

INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

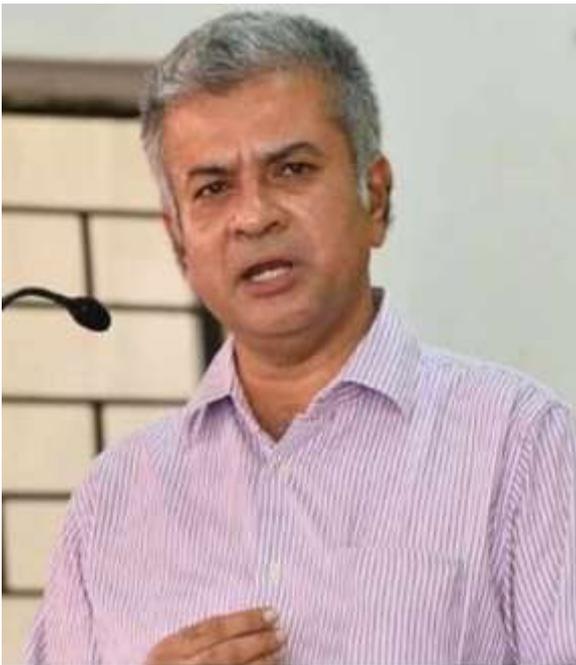
DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service **officer**

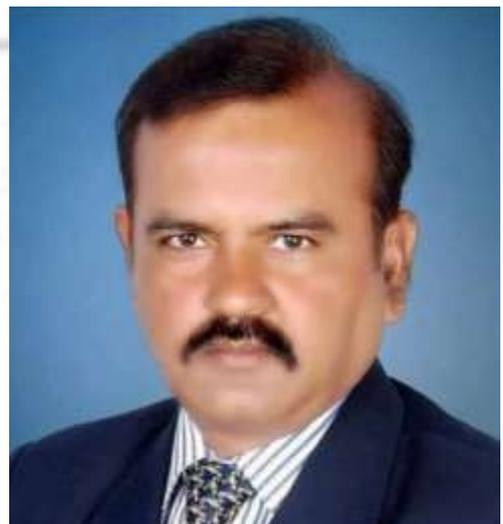


a professional
Procurement from the World Bank.

Dr. Raju Narayana Swamy popularly known as Kerala's Anti-Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala. He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University. He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and diploma in Public

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

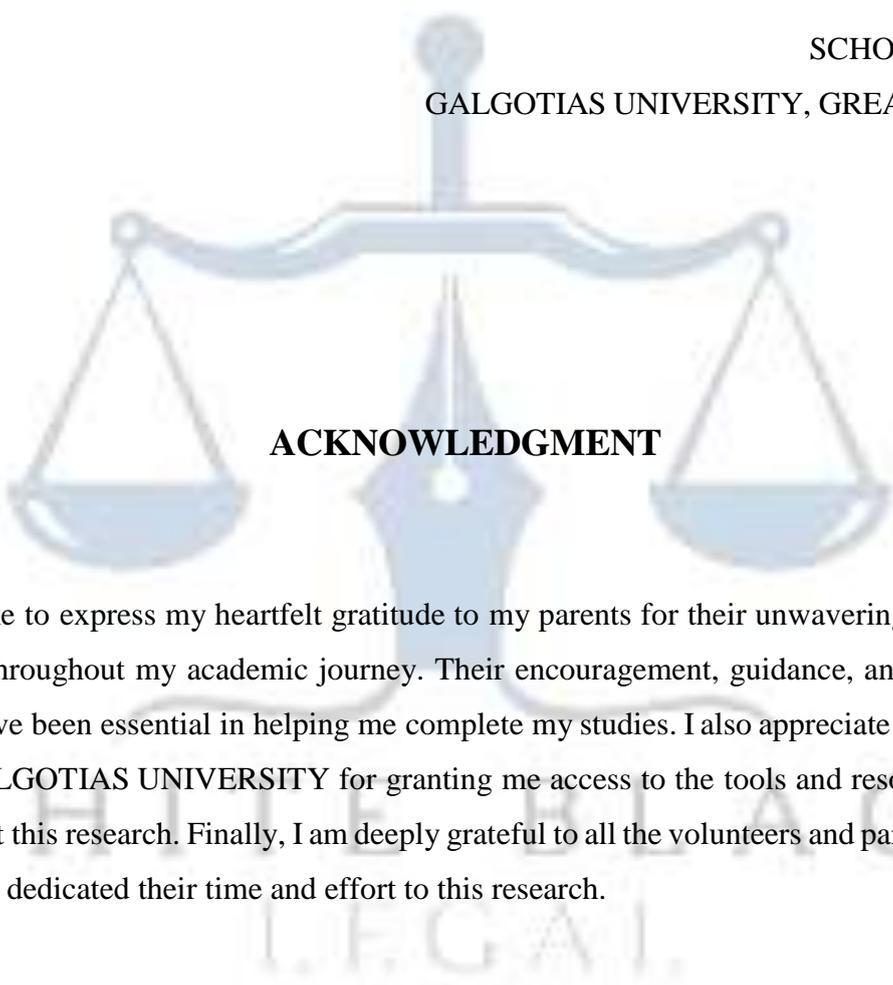
**THE GROWING ROLE OF ALTERNATIVE DISPUTE
RESOLUTION IN INTELLECTUAL PROPERTY
RIGHTS DISPUTES: A COMPREHENSIVE ANALYSIS**

