
INNOVATION MEETS RESOLUTION: REDEFINING IP DISPUTES THROUGH ADR

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ABSTRACT

The dispute resolution mechanism of arbitration, with international recognition, has emerged as a key method of resolving cross-border, intellectual property (IP) and commercial disputes. Its focus on equality, confidentiality, and expert adjudication bolsters its efficiency and adaptability in resolving complex disputes among multiple parties, states, or complex legal systems. Exceptionality in International Dispute Settlement Disputes in intellectual property (patents, trademarks, copyrights) also stand to gain from the privacy and expertise provided by arbitration. Commercial disputes are no different as its efficient route provides protection of business interests and partnerships in an increasingly globalized world. The journey of its development, from abroad to its induction through institutionalization in Indian jurisdiction. This has been instrumental in growth across sectors and the adaptation to modern needs and effective conflict resolution. Though new arbitral principles may be adopted by nations, proper incorporation with current national and international laws are integral.

Introduction:

Since the advent of humankind, we have the societies being building and every society further dwelling in its own culture. With the time still passing what is most constant is changing laws and by-laws in every country. Now what arises is about the different legislations and principles. It thus becomes too obvious of having disputes regarding what one country addresses as a legal binding may not be acceptable as what other country might refuse to. This forms the basis of what we term as “cross border disputes”. In more simpler terms, the differences between any two or more nations due to one or more factors is known as cross border disputes.

With 193 countries all around the globe, there are many factors on which such conflicts start to take place. Limiting the knowledge on a specific ground seems to be too unjustified for the cause what they aim to achieve through what they have designed. Instances that follow the cross-border dispute are legal in nature involving business transactions. Due to various business technicalities, these disputes can be an invitation to a major complex process. The major sphere of complexity lies with the jurisdiction, as many parties as many jurisdictions which at their own level are responsible to cater what they deem to allow in their respective boundaries. Despite such complexities, there are several means for their resolutions, some being conventional and some being traditional.

Alternate Dispute Resolution is one of the quotidian forms of cross-border dispute resolution mechanism. It offers flexibility, confidentiality and the opportunity to put forward their own set of demands and conditions to which all of the parties can have a common consensus for discussing and an open table conference. Further there are several contracts that explicitly mention about ADR as the go to method in case of any dispute in the future.

What has been a new form is the employment crisis all over the globe, several reasons ranging from inflation to introduction of technology at a new level with the advancement of artificial intelligence, unemployment has become a common occurrence nowadays. The more sophisticated and accurate reason can yet not be discussed, it has all become a part of a larger umbrella covering a wider aspect. Well to further shift the focus what is surging is the conflict involving such issues like the employer-employee interests.

Globally these issues are at a high level due to the diaspora still taking a growth. To tackle likeable issues, various methods such as mediation has been a highlighted pointer. In this

article, further discussion has been laid out. All what it seems is not enough to settle with dispute resolutions. Further themes like disputes in digital landscape and emerging trends in Technology Dispute Resolution have also been a constant player since recent times.

Paralleling with the surge of digitalisation and radicalisation, what is the new pattern is the international and global infiltration by parties. Dealing in such different jurisdictions the cases have been a bit complex with the unprecedented pace over the development and implementation in legislations. Dealing with these requires a specific set of dispute resolution method specified with varying forms of conflicts and cases.

Alternative Dispute Resolution: An overview

Alternative dispute resolution worked under the principle of “*Justice delayed is justice denied*”¹: means justice is not served if it is not provided in a timely manner. This principle supports the right to a speedy trial. There is contradictory statement which is “*Justice hurried is justice buried*,” that suggests that justice can be undermined if legal proceedings are rushed or incomplete. ADR is an effort to create a system that offers an alternative to traditional disputeresolution techniques. As we have seen in recent years, human conflicts and disputes are unavoidable. It is difficult to envision a human society devoid of conflicts of interest. To free up more time and resources for productive endeavors, disputes must be settled for the least amount of time and money. “Every human society has a legal system for resolving conflicts. To ensure that no one takes the law into their own hands, the legal system works to achieve the principle of “*Ubi jus Ibi Remedium*”². There are too many litigants in court. Thus, the search for alternatives to traditional judicial systems has begun. Numerous administrative and quasijudicial tribunals have been established to provide speedier relief. In a sense, each of these forums and tribunals is an alternative means to resolve disputes. However, even these tribunals and forums have grown overcrowded, making it impossible for them to offer timely relief. In service-related cases, many tribunals have only been able to offer relief after the harmed employee has already retired. The financial relief that he might eventually receive might not be worth the lost service time. Consumer forums have been established to offer prompt, efficient, and free assistance to consumers and service providers. The number of people complaining about subpar goods and services in the market has grown to such an extent that

