
JURISDICTIONAL ALCHEMY: ARBITRATING INTELLECTUAL PROPERTY RIGHTS IN INDIA'S EVOLVING ADJUDICATIVE LANDSCAPE

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ABSTRACT

This paper provides an in-depth analysis of the application of Arbitration and Online Dispute Resolution (ODR) to Intellectual Property Rights (IPR) disputes within India's evolving adjudicative landscape. As technological innovation accelerates, traditional litigation often proves too slow and rigid for the complexities of IPR. The core of this research examines the tension in Indian jurisprudence between rights in personam (private, arbitrable) and rights in rem (public, non-arbitrable), analyzing how cases like *Booz Allen Hamilton v. SBI Finance* shape the current boundaries of arbitrability.

The paper argues that despite existing legal limitations, arbitration offers indispensable benefits namely confidentiality, technical expertise, and efficiency. By comparing India's position with the progressive frameworks of the USA, UK, and Singapore, as well as the WIPO Arbitration and Mediation Center, the study identifies a significant need for domestic reform.

To bridge this gap, the paper proposes a multi-faceted reform strategy:

- The introduction of specialized IPR arbitration legislation.
- Amendments to the Arbitration and Conciliation Act, 1996.
- The creation of a dedicated panel of IPR expert arbitrators.
- A formal mechanism for reviewing arbitral awards to safeguard third-party interests.

Furthermore, the document introduces Online Dispute Resolution (ODR) as a technologically advanced evolution of ADR. It emphasizes ODR's potential to resolve small-value and consumer disputes efficiently, thereby increasing access to justice and reducing the judicial backlog. The paper concludes by advocating for a progressive, technology-driven approach that aligns India's dispute resolution mechanisms with international standards to support a thriving innovation-led economy.

Keywords: Arbitration, IPR, ADR, Right in Rem, Right in Personam, Arbitration and Conciliation Act 1996, Confidentiality, WIPO, ODR.

INTRODUCTION

IPR are the legal privileges granted to particular person for their skilled work and invention in the field of art, science and literature etc. for a specific period of time. IPR is the right of a particular person to exploit resource for a particular period of time. After that period of time it became universal to use. IPR are outlined in Article 27 of Universal declaration of human right, which grants the right to gain protection for one material and more interest as a result of the authorship of work of science, art and literature.

Types of Intellectual Property Right-

1) Patent

Patent grant safeguard to the inventor by solely possessing the right to use ,exploit or sell usually for 20 year from filing Date. This gives inventor a legal right to stop using their invention without consent. Patent is governed by **Indian Patent Act, 1970**. Example- Pharmaceutical Drugs, Technological Devices.

2) Copyright

Copyright protect the original expression of ideas in literary, artistic, musical and dramatic works. Copyright gives the sole right to the owner to distribute, produce, reform etc. Copyright is governed by the **Copyright Act, 1957**. Copyright Duration is during the lifetime of creator and 60 year post death. Example – Books, movies, songs, software etc.

3) Trademark

Trademark is used for the protection of particular symbol, name, logo or slogans of Particular Goods & Services. Trademark help the consumer to well aware about the brand and eradicate any type of confusion, it also prevents competitors to imitate same type of symbol, name, logo or slogans. Trademark is governed by **Trademark Act,1999**. Trademark time duration is generally for 10 years but it can be renewed. Example- Coca-cola logo, Nike logo etc.

4) Industrial Designs

Industrial design protect the shape, pattern or colour of Object. Industrial design is Governed by the **Design act, 2000**. Industrial design can be in form of 2D and 3D. Time duration is 10

years and can be extended by 5 more years. Examples- Car Models, Smartphone Designs etc.

5) Geographical Indication

Geographical indication protect the product which is originating from the particular locality or region and poses unique qualities. This is governed by **The Geographical indications of goods (Registration and Protection) Act, 1999**. Time duration is for 10 years and renewable. Example- Basmati Rice, Banarasi sarees etc.

6) Trade Secrets

Trade secret protects the confidential business information which play an paramount role in company governance. This include formula, manufacturing process, marketing strategies etc. Trade secret are not registered like other IPR. This is protected by legal agreement. Trade Secret is governed by **Indian Contract Act,1872 and Information Technology Act, 2000**. Time duration is till organisation wants to be confidential. Example-Coca Cola Recipe, Google Search Algorithm.

ARBITRATION Vs. MEDIATION Vs. CONCILIATION

Arbitration is Adjudicative: Binding and enforceable.