AUTHORED BY - PRACHIDEO
(20GSOL1020037) B.A.LL.B (Hons.)

5th Year, IX Semester 2024-25

Section- B

SCHOOL OF LAW,
GALGOTIAS UNIVERSITY, GREATER NOIDA



ACKNOWLEDGMENT

I would like to express my heartfelt gratitude to my parents for their unwavering support and guidance throughout my academic journey. Their encouragement, guidance, and unwavering support have been essential in helping me complete my studies. I also appreciate SCHOOL OF LAW, GALGOTIAS UNIVERSITY for granting me access to the tools and resources needed to carry out this research. Finally, I am deeply grateful to all the volunteers and participants who generously dedicated their time and effort to this research.

ABSTRACT

This research paper examines the increasing significance of Alternative Dispute Resolution (ADR) in resolving Intellectual Property Rights (IPR) disputes. As traditional litigation proves inefficient due to its high costs, complexity, and prolonged timelines, ADR mechanisms such as mediation, arbitration, and conciliation emerge as viable alternatives. The study explores the benefits of ADR, including confidentiality, cost-efficiency, and the preservation of business relationships, while addressing the challenges like enforceability and jurisdictional barriers. Through a doctrinal approach, the paper analyzes global practices, including the role of the World Intellectual Property Organization (WIPO), and India's legal framework to assess the efficacy of ADR in IPR disputes. The findings highlight ADR as a promising avenue for effective and timely dispute resolution, fostering innovation and safeguarding intellectual property.

1. Introductory Introduction

In the modern era of the 21st century, Intellectual Property Rights, known as (IPRs), have recently emerged as an inseparable asset that encourages innovation, creativity, and economic development. The globalization and technological progress, as well as the importance attached to these rights however increased IPRs-related disputes, particularly patent, trademark, and copyright disputes. The adversarial nature, high costs, and prolonged processes of traditional litigation are often inadequate. Intellectual property is intangible, and unlike with conventional property, the value of intellectual property does not lie in the individual possession of the property. The value of intellectual property lies in its exclusive use and licensing by the owner. Methods of Alternative Dispute Resolution (ADR) like arbitration, mediation and conciliation has all played a great role as an effective tool which can resolve the IPR disputes. In this sense, ADR provides confidentiality, technical knowledge and the chance to maintain trade relations. This research highlights the evolution of ADR mechanisms by examining their advantages, challenges, and the mechanisms through which this process can foster the resolution of IPR disputes in the future.

This study aims to evaluate arbitration as a successful alternative dispute resolution (ADR) method for intellectual property-related disputes. Arbitration is a private, flexible, and possibly faster alternative to standard litigation. It allows parties to choose arbitrators with expertise in intellectual property law and associated technology fields, ensuring that complex disputes are

adjudicated by qualified professionals.