¹ Quoted by - William Ewart Gladstone, a British Prime Minister 1868

² where there is a right, there is a remedy

consumers redressal forums and commissions are unable to handle the volume of complaints. Long delays are caused by a heavy pendency. In many instances, a delayed consumer remedy accomplishes almost no accomplishments. Consequently, official consumer remedies were no longer quick. Additionally, they are unable to offer any remedy for non-consumer issues. Therefore, a different approach that is not hampered by expenses and delays is required. ADR may have been identified because of this search. The institutional framework of ADR services is still in the early stages of development. All that can be said is that "now the ADR is rapidly developing its own national institutions, experience, and theoretical and practical development, while at the same time offering a simpler cross-border dispute resolution approach. (Mackie, 1995)"³

Origin of Alternative Dispute Resolution (ADR):

ADR is becoming increasingly recognized in both legal and business sectors. The tiresome litigation procedures, expenses, and insufficiency of the legal system give rise to alternative dispute resolution (ADR). As it offered immediate and inexpensive relief, it overcame the opposition of vested interests. Science and technology advanced astronomically in the last quarter of the previous century. It has had a significant effect on business life by boosting global competition, such as an increase in the corporate sector and digital marketing. Furthermore, it made consumers concerned about protecting their rights. ADR has become an essential tool in both domestic and international dispute resolution. ADR is a means of resolving disputes and is used when parties to litigation cannot independently begin to negotiate and reach a settlement, whether in commerce or any other domain. It's Between Family Businesses: If disputes arise due to the partition of family businesses, disputes with family businesses and its employees or family partners will create a conflict, any resolution of which could increase the interests. In these situations, it would be proper to build a means adapted to the needs related to the conflict and the common interest of the parties. Such specially designed instruments can also be identified as "Amicable Dispute Resolution" or "Appropriate Dispute Resolution" to highlight its non-adversarial desired outcomes.

The 1991 liberalization, privatization, and globalization (LPG) reforms had a major impact on the development and uptake of alternative dispute resolution (ADR) procedures in India. Faster, more affordable, and specialized approaches to dispute resolution are required because of the

³ Mackie, Miles and Marsh, *Commercial/dispute Resolution* (1995) p 3.

expansion of commercial transactions and disputes brought about by the opening of the economy for private companies and foreign investments.

The dynamic demands of an open up market were not well met by traditional litigation, which was frequently beset by delays and inefficiencies. ADR, which includes conciliation, mediation, and arbitration, has become the go-to option, particularly for settling convoluted business and international conflicts. The LPG reforms' globalization component also forced India to bring its arbitration system into adherence to international norms, which culminated in the passage of the 1996 Arbitration and Conciliation Act, which took its inspiration after the UNCITRAL Model Law.

Legislative Recognition of Alternative dispute resolution (ADR):

The parliamentary recognition of alternative dispute resolution can be seen following the enactment of the Legal Service Authority Act of 1987, which established the “Lok Adalat”⁴ System for settling disputes cheaply and expeditiously, as well as in the spirit of compromise through the give-and-take formula. Nowadays, dispute resolution is administered by the

Arbitration and Conciliation Act of 1996 and the Code of Civil Procedure 1908. Section 30 of the Arbitration and conciliation Act of 1996 encourages arbitrators with agreement of the parties to use mediation, conciliation, or other procedures at any time during arbitration proceedings to encourage settlement. As we can be inherent in labor law, there is a system of collective bargaining, which refers to the process by which working people negotiate contracts with employers to determine their terms of employment, including pay benefits, wages, working hours, leave, job, health and safety policies, and ways to balance work and family. This process mentioned that the tools used by employers for settling were Negotiation, Mediation, Conciliation and Arbitration.

Rather than going to court and filing the case in the court system, outside court settlement was preferred. “*Fuerst Day Lawson Ltd v Jindal Exports Ltd*”⁵, the Supreme Court observed that the object of the Act is to provide speedy and alternative solution to the dispute and avoid protraction of litigation.

⁴ Lok Adalat's have been given statutory status under the Legal Services Authorities Act, 1987. (<https://nalsa.gov.in/lok-adalat>)

⁵ (2001) 6 SCC 356: AIR 2001 SC 2293

Furthermore, “the Civil Procedure Code (Amendment) Act of, 1999 with effect from July 1, 2002, carries Section 89”⁶, which is designed to enable the courts to bring about a settlement of disputes outside the court. On enforcement of the Amendment, the four methods listed in the section, known as court-ordered or court-annexed ADRs, became statutory alternatives to litigation for settlement of disputes and were legally enforceable. It is obligatory to court to refer the dispute for settlement, and if parties fail to get their dispute settled through any ADR method, the suit will come back to proceed in court in which it was filed. “Additionally, in 2018, ‘Section 12-A was added to the Commercial Courts Act, 2015 (“Commercial Courts Act”)', requiring a party to use mediation as a last resort before filing a lawsuit under the Commercial Courts Act.”⁷

Constitutional Background of the ADR:

It is well known that judicial procedures are more expensive, time-consuming, and result in faster trials because ADR avoids the rigidity and inflexibility that are unavoidable in the litigation process, in addition to expensive lawyers and court fees and significant delays. This makes ADR a potential substitute for arbitration and litigation. Therefore, the constitution of India guarantee various rights in respect of alternative dispute resolution (ADR) are:

1. Article 39A⁸ and which states that the free legal aid to the indigent person who cannot defend themselves in a court of law is constitutional mandate.
2. The right to life which is guaranteed by Article 21⁹, as result, the law must help the poor who do not have means *i.e.* economics means, to fight their causes.

