bombay High Court in Eros International Media Limited v. Telemax Links India Pvt. Ltd. and Ors.[20], allowed the application under Section 8 of the Arbitration and Conciliation Act, 1996. The court interpreted the judgment laid down in Booz Allen and declared a pro-arbitration approach. The question to be decided upon was whether the disputes involving infringement of copyrights under Section 62 of the Copyright Act, 1957 in an agreement are arbitrable. The Court held that since the dispute arose from an IPR dispute in a commercial contract, the same would be arbitrable in nature. The action would be a right in personam. Hence, the court allowed for the copyright infringement to be settled through arbitration.

Further on, the Bombay High Court in Steel Authority of India Ltd. v. SKS Ispat and Power Ltd. & Ors.[21], dismissed the application under Section 8 of the Arbitration and Conciliation Act, not allowing the dispute to go ahead to arbitration since the dispute referred to right in rem, which is not amenable to arbitration.

The above ruling was upheld in the petition filed in The Indian Performing Right Society Ltd. v. Entertainment Network (India) Ltd.[22] which involved a copyright license dispute. Herein, an arbitrator had passed an award. It was held that the type of right in this case was a right in rem, and hence it was to be set aside. This judgment runs contrary to the judgment given by the Bombay High Court in the Eros case.

The Madras High Court in Lifestyle Equities v. Q.D. Seatoman Designs Pvt. Ltd.[23], talked about the issue of dealing with rights in rem and rights in personam and whether arbitrability of IPR disputes is possible. Here, the dispute that had arisen was pertaining to a copyright infringement. The court held that a party which seeks a "permanent injunction against the use

[19] Vini Verma v. Sanjay Verma & Ors 2013 SCC Online Del4194

[20] Eros International Media Limited v. Telemax Links India Pvt. Ltd. and Ors. 2016 (6) ARBLR 121 (BOM)

[21] Steel Authority of India Ltd. v. SKS Ispat and Power Ltd. & Ors Notice of Motion (L) No. 2097 of 2014 in Suit No. 673 of 2014

[22]Indian Performing Right Society Ltd. v. Entertainment Network (India) Ltd. 2016 SCC OnLine Bom 5893

[23] Lifestyle Equities v. Qd Seatoman Designs Pvt. 2018 (1) CTC 450

of a design by the opposite party" would relate to right in personam. Since the parties in question didn't seek relief for the copyright ownership, they had an action of right in personam and not right in rem. In another judgment by the Madras High Court in Sanjay Lalwani v. Jyostar Enterprises and Ors.[24], the court held the copyright infringement disputes to be non-arbitrable in nature stating that such actions are rights in rem.

In Centre for Development of Telematics v. Xalted Information Systems Pvt. Ltd.[25], the Delhi High Court allowed for arbitration in the matter pertaining to copyright infringement, since such an action would be a right in personam.

A. Ayyasamy v. A. Paramasivam & Ors.[26], was a case wherein the courts completely ignored the judgment set in the Booz Allen case. A dispute arose between the parties and they had a partnership deed which had an arbitration clause. The Supreme Court held that IPR disputes would be non-arbitrable in nature. Thai erroneous judgment is contested since the main subject matter of the dispute was the arbitration of fraud, and not IPR disputes.

Recently in Vidya Drolia v. Durga Trading Corporation[27], the Supreme Court made a conscious effort to adopt a pro-arbitration approach in matters relating to IPR disputes. They laid down the test to decide the arbitrability of a dispute. The Hon'ble Court tried to pass the judgment in such a way that it changed its position to a pro-arbitration stance.

Absence of a Supreme Court Precedent

The Hon'ble Supreme Court of India has not given a conclusive precedent to be followed in matters related to the arbitrability of IPR disputes in India. Even though the Ayyasami and Vidya Drolia case shed some light upon the evolution of the Supreme Court's stance with respect to arbitration, it still does not explain whether there is a blanked bar on the arbitrability of IPR disputes or whether the courts must adopt a pro- arbitration harmonious approach.

Analysing the Current Position of IPR disputes in India:

From the above judicial pronouncements it's evident that the judiciary has not established a set-in-stone precedent to decide its position on the arbitrability of IPR disputes. Even though

[24]Sanjay Lalwani v. Jyostar Enterprises and Ors., (2020) SCC Online Mad 2003
[25] Centre for Development of Telematics vs. Xalted Information Systems Pvt. Ltd., ARB. A. (COMM.) 6/2018

[26] A. Ayyasamy v. A. Paramasivam & Ors (2016) 10 SCC 386

[27] Vidya Drolia vs Durga Trading Corporation 2020 SCC OnLine SC 1018

the courts haven't explicitly barred the IPR disputes from being arbitrated, they have not expressly approved and encouraged the same as well. In some cases (like the IRPS and Mundi pharma cases) the courts adopted a negative, anti-arbitration approach when it came to arbitrating IPR disputes and stated that such infringements of copyright would fall under the public law domain. However, recently in cases like Vidya Drolia and Eros, the courts are evolving their approach and attitude towards arbitrating IPR disputes. Now that there has been an increase in commercial transactions and contractual agreements w.r.t. IPR; the courts have recognized the same and are adopting a positive, pro-arbitration approach.

It is reasonable to conclude that India's current position on IPR arbitration is based on the nature of the claims asserted. There is no blanket prohibition on IPR matters being arbitrated. If the disputes are contractual in nature, then there shouldn't be an issue with them being arbitarble in nature. However, if the question for the validity or ownership of an IP dispute arises, then the same would be considered to be a right in rem and hence would fall under the jurisdiction of a competent court, since it touches upon the interest of the general public.