Review of Literature

Nature and Complexity of IPR Disputes

- Cornish, Llewelyn, and Aplin – "Intellectual Property: Patents, Copyright, Trade Marks, and Allied Rights" (9th Edition, 2019)¹ - The authors point out how globalization and new technological developments have made IPR disputes more complex. They argue that litigation traditionally does not do very well in resolving technical nuances of these conflicts, let alone where jurisdiction extends over multiple borders.
- Bouchoux – "Intellectual Property: The Law of Trademarks, Copyrights, Patents, and Trade Secrets" (6th Edition, 2019)- As a book on IPR, it highlights the author's view of IPR as an essential economic commodity and continues to portray court systems as inefficient at resolving economic disputes.

Overview and Benefits of ADR in IPR Disputes

- The Arbitration and Conciliation Act, 1996: Serves as the cornerstone of ADR in India, enabling parties to resolve disputes efficiently without resorting to traditional litigation.
- Moses – "Principles and Practice of International Commercial Arbitration" (3rd Edition, 2017): ²Identifies commercial disputes, including IPR, that can be resolved through arbitration, and describes its role as allowing parties to find a structured yet flexible resolution process. The advantages of arbitration, as the book notes, include its amenability to technical expertise and cross-border enforcement under treaties such as the New York Convention.
- Bender³ – "Confidentiality in Mediation: Protecting Trade Secrets and Sensitive Information" (2016)- Bender also highlights that confidentiality is guaranteed in ADR (Alternative Dispute Resolution) — with mediation being the most confidential way of resolving a dispute — and patents and trademarks often entail sensitive data, making ADR an attractive solution.

¹ Cornish, Llewelyn, and Aplin – "Intellectual Property: Patents, Copyright, Trade Marks, and Allied Rights" (9th Edition)

² Margaret L Moses, *The Principles and Practice of International Commercial Arbitration* (3rd edition, Cambridge University Press 2017).

³ Jonathan Bender, *Confidentiality in Mediation: Protecting Trade Secrets and Sensitive Information* (2016).

According to the World Intellectual Property Organization (WIPO), ADR is more efficient in settling disputes, and it provides paradigmatic cases that show how these methods save time and resources in a trademark and domain name context.

Emerging Trends in ADR for IPR

- Schultz and Rhee – "Smart Dispute Resolution: Blockchain and AI in Arbitration" (2023)⁴ - The writers demonstrate how emerging technologies such as blockchain establish both transparency and immutability in ADR cases, alongside the function that AI plays in decision-making, especially in copyright and patent cases.

Statement of Problem

IPR (Intellectual Property Rights) disputes generally include complex technical and legal issues. Traditional litigation — rigid, expensive and slow — is not suited to make peace in these sorts of disputes. ADR—flexible, expert-driven, and confidential—becomes increasingly important for handling these new threats that show no sign of abating. Nevertheless, the proliferation of ADR is hindered by jurisdictional issues, ignorance of the benefits offered by these methods and deficient enforcement modules which leads to the need for comprehensive analysis.

Hypothesis

The Alternative Dispute Resolution (ADR) mechanisms are better in disposing of IPR disputes, effective, quicker and less expensive compared to litigation and, additionally, this method gives more privacy keeping the business relations maintained.

Research Objective

1. To assess the efficacy of ADR mechanisms in resolving IPR disputes compared to litigation.
2. To analyze the benefits of ADR in terms of confidentiality, cost-efficiency, and relationship preservation.
3. To propose strategies for enhancing the adoption of ADR in IPR conflicts.

Research Question

1. What part do global institutions such as WIPO play in advancing ADR for IPR?

⁴ Thomas Schultz and Mo Jae Rhee, *Smart Dispute Resolution: Blockchain and AI in Arbitration* (2023).

2. ADR procedures are most frequently utilised to settle IPR disputes?

Scope & Limitation

The detailed study further scopes the role and significance of Alternative Dispute Resolution (ADR) in resolving the Intellectual Property Rights (IPR) disputes along with their advantages and disadvantages and a booming up of the future scope of ADR in IPR disputes litigations.

The discussion identifies a list of patents, copyrights, trademarks, trade secrets, and new challenges including domain names and digital IP. It contrasts different ADR data-generated categories by exploring how ADR can address the unique problems each presents.

Research Methodology

This is a Doctrinal type of Research and it involves a systematic analysis of legal doctrines, statutes, case law, and legal principles to interpret, clarify, and develop legal norms and their application.