The initiation of mandatory rescue efforts stemmed from the reports of Justice V.R. Krishna Iyer and Justice P.N. Bhagwati Committees, which resulted in underprivileged groups gaining access to judicial institutions from Munsif Courts to the Supreme Court. The Committee for the Implementation of Legal Aid Services (CILAS) emerged, introducing innovative methods

⁶ Ins. by Act 46 of 1999, s. 7 (w.e.f. 1-7-2002), Earlier rep by Act 10 of 1940, s. 49 or the Third Schedule

⁷ Ins. by s. 11, *ibid.*, (w.e.f. 3-5-2018)

⁸ 39A. Equal justice and free legal aid - The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. [After article 39 of the Constitution, the following article shall be inserted through Constitution (Forty-Second Amendment) Act, 1976]

⁹ Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law.

for resolving civil disputes through non-legal and informal channels. Consequently, states established various alternative dispute resolution (ADR) mechanisms through State Legal Aid and Advice Boards, including Lok Adalat's, Legal Aid Camps, Family Courts, Village Courts, Mediation Centres, Commercial Arbitration, Women Centres, and Consumer Protection Forums. Effective governance hinges on providing justice to the populace. *"Our Constitution, therefore, highlights triple aspects of Economic Justice, Political Justice and Social Justice. This requires the creation of an ultra-modern disseminating infrastructure and manpower; sympathetic and planned; 'the need for new judicare technology and models; and remedy-oriented jurisprudence'.* (Bhagwati, 1978) "¹⁰

Quick resolution of disputes is a key requirement in alternative dispute resolution. The purpose of a speedy trial is to hasten case resolutions, thereby enhancing the legal system's effectiveness and reliability. Promoting social justice stands as the primary aim of the right to a speedy trial. This concept was initially introduced in the *"Magna Carta,"*¹¹ a foundational document in British legal history. As a fundamental human right, a speedy trial is essential for justice to be truly served. This principle has been endorsed by virtually all international charters and conventions.

Scope of Alternative Dispute Resolution:

Alternative dispute resolution serves as an effective approach for resolving conflicts related to intellectual property, digital matters, insurance claims, real estate transactions, commercial disagreements, banking issues, and labor disputes. Rights holders must remain vigilant and pursue legal action if they suspect their rights are being infringed upon.

While the Bar has made considerable strides in establishing an intellectual property framework in India, the judiciary will employ alternative dispute resolution to optimize the use of existing resources. Patent and copyright cases, which often involve the convergence of scientific and technological aspects, require adjudicators capable of recognizing the interdisciplinary nature of these matters. Given the limitations of intellectual property rights protection, it is essential to develop alternative dispute resolution methods to ensure swift justice delivery.

¹⁰ P.N Bhagwati on the need to create adequate and effective delivery system of justice in Chap VI of Social Justice – Equal justice, p 33.

¹¹ Magna Carta in 1215 ("To no one will we sell, to no one will we refuse or delay, right or justice")

What are the IPR Law's (Intellectual Property Rights)?

‘According to the World Trade Organization’¹², “Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time”.

Types of Intellectual Property Rights are:

1. **‘Copyright’**¹³ – “copyright means the exclusive right subject to the provision of ‘section 14 of copyright act 1957’¹⁴ it includes, literary, dramatic, or musical work, work in material form including the storing of medium by electronic mean, copies of work to the public, perform the work in public or communicate it to the public, any cinematograph film or sound recording in respect of work, any translation of the work, make any adaptation of the work, includes computer data sets, express in words, schemes.”
2. **Trade Mark** - Trademark Defined under section 2(1) (zb) of ‘Trademark Act of 1999’¹⁵ – "trade mark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours.”
3. **“Geographical Indication”**¹⁶ – “section 2(1)(e) defined geographical indication, in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.”

¹² https://www.wto.org/english/tratop_e/trips_e/intel1_e.htm

¹³ Section 14 of the copyright act, 1957

¹⁴ <https://www.copyright.gov.in/Documents/Copyrightrules1957.pdf>

¹⁵ <https://ipindia.gov.in/writereaddata/Portal/ev/TM-ACT-1999.html>

¹⁶ The Geographical Indications of Goods (Registration and Protection) Act, 1999 (<https://ipindia.gov.in/act1999.htm>)

4. **“Patent”**¹⁷ – ‘Section 2 (1)(m) of patent Act 1970 means a patent for any invention granted under this Act.’
5. **“Plant variety protection”**¹⁸ – ‘These rights are given to the farmers and plant breeders to encourage the development of new varieties of plant. Governed under protection of plant varieties and farmer right act, 2001.’
6. **“Design”**¹⁹ – ‘Section 2(d) of Design Act 2000 "design" means only the features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device and doesn't include any trademark.’
7. **“Semiconductor and layout”**²⁰ : ‘2(h) “layout-design” means a layout of transistors and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in a semiconductor integrated circuit and 2(r) defined “semiconductor” integrated circuit” means a product having transistors and other circuitry elements which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function.’