Mediation is Facilitative: Non-binding unless mutually agreed

Conciliation is Advisory: The conciliator may suggest terms and the outcome is binding only on mutual consent.

ARBITRATION

Arbitration is a method of Alternative Dispute Resolution(ADR) where disputing party refer their conflict to arbitrators whose decision is legally binding. It is commonly used in commercial context due to its confidentiality, efficiency and flexibility. Unlike litigation, arbitration allows parties more control over the proceedings, including the choice of arbitrator, the governing procedure and the seat of arbitration.

Arbitration is a type of ADR which is basically used for out of court settlement. Arbitration reduces the cost, time, procedure etc. In arbitration parties can decide their arbitrator, seat,

venue and the procedures etc. The decision of arbitration is known as Arbitral award and binding on the parties. Arbitral award can be enforced like a decree in CPC. Court intervention is minimal in arbitration. The utmost important benefit of arbitration is that particular specialized person of that field act as a arbitrator and solve the dispute in confidential and expeditious manner. For Example Capital market dispute, Construction dispute ,Commercial disputes.

Key Features of Arbitration-

1. Party Autonomy
2. Neutrality
3. Finality and Binding Nature
4. Confidentiality
5. Flexibility

The Arbitration and Conciliation Act, 1996 governs both domestic and international arbitration in India, drawing from the **UNCITRAL Model law**.

ARBITRATOR APPOINTMENT

There are three main method to point Arbitrator-

- (i) Party appointed arbitrator: Each party appoints one arbitrator and the two appoint a third (presiding) arbitrator.
- (ii) Institutional arbitration: Institutions like ICC, SIAC or LCIA appoint arbitrator as per their rules.
- (iii) Court intervention: In India, under section 11 of 1996 Act, Courts can appoint arbitrator when parties fail to do so.

Arbitration in IPR Disputes

The primary legal principle governing this issue in India is the distinction between **rights in**

personam and *rights in rem*.

- **Rights in personam** are private rights enforceable against a specific individual. Disputes involving these rights, such as those arising from a breach of a licensing agreement between two parties, are generally considered suitable for arbitration.
- **Rights in rem** are public rights enforceable against the world at large. Disputes that affect the rights of third parties or the public at large are typically deemed non-arbitrable.

Indian jurisprudence generally holds that if an IPR dispute involves the rights of a third party, it cannot be resolved through arbitration. The rationale is that a private arbitral award cannot bind non-parties .

Advantages of Arbitration for IPR Disputes

Despite these legal challenges, arbitration offers significant advantages that make it particularly well-suited for IPR matters.

- Confidentiality
- Technical Expertise
- Efficiency
- Party-Centric Approach

Dispute that are not Arbitrable

There are certain disputes which cannot be decided in arbitration-

1. Criminal matters
2. Domestic relations and successions
3. Bankruptcy
4. Certain competition claims

These Disputes are related to public right and interest of third party which cannot be resolved by Alternative dispute resolution mechanism such as arbitration. These type of dispute can be decided by courts. Many judgments in India spell out that IPR is not arbitrable and IPR must be decided by the Court of law

The Allahabad HC in **Swatantra Properties (P) Ltd. v. Airplaza Retail Holdings Pvt**¹ held as under: “The following categories of disputes are generally treated as non arbitrable :

- (i) Patent, trademarks and copyright;
- (ii) Anti-trust/competition laws;
- (iii) Insolvency/winding up;
- (iv) Bribery/corruption;
- (v) Fraud;
- (vi) Criminal matters.”

IPR is Arbitrable or not?

In India, the law relating to arbitrability of disputes was laid down by the Supreme Court in the case of **Booz Allen Hamilton v. SBI Finance**². The Court held that arbitrability of a dispute had to be determined by seeing if the dispute relates to a right in rem or a right in personam. A right in rem is a right exercisable against the world at large whereas right in personam which is an interest protected solely towards a particular person. The courts held that all disputes relating to rights in personam can be decided by arbitration whereas all disputes relating to rights in rem are to be adjudicated by courts and public tribunals.

So, the inference is drawn that Intellectual property right is not arbitrable because there is a closed link between intellectual property and public policy and public authority Grant intellectual property right.

¹ Swatantra Properties (P) Ltd. v. Airplaza Retail Holdings Pvt, 2019(1) ALJ 409.

² Booz Allen Hamilton v. SBI Finance ,(2011) 5 SCC 532.