2. Understanding The IPR Disputes and ADR:

2.1 The Law in India Vis-&-Vis Alternative Dispute Resolution in Intellectual Property Disputes⁵

1. COPYRIGHT LAW AND ADR- Copyright disputes usually revolve around whether an accused party infringes copyright law by illegal 'copying' or by building his creation based on copyrighted material. Resolution of disputes very often requires looking at the defendant's proof, looking at the work itself and the extent of substantial similarity in light of the specific claims of the new work and the accused defendant's position. Hence, the arbiter needs to determine if the allegedly infringing party copied the copyright-protected work.
2. PATENT AND ADR– Patent disputes concern the technicality of the issue raised, hence the question that arises is the critical dispute which the Indian benches are confronted with in terms of hastening the trial of the conflict economically and quickly. The facts in each case in the patent law ground of India has been coiled into the micro-indentities of interim orders and applications in connection to those orders. It is true that many governments have adopted arbitration as a model for resolving patent conflicts. Section

⁵ <https://articles.manupatra.com/article-details/ADVOCATING-FOR-ALTERNATIVE-DISPUTE-RESOLUTION-IN-INTELLECTUAL-PROPERTY-RIGHTS-NEED-OF-THE-HOUR>

103 expressly uses arbitration as the means by which to settle disputes. A proper way of justice dispensation can be achieved, if ADR is also closely incorporated in cases across patent infringement proceedings.

Moreover, ADR has the ability to provide a focused, limited, and, relatively speaking, fast method, despite the significant financial strain litigation creates. It also gives both parties a chance to do a “reality check.”

3. TRADE MARK AND ADR – Trademark holders are often embroiled in quarrels claiming the Respondent's mark is confusingly similar to the Plaintiff's. It is consistently alleged by the aggrieved party that the wrapping of the Respondent occurs in a manner which misleads the common man into thinking it to be the goods of the Plaintiff. ADR may allow parties to settle their disputes sooner, thus saving them time, money, and essential business relationships.⁶

2.2 Methods of ADR in IP Disputes

Using these processes can help Alternative Dispute Resolution Adoption between Intellectual Property Disputes.⁷

Mediation: When countries meet, theoretically face to face, before a mediator to discuss their respective viewpoints is mediation. The mediator might be sympathetic or through a process agreed upon by the parties. In mediation, the warring parties usually talk directly to each other without a go-between. The system's success depends on the partners' desire and is not legally binding. Additionally, mediation can be used as an independent dispute-resolution instrument or as part of a more comprehensive dispute-resolution process that could include a lawsuit.

Arbitration: Another option for settling conflicts involving intellectual property is arbitration. The parties can choose to have one or three panellists settle the issues, and it is frequently more structured than mediation. The terms of an irrevocable arbitration are sometimes outlined in a second agreement or licence agreement through an arbitration clause. A standard arbitration agreement or clause includes a list of subjects or exclusions to problems that may be arbitrated, relevant laws, the location of hearings, and a process for choosing the jury.

⁶ <https://articles.manupatra.com/article-details/ADVOCATING-FOR-ALTERNATIVE-DISPUTE-RESOLUTION-IN-INTELLECTUAL-PROPERTY-RIGHTS-NEED-OF-THE-HOUR>

⁷ Ibid

Med-Arbitration: One new concept of alternative dispute resolution is to combine mediation and arbitration. The parties may, for example, agree that they will attempt to resolve a dispute by way of mediation but, if the mediation is unsuccessful, submit any remaining issues to arbitration. The parties can proceed to the same neutral third party to serve for mediation and arbitration or can select a different neutral third party for the next proceeding.

2.3 Reasons to consider using Alternative Dispute Resolution for Intellectual Property Litigation

The adaptation of the Alternate Dispute Resolution stated for intellectual property is the subject of numerous hypotheses under the aforementioned heading.