Alternative Dispute Resolution in matter of Intellectual Property Rights:

The field of Intellectual Property Rights (IPR) is constantly evolving, presenting new challenges that require a fresh approach to resolving disputes. Since India's adoption of the

“Trade-Related Aspects of Intellectual Property Rights (TRIPS)”²¹ in 1995 upon joining the

¹⁷ Patent Act 1970 (https://ipindia.gov.in/writereaddata/portal/ipoact/1_31_1_patent-act-1970-11march2015.pdf)

¹⁸ Protection of plant varieties and farmer right act, 2001
(<https://www.indiacode.nic.in/bitstream/123456789/1909/1/A2001-53.pdf>)

¹⁹ Design Act 2000 (https://www.indiacode.nic.in/handle/123456789/1917?view_type=browse)

²⁰ The semiconductor integrated circuits layout-design act, 2000

²¹ The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), negotiated during the 1986-94 Uruguay Round, introduced intellectual property rules into the multilateral trading system for the first time. (https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm)

World Trade Organization, the need for robust intellectual property protection has become evident. Traditional litigation methods, however, may not always be the most suitable for addressing conflicts in this sphere. Recognizing the constraints of adversarial proceedings, India's judiciary has begun exploring alternative avenues for settling intellectual property disputes.

Given the fluid nature of IPR issues and the need for swift, amicable resolutions, Alternative Dispute Resolution (ADR) emerges as a compelling option. While not universally applicable to all intellectual property conflicts, ADR's capacity to streamline processes, reduce antagonism, and provide tailored solutions makes it a valuable tool in today's intellectual property management landscape.

In the case of *Vidya Drolia v. Durga Trading Corporation*²², the Hon'ble Bench ruled that certain actions in rem, such as patent issuance and acceptance, as well as trademark registration, are exclusive matters under sovereign and governmental jurisdiction and cannot be subject to arbitration. The court determined that the dispute at hand concerned permission to use a brand as stipulated in a specific organization's agreement, rather than trademark infringement. Consequently, the court deemed the dispute between the parties arbitrable. It was clarified that "the assignment of a trademark is by contract and is not a statutory fiat."

Mediation as a Method of resolving intellectual property Disputes:

The Commercial Courts Act mandates pre-litigation mediation for intellectual property disputes, except when urgent interim relief is required, and the Mediation Act provides a robust framework for this process. The case of *Bawa Masala Co. Pvt. Ltd. v. Bawa Masala Co. Pvt. Ltd. and Anr*²³ highlighted the benefits of mediation over litigation in IP disputes, noting that litigation often revolves around temporary injunctions and can drag on for years in India. These rulings promote the use of mediation to achieve amicable settlements, aligning with Section 89 of the Code of Civil Procedure's emphasis on mediation. The Court also declared that all courts and tribunals must comply with this order. Consequently, these legal precedents have led to a rapid increase in the popularity of mediation for intellectual property disputes within Indian courts.

²² 2020 SCC ONLINE SC 1018.

²³ (2009) 2 SCC 635 (India)

International aspect of ADR for Intellectual Property Disputes:

“In the global marketplace, intellectual property is becoming an increasingly valuable asset. Technology plays a crucial role in the worldwide economy in various ways.”²⁴ The corporate sector has seen growth, particularly in entrepreneurial investments across different industries. This trend is evident due to increased globalization, with companies from various countries investing in developing nations, especially India, following the implementation of LPG and PPP policies in 1991. The rise in international trade, digital advancements, and globalization has led to an increase in commercial disputes. To address these cross-border conflicts efficiently and reduce the burden on India's judicial system, alternative dispute resolution (ADR) methods can be employed for expedited proceedings.

“Features of International ADR in intellectual property disputes (Jolly, 2009)”²⁵ :

1. **‘Neutral Cross-Border Jurisdiction’:** ADR methods allow parties to resolve disputes in unbiased venues, avoiding the disadvantages of domestic courts.
2. **‘Global Enforcement’:** The New York Convention ensures the recognition and execution of arbitration decisions in most countries, providing a reliable conflict resolution mechanism.
3. **‘Specialized Mediators’:** Selecting mediators with particular IP knowledge ensures effective proceedings.
4. **‘Adaptability and Cost-Effectiveness’:** ADR offers customizable processes tailored to parties' requirements and is generally more economical and swifter than conventional litigation.