Further the Madras High Court in **Super Audio Madras v. Entertainment Network India**³ held that orders of the copyright board are orders in rem and bind third parties.

In **Fulham Football Club Private Limited v. Richards**⁴-The Court held that arbitrability needs to be determined on the facts and circumstances of the case and whether the matter involves the rights of third parties or public interest.

Several limitations of an arbitration proceeding

1. Public Policy

Arbitrators are appointed by the parties of the case due to which the process of arbitration is flexible. Arbitrator can not issue Summon, impose liability or send to prison. IPR is basically not decide any right between two persons but it decide against the general public. So, if any matter is related with public policy or general public importance then it should be sent to court not arbitration.

2. Real and Sub-ordinate Rights

Real right is a right in Rem which is enforce against the world at large whereas subordinate right is right in personam which are enforceable against the parties.

The matter which is basically between the two living being(Right in Personam) that can be easily decided in the arbitration but if any matter which is not between two person but there is involvement of third person or more(Right in Rem) then it cannot be decided in arbitration.

3. Court's Power

All arbitration matter is governed through Arbitration and Conciliation Act 1996. Section 8 of the arbitration and conciliation Act clearly explains that if the court deems fit may refer a matter to arbitration, if there exists an arbitration agreement between the parties.

Section 11 of Arbitration and conciliation Act, 1996 provides for an appointment of an arbitrator if the arbitrator is not appointed by the party.

³ Super Audio Madras v. Entertainment Network India ,(2011) 1 LW 611 (Mad).

⁴ Fulham Football Club Private Limited v. Richards ,[2012] Ch. 333.

POSITION IN OTHER COUNTRIES

IPR disputes can be Decided through arbitration in these country-

1. USA

Patent, Copyright and trademark are arbitrable in USA.

2. Hong- Kong

All the IPR related disputes are now made arbitrable

3. Singapore

All the IPR related disputes are now made arbitrable⁵.

4. United Kingdom

Patent⁶, Copyright and trademark are arbitrable in UK

WIPO RULES ON ARBITRATION

WIPO is the only institution to Provide services related to the IPR. WIPO has also developed an online system for administering commercial dispute involving intellectual property. A WIPO procedure is commenced by a request for arbitration submitted to the WIPO Arbitration center. The list of arbitrators or mediators is maintained by the Arbitration center in accordance with the qualification criteria in matter of intellectual property dispute but that list is not published yet. WIPO rules regulates the Confidentiality and trade secrets.

Interim relief generally granted by the court and many cases generally end at the level of interlocutory stage. Arbitration rules generally do not give power to arbitral tribunal to grant interim relief. But Party can take the benefit by going to court By the permission of the Arbitral tribunal. At present there is no arbitral tribunal which provides the instant relief to the parties in the form of interim relief. WIPO is about to introduce an emergency interim arbitral procedure which will be there in addition to the WIPO arbitration. This can be availed by giving

⁵ Singapore International Arbitration Act, 1994.

⁶ Roussel-Uclaf v. G.D. Searle & Co. Ltd., [1978] Lloyd's Report 225

the 24 hour notice. This interim relief will be very beneficial for the parties. But many countries arbitration laws does not allow the enforcement of partial award or recognise the arbitral tribunal power to grant interim relief.

Arbitration and Conciliation Act, 1996

Arbitration and conciliation Act, 1996 does not classify any kind of dispute as non arbitrable. In fact this act prescribes all dispute arising out of legal relationships whether contractual or not to be arbitrable.

Section 2(3) provides Certain Dispute to be non arbitrable.

Section 7 Explains the essential of Arbitration agreement.

Section 8 Explain power to refer parties to arbitration where there is an arbitration agreement.

Section 10 explain number of Arbitrator should be in odd.

Section 11 explains about the appointment of arbitrator.

Section 17 explains Interim Measures ordered by Arbitral Tribunal

Section 26 explain expert appointed by arbitral tribunal

Section 34 explains that an arbitral award will be set aside if the court finds that the subject matter of the dispute is non arbitrable.

Section 36 explain enforcement of Arbitral award.

All Dispute related to right in Personam can be decided by arbitration but all dispute related to right in Rem required to be adjudicated by court and public tribunals.

In a later case⁷, the Apex Court also stated that the presence of a special tribunal like Debt Recovery Tribunal should not oust the jurisdiction of the arbitral tribunal. Further, the Apex Court hinted at the arbitral tribunal to be the substitution of the civil courts⁸.