1. Utilitarianism Theory:

Intellectual property rights were defended by Jeremy Bentham and John Stuart Mill, who also agreed that they constitute an important societal resource. The utility principle, developed by John Stuart Mill, governs any action that results in widespread pleasure and guarantees the absence of pain. According to Jeremy Bentham and J.S. Mill, the primary goal of the entire system is to maximise everyone's welfare or well-being by providing an efficient cure. ADR is one of the innovative mechanisms that Jeremy Bentham provided for the public opinion tribunal. They were given the opportunity to learn about intellectual property rights and realised that they are a means of encouraging creativity and innovation as well as striking a balance between the loss of monopolistic exploitation and social welfare. At the time, it was the finest illustration of an alternate dispute resolution adaptation. One distinctive aspect of every democratic or socialist society is the role that the alternative conflict resolution process plays in ensuring that the general public receives justice. The idea that the person who produces something valuable has a right to partake in the results of his labour is the foundation of all welfare governments.

2. Labour Theory:

John Locke, the creator of the Social Contract theory, developed the idea. He asserts that one produces work and intellectual effort and reaps legal protections for the benefits of one's labour. First, Roman law, which adhered to natural law theory, acknowledged intellectual property. Natural law theory values the protection of intellectual property rights and is concerned with justice and natural rights. John Locke's fundamental idea of property can be extended to the more contemporary interconnection of intellectual property rights.

According to the aforementioned theories, an invention, innovation, or new creation should be respected, protected, and implemented as soon as possible.

3. Principle of Speedy Justice:

A relatively recent and well-founded idea is "speedy justice,"⁸ which calls for the use of ADR methods to settle intellectual property disputes. Another concern is that Article 21's vast scope and content implicitly guarantee the fundamental right to speedy justice.

The Supreme Court noted in *Bajaj Auto Limited v. TVS Motor Company Limited* that conflicts involving intellectual property rights should require both an effective remedy and a quick remedial mechanism. ADR is a brand-new, efficient remedy for intangible rights. Increased reliance on technology during a pandemic led to many problems in society, including violations of intellectual property rights.

3. Role of ADR in Resolving IPR Disputes

3.1 Role of WIPO in dispute resolution by using ADR⁹:

By using Alternative Dispute Resolution (ADR) techniques, the World Intellectual Property Organisation (WIPO) contributes significantly to the settlement of intellectual property (IP) disputes. ADR refers to conflict resolution techniques that are not traditional litigation and frequently provide more economical, flexible, and successful solutions.

WIPO supports ADR in IP disputes in the following ways: WIPO offers specialised arbitration and mediation services designed to settle intellectual property disputes. As opposed to typical court litigation, these processes are intended to be quicker and less formal.

WIPO Mediation and Arbitration Centre: WIPO runs a mediation and arbitration-specific centre. This centre manages processes designed especially to settle intellectual property disputes, including copyright concerns, patent problems, and domain name disputes.

Panel of Experts: WIPO keeps an impartial panel of experts that includes specialists in ADR methods and IP law. This panel provides a skilled and impartial third party to supervise the

⁸ <https://ijlmh.com/paper/alternative-disputes-resolution-and-intellectual-property-rights-indian-perspective/>

⁹ <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-rn2023-5-8-en-alternative-dispute-resolution-for-disputes-related-to-intellectual-property-and-traditional-knowledge-traditional-cultural-expressions-and-genetic-resources.pdf>

dispute resolution process by allowing parties to choose mediators or arbitrators.

Customised ADR Processes: WIPO gives parties the freedom to create their own ADR processes that are appropriate for the particulars of their disagreement. They can design a procedure that suits their requirements and the specifics of the IP dispute thanks to this flexibility.

The WIPO Arbitration and Mediation Center:

The WIPO Arbitration and Mediation Centre¹⁰ (WIPO Centre) was established in 1994 on a non-profit basis to promote the time and practical goals of IP and associated issues through ADR. It is regarded as a global and neutral discussion forum, particularly suited to cross-border and culturally diverse arguments, and it directs techniques under the WIPO Mediation, Expedited Arbitration, Arbitration, and Expert Determination Rules (WIPO Rules).

The WIPO Rules include particular provisions that are especially appropriate for IP and associated discussions, such as those regulating secrecy and specialised proof. In any case, their application is not limited to such questions, and they may and have been successfully applied in a variety of settings. Gatherings can use the model conditions and understandings provided by the WIPO Centre in a variety of dialects as justification for bringing their disagreements to WIPO.