Methods of ADR in Intellectual property Disputes:

One method of solving the problems of international intellectual property disputes is the harmonization of intellectual property treatment. To help private parties resolve their domestic

²⁴ Rory J. Radding, *Intellectual Property Concerns in a Changing Europe: The U.S. Perspective*, 7 INT'L L. Practicum 41, 41 (1994)

²⁵ Jolly, A and Philpott, J (eds) (2009) *The Handbook of European Intellectual Property Management*, 2nd ed, Kogan Page, London

or international business disputes, the “WIPO”²⁶ “Arbitration and Mediation Center provides time- and money-efficient alternative dispute resolution (ADR) options like expert determination, arbitration, mediation, and expedited arbitration.

1. **Mediation:** A casual process where a neutral third party, known as the mediator, helps disputing parties reach an agreement. (If no resolution is achieved, the parties may choose to proceed with arbitration, expedited arbitration, expert determination, or court litigation, based on their preference.)
2. **Arbitration:** A conclusive process in which one or more arbitrators review the dispute and render a final, binding decision. (The parties may opt to engage in mediation or expert determination prior to arbitration.)
3. **Expedited Arbitration:** A streamlined arbitration process conducted in a shorter timeframe and at a lower cost. (Depending on the parties' preferences, mediation or expert determination may precede expedited arbitration.)
4. **Expert Determination:** A process where one or more experts evaluate and decide on a technical, scientific, or business-related issue between the parties. The expert's determination is binding, unless otherwise agreed upon by the parties. (Based on the parties' choice, this process may be preceded by mediation or followed by standard or expedited arbitration.).”²⁷

Intellectual Property Rights in the Digital Landscape:

“The digitization of information transforms the intangible into numerical representation. Once digitized, information is easily and cheaply created, stored, transmitted, and manipulated. The representation in numbers permits easy segmentation of ideas and their expression. Numbers can be rearranged without discernible loss of quality, making prior segments easily replicable and leading to their illicit use beyond the limits of fair use. Linguistic and technical means can transform ideas from one expression to another, allowing for complex coding to obscure these segments. Thus, the easily digitized and transmitted world of networks and bars brings about

²⁶ WIPO is a specialized agency of the UN. It was formed in 1967, to encourage creativity and promote protection of intellectual property around the world.

²⁷ The Centre also provides expert determination under the WIPO Expert Determination Rules. More on this service can be found at www.wipo.int/amc/en/expert-determination/.

free-riding of copyrightable goods and threatens the channelling effect of trademarks. On the other hand, through the digitization of information, local rights transform into global or even universal rights. While states remain the primary locus of enforcement action, the cyberspace mootness of state sovereignty brings about global infringement but local enforcement. IP law has largely delivered on its facilitative promise. “ (Barton, 2012)”²⁸

It provides ex ante legal certainty for the transnational exploitation of rights at low enforcement cost, attributes IP rights to minimize hold-up problems in the chain of transactions, and accommodates and channels cross-border transmission at natural speeds. However, the digitization of information and the increase in the use of IP rights therein translate into a steady growth of IP-related problems.

Challenges and Disputes in the Digital Landscape:

The rapidly changing digital landscape is opening up new avenues for life, education, creativity, and finance. But it presents difficulties, just like any new frontier. Wide-ranging technologies like the internet, which can be weaponized and abused, necessitate the establishment of regulations and governance frameworks to deal with undesirable behaviour, ranging from minor and trivial to complex and sinister. However, as history demonstrates, regulations are frequently disputed, and disagreements over their application and interpretation occur. Just as important to take into account as the underlying objectives and design are the unintended repercussions of both action and inaction. To grasp alternate norms and solutions that may address undesirable behaviour, one must have an empirical understanding of how it manifests. Zooming in on the digital landscape, this article views the need for rules and governance systems as arising from a set of challenges brought on by the unwanted behaviour of individuals, organizations and states in the digital domain. It recalls how similar challenges played out in analogue frontiers and how " With a focus on the digital world, this essay sees the need for regulations and governance structures as a result of a number of issues caused by governments, businesses, and individuals acting in an undesirable manner online. It brings to mind the analogy frontiers, where comparable difficulties were encountered and disagreements emerged about the interpretation and applicability of regulations. The descriptive method specifically steers clear of normative inquiries regarding the best governance systems to pursue

²⁸ . Barton, T. and Cooper, J. "Symposium Introduction: Advancing Intellectual Property Goals Through Prevention and Alternative Dispute Resolution." 2012.

and the appropriate norms (P. Lycans, 2003)²⁹. It is hoped that this article's trace of the connections would provoke reflection and offer some forward-looking ideas.

What is Digital landscape?

“Technology, platforms, and infrastructures that are interconnected and facilitate digital interactions, communications, and transactions are collectively referred to as the "digital landscape. Digital technologies such as the Internet, social media platforms, cloud-based services, blockchain systems, AI, and various other online tools have fundamentally altered how we live, work, and interact with the world around us. These innovations aren't just tools—they've become the backbone of modern life, shaping everything from communication to creativity.