⁷ HDFC Bank v. Satpal Singh Bakshi, (2013) 134 DRJ 556 (India).

⁸ Natraj Studios Pvt. Ltd. v. Navrang Studios, AIR 1981 SC 537 (India).

The Apex Court have been instrumental and progressive in dealing with arbitrability of disputes. Whether its Balco case⁹, wherein the judiciary has been asked to refrain from interfering in the foreign seated arbitral awards or its World Sports Group case¹⁰, wherein the court has upheld the arbitrability of even the disputes involving fraud.

Arbitrating IPR disputes in India

There is no law which governs Arbitration of IPR disputes in India. IPR dispute is at premature stage in India. We should have to make legislation to implement arbitration in field of Intellectual property dispute. But we cannot simply adopt the same laws of USA or Switzerland because of the social condition of our nation is very different from those countries. But we have to make Legislation for Incorporation of arbitration in IPR, There are some steps which should be followed to incorporate arbitration in IPR-

1. The Legislature should make a legislation related to Arbitration of Intellectual property right. So, that Court should not hesitate in sending the IPR case to arbitration.
2. State should make amendment in Arbitration and Conciliation Act, 1996 and give reasonable power to tribunal to decide any type of Intellectual property dispute.
3. Unlike United Kingdom any clause which restrict the parties to approach the civil court must not be permitted in India.
4. Party should mention in IPR contract that in case of any disagreement they should go for arbitration. First option of Parties must be Arbitration.
5. The award given by the tribunal must be notified to the relevant authority/board who maintains the record of particular intellectual property. The arbitral awards must be reviewed by the relevant authority or board and then if arbitral award is in accordance with the law then it should be enforced.
6. If any third party right is violated by the arbitral award then that third party can institute a suit regarding the grievance.

⁹ BALCO v. Kaiser Aluminium, (2012) 9 SCC 552 (India).

¹⁰ World Sports Group (Mauritius) Ltd. v. MSM Satellite (Singapore) Pte Ltd., AIR 2014 SC 968 (India)

7. A list of arbitrators should be appointed by the state who have a special knowledge in the field of IPR. Arbitrators can also be appointed from the retired members of relevant authority/Board who maintain the record of particular intellectual property.
8. Judiciary should restrict itself from playing internal role in any matter relating to Arbitration of intellectual property right. But you can send any dispute to judiciary when you cannot find out solution in Arbitration or in appeal..
9. State can take the help of laws of different countries and then make the changes according to the social condition in India and then implement them accordingly.
10. State can also take the help of WIPO Arbitration and mediation center rules to make legislation in India.

Government should implement these steps in particular some state. And accept all the new ideas and development from that state and incorporate that into the legislation & then Implement legislation in the whole country.

Arbitration is widely used as dispute resolution mechanism in international commerce. Arbitration satisfy the demand of the parties in non hostile, affordable, fast manner to settle their dispute. Party also have a leverage to choose their arbitrator, seat, venue, procedure etc. according to their convenience. The number of applications in intellectual property right is continuously increasing day by day due to the technological advancement. So, arbitration act as an instant method to solve dispute easily and within a limited time frame.

ONLINE DISPUTE RESOLUTION (ODR)

ODR stands for Online dispute resolution Mechanism which is continuously evolved over the last two decades. ODR is one of the best mechanism to solve the dispute without court intervention by virtual medium. After pandemic Internet is became the integral part of of our daily life. Due to which Indian courts also adapt online mechanism to solve cases. Due to the pendency of million of cases ODR is need of the hour and one of the best mechanism to solve the dispute amicably. ODR reduces the time, cost of the Parties of Dispute. ODR includes e- mediation e- arbitration and e- negotiation and e- conciliation or combination of all type of alternative dispute resolutions. ODR is evolved from ADR as a better mechanism to solve dispute amicably. ODR is a mechanism to solve the dispute amicably by following Any type

of ADR mechanism by virtual means. ODR includes not only pleading but also includes evidence presentation, cross examination, oral argument and giving award at the end of Session.

Advantages of ODR.

ODR uses the technology to decide the particular dispute amicably because of which it reduces the time of party travelling from one place to another place, eradicate the trouble of location, reduce the expenses of the both party and also one of the flexible and convenient mechanism. At present, there is no need to take the holiday from the office and go to particular venue to decide any dispute through ADR, in spite of that we can simply avail the procedure of ODR by sitting at home and find out amicable solution by virtual means. By Algorithm based input we can make decision prior to initiating a dispute. ODR is time & cost effective method, eliminating bias in dispute resolution, increasing access to justice.