The WIPO Centre also acts as an asset community, raising awareness of the vital role alternative dispute resolution (ADR) may play in a variety of industries. It prepares for IP-related ADR through seminars and meetings and offers ADR advice to interested private and public parties. A recent online seminar on arbitration and mediation under the WIPO Rules was presented by the WIPO Centre in partnership with the WIPO Academy. Intellectual property and associated conflicts are particularly well-suited for several of the WIPO Rules' provisions, such as those relating to confidentiality and technical evidence.

3.2 India's Legal Framework for Alternative Dispute Resolution in IPR Cases

1. The 1996 Act on Arbitration¹¹ - In India, the Act serves as the foundation for ADR. It

¹⁰ <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-rn2023-5-8-en-alternative-dispute-resolution-for-disputes-related-to-intellectual-property-and-traditional-knowledge-traditional-cultural-expressions-and-genetic-resources.pdf>

¹¹ The 1996 Act on Arbitration

//<efaidnbmnnnibpcajpcglclefindmkaj/https://www.indiacode.nic.in/bitstream/123456789/1978/3/a19

makes it easier to resolve business conflicts, especially those involving intellectual property rights, through arbitration and conciliation.

Section 7: Arbitration agreements are recognised, which is important for contractual issues concerning royalties and licensing.

Sections 34 and 36: There are few grounds to contest arbitral rulings and their enforcement as court orders.

2. Laws Concerning Intellectual Property

India's IP laws are silent on required ADR but give parties the freedom to select it:

ADR may be used to resolve disputes pertaining to mandatory licensing and royalty-sharing under the Copyright Act of 1957.

If specified in the agreement, licensing conflicts may be settled by arbitration under the Patent Act of 1970.

ADR procedures are made possible by the Trademarks Act of 1999, especially in cases involving business disputes.

3.3 Laws pertaining to Intellectual Property

While India's IP laws do not mandate ADR, they do give parties the freedom to select it:

- ADR may be used to resolve disputes pertaining to mandatory licensing and royalty-sharing under the Copyright Act of 1957¹².

If specified in the agreement, licensing conflicts may be settled by arbitration under the Patent Act of 1970.

ADR procedures are allowed under the Trademarks Act of 1999, especially in business disputes involving trademark rights.

- The 2015 Commercial Courts Act:

The Act promotes alternative dispute resolution (ADR) as the preferable method by encouraging pre-litigation mediation for all commercial issues, including IPR problems.

- WIPO ADR Framework Role:

India actively engages in the WIPO Arbitration and Mediation Center's programs, which offer specialised ADR guidelines and knowledge to settle international intellectual property rights

96- 26.pdf>

¹² The Copyright Act, 1957// < <https://www.copyright.gov.in/Documents/Copyrightrules1957.pdf>>

issues.

3.4 Arbitrability of Disputes under IP Licensing/ Assignment Agreements: Particularly in economically developed jurisdictions, disputes pertaining to intellectual property (IP) license and assignment agreements are typically regarded as arbitrable.¹³ Recognised and governed by a number of intellectual property laws, these agreements frequently have required formalities, such as written contracts outlining terms, as demonstrated by the Patents Act of 1970. Arbitrators¹⁴ can rule on patent validity concerns that come up incidentally in a commercial dispute, according to courts in some jurisdictions, such as the Paris Court of Appeal in *Societe Liv Hidravlika D.O.O. v. S.A. Diebolt*¹⁵. However, these rulings only bind the parties and not a third party. As demonstrated in cases like *Deepak Thorat and Euro Kids International*, disagreements over the execution of negative covenants—such as bans on utilising licensed trademarks after a franchise agreement expires—have also been determined to be arbitrable. This pattern shows that arbitration is becoming more and more popular as a means of settling contracts involving intellectual property, such as those involving licensing and assignment.

4. REMEDIES AVAILABLE IN ADR FOR IP DISPUTES AND THEIR ENFORCEABILITY:

4.1 Damages: The right of judicial authorities to grant damages "adequate to compensate for the injury the aggrieved right holder has suffered as a result of an infringement of that person's intellectual property right by an infringer who engaged in infringing activity knowingly, or with reasonable grounds to know" is a requirement of TRIPS, which requires WTO members to demonstrate this ability. The local laws governing civil adjudication must permit reparation to be sought by harmed intellectual property owners after determining the infringer's liability. Additionally, the judiciary will have the authority to order the infringement to reimburse the aggrieved party's expenses, which may include the advocates' costs, according to TRIPS Article 45(2). These are the smallest damages awarding guidelines that TRIPS imposes on WTO participants.