Current Challenges in Dispute Resolution:

The swift advancement of technological and digital platforms has transformed the landscape of intellectual property rights, offered new possibilities while simultaneously introduced intricate challenges in dispute resolution. This development is revolutionizing the way creative works are safeguarded in the digital age. As artistic creations become increasingly available online, the potential for infringement has grown, complicating traditional dispute resolution methods that often depend on physical jurisdictions. This transformation has presented significant obstacles to enforcing intellectual property rights. The disparities in international legislation and inconsistent copyright regulations concerning the anonymity of online infringers have led to mounting difficulties.

Concurrently, the emergence of alternative dispute resolution (ADR) techniques, including online mediation and arbitration, presents an encouraging path forward. These approaches are faster and more cost-effective, but they're not without flaws. Concerns about transparency and fairness can sometimes undermine their potential, making it clear that there's still work to be done to strike the right balance.

Consequently, stakeholders must navigate a complex web of technological developments and legal intricacies to effectively address and resolve intellectual property disputes in this evolving

²⁹ P. Lycans, A. "Cyberdemons: Regulating a Truly World-Wide Web." 2003

digital era.

Examination of common disputes arising from digital content and the limitations of existing legal frameworks the rapid proliferation of digital content has led to a myriad of disputes, particularly concerning copyright infringement, ownership rights, and unauthorized distribution. These conflicts highlight significant inadequacies within existing legal frameworks, which often struggle to keep pace with the evolving digital landscape. Current intellectual property laws, originally designed for tangible assets, fail to address the complexities introduced by decentralized platforms and digital assets. For instance, the rise of the Metaverse and utilization of smart contracts complicate traditional dispute resolution due to the pseudonymous nature of transactions and cross-border implications.

This creates an urgent need for innovative solutions that can seamlessly bridge the gap between automated processes and human oversight. While technology offers speed and efficiency, human involvement ensures fairness, empathy, and thoughtful decision-making.

As “(Arnone G et al.)”³⁰ emphasizes, understanding the need for robust dispute resolution mechanisms is essential. “(Evans, 2019)”³¹ Furthermore, points to the necessity for legal frameworks to adapt and innovate, ensuring they support the unique characteristics of digital transactions while safeguarding additional user rights.

Future Directions for Intellectual Property Dispute Resolution:

‘As the digital landscape continues to evolve, future directions for intellectual property dispute resolution must adapt to the complexities arising from international norms and localized enforcement challenges. Stakeholders increasingly recognize the need for comprehensive strategies that address bottlenecks in patent governance, such as the backlog issues highlighted by the European Parliaments discussions on enhancing patent awareness and enforcement mechanisms’ “(Granstrand, 2009)”³².

³⁰ Arnone G., Giacalone M. "Dispute Resolutions for Digital Assets in a Decentralized Virtual World". Suor Orsola Benincasa University of Naples, 2024,

³¹ Evans, Tonya M. "The Role of International Rules in Blockchain-Based Cross-Border Commercial Disputes". University of New Hampshire Scholars Repository, 2019

³² Granstrand, O., Leijten, J., Poti, B., Rodriguez, et al. (2009). Current policy issues in the governance of the European patent system. STOA - Science and Technology Options Assessment. European Parliament.

Moreover, the increasing fragmentation of international IP law, particularly in the Pacific Rim, raises significant concerns regarding the authority and legitimacy. Moreover, the growing fragmentation of international IP law, especially in the Pacific Rim, has sparked major concerns about the authority and effectiveness of global regimes like 'TRIPS' and 'WIPO'.

This inconsistency challenges their legitimacy and leaves creators and businesses struggling to navigate a fractured legal framework. Tackling these challenges calls for fresh, innovative strategies. This includes integrating technology into dispute resolution processes to streamline efficiency and creating harmonized frameworks that encourage seamless cross-jurisdictional cooperation. By combining innovation with collaboration, we can navigate these complexities effectively. Ultimately, proactive engagement among international organizations, national governments, and private entities will be essential for developing a future-oriented dispute resolution landscape that effectively addresses evolving intellectual property concerns.

As the digital world continues to advance, dispute resolution systems must evolve to effectively handle the intricacies of intellectual property rights in this new environment. Potential advancements and changes in conflict resolution methods are necessary to keep pace with the shifting digital landscape. Innovations such as online dispute resolution (ODR) platforms have gained traction, offering efficient and cost-effective solutions that cater to the needs of a globalized, digital audience. With the power of digital tools like artificial intelligence and machine learning, these platforms are transforming how cases are handled. They enable faster resolution, offer predictive insights to anticipate outcomes, and ultimately enhance transparency and accessibility for everyone involved. Furthermore, reforms such as incorporating blockchain technology can enhance the integrity of evidence in disputes related to intellectual property by creating immutable records of ownership and usage. Lastly, the development of hybrid models that blend traditional arbitration and mediation with digital elements can further streamline processes, encouraging parties to resolve disputes amicably and expeditiously. This innovative approach is crucial in mitigating the unique challenges posed by the digital environment.

More on challenges of the dispute resolution:

1. Manipulative online environment- "nowadays internet is designed to maximize commercial gains. This includes varieties of architecture, and immense use of AI assisted information which can lead to various E-disputes".