Position of Other Countries:

Even though India's stance at the moment is not completely pro- arbitration, several other countries are implementing and permitting IPR disputes to be resolved through arbitration or other Alternative Dispute Resolution methods.

➔ *United States of America*

The federal statutory laws here expressly allows parties to agree to arbitrate patent disputes, either by including an arbitration provision in a contract involving a patent (e.g., a license agreement, a joint development agreement, etc.) or by agreeing to arbitrate an existing patent dispute. This means that the parties can approach an arbitration tribunal as a means to settle patent disputes.

However, the courts have not provided a statute for copyright disputes. No statute in the US provides for the binding of trademark disputes. In Packeteer, Inc. v. Valencia Systems, Inc.[28], the courts held that copyright issues can be subjected to arbitration.

➔ *United Kingdom*

[28] Packeteer, Inc. v. Valencia Systems, Inc., 2007 WL 70750

England and Wales, Scotland and Northern Ireland, being one of the most progressive places in the world, do not have a statutory authority for arbitration in matters relating to IPR disputes, as per the Arbitration Act, 1950, 179 & 1996. The United Kingdom Patents Act, 1977 allows for the arbitrability of patent disputes only in certain cases.

However, arbitration of IPR disputes have been recognized by the judiciary, making trademarks and copyright disputes fully arbitrable.

➔ *Canada*

In Desputeaux v. Éditions Chouette (1987) Inc.[29], the Hon'ble Supreme Court of Canada adopted a pro-arbitration approach. They recognize the validity of using arbitration in order to resolve copyright and patent infringement disputes.

➔ *Australia*

The Australian statues do not expressly talk about the arbitrability of IPR disputes. The position of arbitrators in Australia is that they have the authority to make decisions about the parties' intellectual property rights.Arbitrators, on the other hand, cannot settle IPR disputes in a way that binds any third party or the general public.

➔ *Singapore*

The Intellectual Property (Dispute Resolution) Act, 2019, which amended the Arbitration Act in Singapore, allowed for the arbitration of IPR disputes. All aspects of IPR can now be arbitrated. This amendment was observed to be not going against the public policy.

➔ *Hong Kong*

Hong Kong issued the Arbitration (Amendment) Ordinance 2017 (the 'Arbitration Ordinance'), which paved the way for IPR disputes to be resolved through arbitration. Even if Hong Kong law grants any entity the authority to determine IPR disputes, and even if the legislation does not specifically specify the possibility of resolving IPR disputes through arbitration, resort to arbitration would be available.

The above feature makes Hong Kong an extremely popular arbitration hub for IPR disputes.

[29] Desputeaux v. Éditions Chouette (1987) inc., 2003 SCC 17 (Can. 2003) at 198

➔ *Switzerland*

When it comes to the arbitrability of IPR disputes, Switzerland, one of the world's most liberalized countries, has taken a very pro-arbitration stance. IPR conflicts are not subject to any legal limits, and they are also deemed arbitrable. Patent arbitrations are supported by the majority of courts.

RECOMMENDATIONS

- ➔ Even though the interpretation of courts are constantly evolving, it is important that the judiciary establishes a precedent on the matter of arbitrability of IPR disputes. The High Courts, as well as the Supreme Court, do not have a precedent in place to be followed in order to decide whether IPR disputes can be arbitarble or not.
- ➔ Taking into consideration the speed at which India disposes its cases due to the overburdened courts, the sanctity of IPR disputes to be resolved by arbitration must be upheld. A pro-arbitration approach adopted by the judiciary may cater to the aspirations of the country.
- ➔ While there might be certain challenges to arbitration, putting a blanket ban on the arbitrability of IPR disputes would do a lot of harm, affecting the commercial world of mergers and acquisitions, joint ventures, etc.
- ➔ Amendment to the Arbitration and Conciliation Act, 1996 must be made in order to clear the doubts of whether arbitrability of IPR disputes is possible or not.
- ➔ A flexible and liberal approach should be adopted by the courts in order to resolve IPR disputes efficiently; the same is possible through arbitration.
- ➔ To really measure the efficiency of arbitration in IP disputes, we must think through the boundaries of arbitrability. Increased IP conflicts, on both a national and international level, represent a challenge to the existing legal framework's ability to deal with them, and arbitration, with all of its potential successes thus far, may be the response to these problems.

CONCLUSION

IPR dispute arbitrability has been questioned and will continue to be questioned until all nations take a strong pro-arbitration attitude. The grounds for challenging the arbitrability of IP matters cannot be completely eliminated; however, prohibiting arbitration of all IPR-related matters would be counterproductive; especially in today's globalized and commercialized world, where even general business events such as mergers and acquisitions, joint ventures, and so on involve dealing with IPR and include an arbitration clause as a means of resolving disputes.

The Supreme Court stated its stance on the arbitrability of IPR issues in the Booz Allen case, although the law on the subject is still fragmented, as seen by the rulings of several high courts. As a result, there is a need for codification or for the Supreme Court to consider it in order to establish the law pertaining to the arbitrable parts of IPR. The United States and Hong Kong, for example, have already made moves in this direction.

Given the Indian judiciary's recent pro-arbitration stance, there is a strong probability that additional lawsuits originating from IPR agreements would be resolved through arbitration. It goes without saying that the legislation on the arbitrability of IPR issues is still evolving, and we may expect further litigation in this area.

The courts can strike a tight balance between the rights of the inventor/owner and the public interest by permitting arbitration in disputes arising out of purely commercial concerns while maintaining disputes over the validity or registration of IP non-arbitrable. As a result, it remains to be seen which way the Supreme Court and other High Courts will steer the Indian arbitration-friendly environment.