¹³ < file:///C:/Users/acer/Downloads/JPT_14_SHAISTA+PEERZADA_3_1432%20(3).pdf >

¹⁴ See, Chandni Ghatak, 'Arbitrability of IP Disputes in India: Lessons from Hong Kong' (IndiaCorpLaw, 10 March 2019) <<https://indiacorplaw.in/2019/03/arbitrability-ip-disputes-india-lessons-hong-kong.html>> accessed 14 April 2020 (analysing the Hong Kong Arbitration Law on the subject)

¹⁵ 2019 SCC OnLine Del

4.2 Injunctions: Although damages are necessary, injunctive remedy is frequently more common in the IP context because it focusses on stopping infringements and preventing further infractions. An equitable remedy that is typically awarded at the court's discretion is an injunction. According to TRIPS, "official jurisdiction ought to have in hand the power to abstain a litigant from an infringement, inter alia, to avert the entrance into the medium of trade in the territory of imported goods that pertains to the infringement of an intellectual property right, immediately after customs clearance of such goods." WTO members must thus, at the very least, give domestic courts the authority to impose injunctions against violators in order to prevent violations. There are two categories of injunctions: interlocutory and final. While Article 50 of TRIPS addresses "provisional measures," which refer to interlocutory injunctions, Article 44(1) of TRIPS deals with final injunctions. This is granted at the beginning of court proceedings.

4.3 Other Remedies: In addition to damages and injunctions, TRIPS mandates that WTO members offer a few other remedies. According to TRIPS, for instance, courts have the authority to order that goods that violate the law or the materials and tools used to make them be thrown out without compensation. Other issues may arise even though the destruction of infringement-causing objects and tools is meant to discourage infringement. Additionally, judicial authorities in WTO Member States may force infringers to disclose the "recognition of unbiased observer associated with the manufacturing and giving out of the infringing commodities, as well as their marketing channels" under TRIPS, but they are not prohibited from doing so. This could help resentful IP owners file a lawsuit against middlemen and other parties implicated in the infringements.

5. JUDICIAL PRONOUNCEMENTS:

- 1) Mundi pharma AG v Wockhardt Ltd.¹⁶ is one of the earliest cases on the arbitrability of IPR and requires close analysis. Section 20 of the Arbitration Act 1940 provided for reference of disputes in a suit to arbitration if there was an arbitration agreement between the parties.
- 2) Eros International Media Limited v. Telemax Links India Pvt. Ltd. (2016)¹⁷:
Telemax Links India Pvt. Ltd. (Telemax) and Eros International Media Limited (Eros)

¹⁶ <https://indiankanoon.org/doc/621947/>

¹⁷ Eros International Media Limited vs Telemax Links India Pvt Limited And 7 Ors on 12 April, 2016//<148880955>

signed a distribution agreement for specific cinematographic films. There was a disagreement over claims of copyright violations and agreement violations. Telemax was accused by Eros of violating its exclusive rights under the 1957 Copyright Act. An arbitration clause in the parties' agreement stated that disagreements would be settled by arbitration.

Court Held: Contractual Character of the Conflict: The Bombay High Court concluded that the terms of the parties' agreement were the main source of contention. Although there were allegations of copyright infringement, the suit was based on a breach of contract.

IPR Dispute Arbitrability: The Court reiterated that disagreements pertaining to intellectual property rights that result from a contract are subject to arbitration. It made a distinction between problems pertaining to licensing or contractual duties, which are arbitrable, and those involving the ownership or validity of IPR.

Enforcement of the Arbitration Clause: The Court affirmed the arbitration clause and ordered the parties to arbitrate the dispute in accordance with their agreement.

1. Bawa Masala Co. v. Bawa Masala Co. Pvt. Ltd. (2007)¹⁸

Bawa Masala Co., a partnership firm, and Bawa Masala Co. Pvt. Ltd., a private corporation established by the firm's partners, were at odds. The matter at hand concerned who owned and used the trademark "Bawa Masala." A dispute arose about contractual duties and trademark enforcement after the partnership claimed that the company had used the trademark without authorisation. An arbitration clause was incorporated into the parties' agreement to settle disagreements.