2. Legal and jurisdictional issues- “The digital age has created many complicated legal problems, ranging from data breaching, privacy risks, cybercrimes and intellectual property issues. This, however, has worsened with the often decentralised and borderless nature of the internet, which may cross geographical borders and thus traditional legal jurisdictions. Jurisdictional problems are especially complex, because cyberspace often creates tension between national legal systems, which can only remedy either through international consensus around harmonized global frameworks, regional fragmentation of agreements around legal standards, or a return to unilateral national law to resolve jurisdictional problems. In a rapidly changing digital environment, innovative legal frameworks are needed to adapt to the cross-border nature of the Internet, the emergence of new technologies and the need to adapt legislation to ensure that rights are protected and accountability achieved in such a globalised context”.
3. The "Copyright Act of 1957"³³ ‘serves as the foundation for copyright legislation in India, granting exclusive protection rights to various creative professionals. This law enables individuals such as composers, authors, visual artists, cinematographers, and audio producers to safeguard their intellectual property and original works.’ It’s a vital shield that protects their hard work and ingenuity from unauthorized use.

These rights aren’t just fancy legal jargon; they’re tools to safeguard the essence of creativity. From adapting a piece of work to reproducing it, sharing it with the public, or even translating it into another language, copyrights form a protective shield around the creator’s efforts. Think of it like a security system for their ideas, ensuring that their hard work isn’t casually taken or misused. But here’s where things get interesting—or messy, depending on how you see it. In today’s digital world, the internet has turned into a vast playground where content is shared, reshaped, and reimaged every second. It’s a space bursting with creativity—but also challenges when it comes to protecting original work. Some of this content is copyrighted, but a lot of it isn’t. And let’s be real—how many people pause to ask, “Is this work protected?” before using it? Digital media, while incredibly powerful, has also made it incredibly easy for people to borrow

³³ <https://www.copyright.gov.in/Documents/Copyrightrules1957.pdf>

or outright steal someone else's work without permission. For a copyright owner to prove their rights have been violated, two things must happen.

First, they need to establish that they are indeed the rightful owner of the work in question. Second, they must identify who's liable for the infringement. And no, simply tweaking the original work a little—like changing a few words, flipping an image, or adding a “unique” touch—doesn't make it your own.

Take, for instance, the landmark case of “*R.G. Anand v. M/S Deluxe Films & Ors*”³⁴. ‘This case set a crucial precedent in copyright law by emphasizing that while ideas are free to use, the expression of those ideas is protected. It's a fine line, but one that ensures originality is safeguarded while still allowing creativity to flourish. The court made it clear: if you create an almost carbon copy of someone else's work with just a few variations sprinkled in, you're still guilty of copyright infringement’. Let's put it this way—repainting the Mona Lisa with blue hair doesn't make it your masterpiece. This is where creators need to stand their ground and use the tools copyright law offers. It's also a powerful reminder for all of us: respect the hard work and creativity of others. At its core, copyright isn't just a set of rules or legal jargon—it's about valuing the effort, imagination, and passion that go into creating something truly original. In today's fast-paced world of digital media, competition is fierce. To stand out in the crowd, companies and businesses are creating unique trademarks to establish their presence online. Why? Because digital platforms are teeming with potential customers, and marketing agencies are constantly working to connect businesses with the right audience at the right moment. But while growing your business is critical, protecting it is equally important—and that's where trademarks step in.

A trademark is more than just a legal shield; it's a symbol of your brand's identity. It builds **recognition** and **goodwill**, helping your business gain customer trust. In the world of digital marketing, which brings businesses closer to customers than ever before, trademarks play a crucial role in ensuring your brand remains yours—and only yours. In today's fiercely competitive online landscape, securing a trademark is not merely advantageous but essential for protecting a brand from unauthorized usage.

³⁴ 1978 AIR 1613 1979 SCR (1) 218 1978 SCC (4) 118

‘The Trademarks Act of 1999’³⁵ in India offers strong and extensive safeguards for businesses. This legislation ensures that brands can preserve their distinctive identity and defends them against misappropriation or replication. The act provides a robust framework for companies to maintain their unique market presence and shield themselves from potential imitators or those who might misuse their brand assets.

Trademarks play a crucial role in protecting brand identity, as demonstrated in cases like “*Hearst Corporation v. Dalal Street Communication Ltd*”³⁶. ‘In this case, the court ruled that trademark infringement occurs when a mark deceptively similar or identical to a registered trademark is used for business purposes, potentially misleading customers.’

Another striking example is “*Zara Food v. Zara Fashion*”³⁷. ‘A Delhi-based restaurant named itself after the globally recognized Zara fashion brand, causing obvious confusion—many people assumed the restaurant was affiliated with the fashion giant. The court sided with Zara Fashion, and the restaurant was compelled to rename itself as Tapas Bar. These cases highlight how trademarks ensure clarity and protect both businesses and consumers from misleading practices.’