DIFFERENCE BETWEEN ADR AND ODR

ADR means out of court settlement by mediation, negotiation, conciliation and arbitration. The process of ADR is simple, cost effective and time saving. ADR helping not only the party but also the Court but with the passage of time ADR is also become a complex and costly method. Therefore, other method is the need of the present time i.e. (ODR) which is friendly transparent and less expensive than ADR.

Online dispute resolution is a way to resolve issues by use of technology rather than solving it in a traditional manner .It allows people to receive solution in more accessible, efficient and affordable way. ODR Act as a boon to the court system since it allows the online resolution of dispute by minimal interference, loss of time and money. ODR is much cost effective, convenient and time effective then ADR

MERITS OF ODR

1. Cost Saving

ODR allows the party to save the expenses of travel and lodging as well as hiring of legal counsel. ODR is one of the best mechanism to solve the international dispute between the parties.

2. Time Saving

Before ODR, Dispute resolution was time consuming and expensive but ODR speed up the process by removing unnecessary adjournment.

3. Autonomy/Avoidable Conclusion

Parties not have constraint of law and they can reach an agreement by their autonomy and if they are not satisfied with the final decision in that case they can go for alternative remedy.

4. Impartiality and Confidentiality

ODR establishes an environment of good faith and trust and also provides secrecy to the parties. All the conversations between the parties will remain confidential and will not be disclosed to any 3rd person.

ODR PLATFORMS AVAILABLE IN INDIA

ODR Platforms that are available in India are-

1. Online Consumer Mediation Centre (OCMC), Bangalore
2. SAMA - Space for Resolution
3. Centre for Online Resolution of Disputes (CORD)
4. Centre for Alternative Dispute Resolution Excellence (CADRE)

In India, ODR is recognized by the Information Technology Act, 2000, and the Arbitration and Conciliation Act, 1996.

In **Grid Corporation of Orissa Ltd. v. AES Corporation**,¹¹ the Supreme Court mention that, When the two party effectively consult any dispute between themselves by virtual medium. Then it is not necessary to sit together physically and consult on the same issue unless it is the requirement of law or mentioned in the contract.

¹¹ Grid Corporation of Orissa Ltd. v. AES Corporation, (2003) 1 Cal LT 50 SC

Method to accelerate the growth of ODR.

1. Due to the lack of awareness general public not known about ODR. So, first of all government have to make awareness Campaigns about ODR.
2. Increase in technology is one of the utmost important part of ODR.
3. We need ODR professionals who are trained and skilled in the required field and have knowledge of ODR Procedure.
4. To maintain the public trust in online dispute resolution(ODR). We should integrate ODR with government agencies.
5. Government should make legislation which cover confidentiality, enforcement and procedure of ODR and Appeal.

Government should make legislation and enforce ODR as one of the most effective mechanism in resolving small value Dispute & Consumer Dispute in comparison to ADR.

CONCLUSION

The evolution of India's adjudicative landscape marks a pivotal shift from traditional, court-centric litigation toward a more streamlined, party-driven framework. As Intellectual Property Rights (IPR) become the cornerstone of the modern economy, the historical rigidity surrounding their "non-arbitrable" status is increasingly being challenged. While Indian jurisprudence highlighted by the landmark *Booz Allen Hamilton* case maintains a cautious distinction between rights *in rem* and rights *in personam*, the practical demands of the global market necessitate a more progressive stance.

The integration of Arbitration and Online Dispute Resolution (ODR) into the IPR domain is no longer just a matter of convenience; it is a necessity for fostering innovation. By leveraging the technical expertise of specialized arbitrators and the cost-effective, borderless reach of ODR platforms, India can offer a dispute resolution environment that matches the speed of technological advancement. However, for this transition to be successful, the current legal vacuum must be filled with robust legislative reforms, including amendments to the Arbitration and Conciliation Act, 1996, and the establishment of clear protocols for protecting third-party

interests.

Ultimately, by harmonizing domestic laws with international standard such as those set by WIPO and embracing the digital revolution through ODR, India can transform its "premature" IPR arbitration landscape into a mature, reliable, and efficient system. Such a shift will not only alleviate the burden on the judiciary but also bolster investor confidence, ensuring that India remains a competitive hub for intellectual and industrial growth in the 21st century.