In the case of “*Starbucks Coffee v. Sardarbuksh Coffee*”³⁸, ‘the court emphasized that deceptive similarity must be evaluated from the perspective of an average customer—someone with ordinary intelligence. If a customer is likely to feel confused when trying to distinguish between two brands, the brands can be considered deceptively similar. The ruling favoured Starbucks, with the court directing the defendants to rename their business from Sardarbuksh Coffee & Co. to Sardarji-Bakhsh Coffee & Co.’

The same principle applies in the digital world. It’s incredibly easy for bad actors to mimic domain names by making small tweaks adding or changing a few characters to deceive customers. This is why having a **registered trademark** is vital for businesses in digital media.

It’s not just about protecting your logo or name - it’s about protecting your **identity** in a space where brand reputation can make or break a company.

³⁵ <https://ipindia.gov.in/writereaddata/Portal/ev/TM-ACT-1999.html>

³⁶ (1995) 2 CALLT 346 (HC)

³⁷ (CS (OS) 1472 of 2013).

³⁸ CS (COMM) 1007/2018

So, if you're looking to grow your business in the digital sphere, remember: a trademark is not just a formality. It's an investment in your brand's future, security, and success.

The Human Side of Digital Rights Management: A Double-Edged Sword

Digital Rights Management, or DRM, is like the gatekeeper for digital content. It's a clever set of technologies that copyright holders—think companies like Apple, Amazon, or Sony—use to lock down their creations. But what exactly does it do? Well, it's not just about stopping people from copying music, books, or games. DRM takes it a step further. It controls how digital works are distributed, printed, or even altered. In short, it adds another layer of security to protect the creators' exclusive rights.

Sounds great for copyright owners, right? Here's where it gets tricky. While DRM helps them maintain control, it often creates friction with users. Imagine buying an eBook but realizing you can't print a single page for notes or share it with a friend. Frustrating, isn't it? For many, it feels like their freedom to use what they've purchased is being boxed in by invisible walls.

This tension has led to what some call a "digital war." Users, feeling cornered, find ways to bypass DRM protections. They just want to enjoy the content they've paid for—on their terms. On the other side, creators and publishers see this as a breach of trust, a threat to their hardearned profits. And so, both parties lose: users get restricted, and copyright holders face unauthorized access and revenue leaks.

Take a closer look at how DRM plays out in different industries:

- **Music:** Gone are the days of owning CDs. Today's online music is often wrapped in DRM, tying your favourite songs to specific apps or devices.
- **eBooks:** Many e-readers limit how you use a book you've purchased—no printing, no lending, and sometimes, no access if you switch platforms.
- **Video Games:** DRM in gaming is notorious for "always-online" requirements, which means you can't even play offline unless you log in first.

The goal of DRM is straightforward: stop unauthorized access and funnel users toward legal licensing systems. But the methods? They often feel like a strict teacher punishing the whole

class for the actions of a few.

In the end, DRM is a balancing act. It's about finding that sweet spot between protecting creators' rights and giving users the freedom to enjoy content without unnecessary restrictions. And perhaps, this ongoing tug-of-war is a reminder that in the digital age, rules can sometimes feel as complicated as the technology they're trying to protect.

So, the next time you open an eBook or stream a song, remember—there's a whole lot more going on behind the scenes than meets the eye.

ADR in the Online World: Resolving E-Commerce and IP Dispute

In our rapidly evolving digital era, non-traditional conflict resolution techniques—such as mediation, arbitration, and negotiation—are emerging as transformative solutions. These Alternative Dispute Resolution (ADR) approaches are increasingly recognized for their effectiveness in addressing contemporary challenges.

Think of them as the modern tools to untangle complex disputes quickly, without the stress and time of traditional courtroom battles. Let's face it: as businesses and consumers interact more online, disputes are bound to happen.

From e-commerce delivery nightmares to complex intellectual property (IP) clashes, these issues demand solutions that are fast, affordable, and effective. That's where ADR shines. But how do these methods actually work in the online world? Let's break it down with some real-life scenarios.

Arbitration: For When You Need a Binding Decision

Sometimes, disputes can't just be "talked out." That's when arbitration steps in. It's like going to court but without the delays and red tape.

- **In E-Commerce:** Let's say you're a seller working with an online platform, and there's a payment dispute. Arbitration clauses in your agreement make it possible to resolve these conflicts without dragging things into traditional courts.
- **In Intellectual Property:** Remember the "*Eros International Media v. Telexmax Links*

India”³⁹ case? Arbitration helped settle a copyright infringement issue quickly in the competitive digital entertainment space. This is a perfect example of how businesses can safeguard their creative work *without* getting bogged down in endless legal battles.

Simple, effective, and drama-free—that’s the way to go.

- **Challenges Ahead:** Sure, ADR isn’t perfect. Cross-border disputes? They can be tricky. Not everyone is aware of ADR’s potential, and enforcing decisions across jurisdictions can be tough. But with platforms like **SAMA** and **Presolv360** leading the charge in **Online Dispute Resolution (ODR)**, India is catching up fast.

³⁹ (2012) 1 Bom CR 586.