The Court Held: The Delhi High Court ruled that disagreements over trademark-related contractual rights are arbitrable. Arbitration can resolve disputes concerning usage and enforcement based on contractual conditions, but it cannot resolve questions pertaining to the validity or continuation of a trademark, which are regulated by statutory law.

The Court made it clear that the Trademarks Act, 1999's statutory authorities, not arbitration,

¹⁸ Bawa Masala Company Pvt. Ltd. (OS No.139 of 2002).

must handle disputes that directly contest a trademark's registration or validity.

The Court ordered that the disagreement over trademark usage be settled through arbitration, upholding the arbitration clause in the parties' agreement.

6. CHALLENGES IN ADR FOR INTELLECTUAL PROPERTY DISPUTES:

To comprehend its shortcomings and potential areas for development, it is essential to address the difficulties in using ADR (alternative dispute resolution) for intellectual property (IP) conflicts¹⁹. These difficulties may affect ADR's attractiveness and efficacy in settling intricate intellectual property disputes.

Complexity of Intellectual Property Rights: Complex technological aspects that call for specialised knowledge are frequently involved in IP disputes. It is essential to make sure arbitrators or mediators has the requisite technical knowledge. The intricacy is increased by varying interpretations of IP rules, which can differ greatly by jurisdiction. It may be difficult to find a solution that works for everyone because of this variance.

Enforcement of ADR Results: Although arbitration rulings are usually enforceable, it can be difficult to do so, particularly when they are made in different jurisdictions. It might be difficult to make sure that parties follow the conditions of mediation agreements because they are usually not legally binding.

Cross-Jurisdictional Issues: It might be difficult to decide whose laws apply in cross-border conflicts and which jurisdiction's regulations should control the alternative dispute resolution procedure. Different national legislation and the lack of reciprocal enforcement mechanisms can make it more difficult to enforce ADR outcomes in other nations.

7. Future Perspectives in ADR for IP

Given the growing worldwide nature of intellectual property issues and technological improvements, it is expected that dispute resolution procedures will continue to become more digital. ODR platforms can provide effective, affordable ways to settle simpler intellectual

¹⁹ Tuijin Jishu/Journal of Propulsion Technology ISSN: 1001-4055 Vol. 45 No. 2 (2024)

property disputes.²⁰ IP is become increasingly complicated, particularly with new technologies like artificial intelligence (AI) and biotechnology, there will probably be a larger demand for mediators and arbitrators with extensive technical understanding and legal expertise.

ADR procedures may increasingly be incorporated into international IP agreements and treaties, which would make it easier to settle cross-border IP disputes. It is probable that new legal frameworks or international agreements to streamline and standardise enforcement procedures may result from the difficulty of implementing ADR rulings across various jurisdictions.

8. Conclusion and Recommendations

For effective and cordial conflict resolution, Alternative Dispute Resolution (ADR) must be incorporated into intellectual property issues. As the field of intellectual property rights (IPR) evolves, a paradigm change towards cooperative and logical approaches is essential. Parties in India and throughout the world have long accepted that intellectual property transactions will be arbitrated. Many local and international business deals include provisions for arbitration to settle disputes resulting from the licensing or transfer of intellectual property. If all IP rights disputes are to be settled in court, it will not only violate the parties' consciously signed arbitration agreement, but it will also cause a significant delay in the resolution of those disputes and add to the already overloaded court filings. Keep abreast on the most recent advancements in ADR methods and IP law. Gain knowledge of the legal and technological facets of IP to effectively manage complicated conflicts. Think about adding ADR procedures to national IP regulations and guidelines. Strive for global accords that make it easier to enforce ADR decisions internationally. Put your attention on interdisciplinary research that blends technology, law, and conflict resolution.

Offer educational and training initiatives that give aspiring professionals the know-how to resolve IP disputes through effective ADR.

Bibliography:

- Tuijin Jishu/Journal of Propulsion Technology ISSN: 1001-4055 Vol. 45 No. 2 (2024)
- <https://www.copyright.gov.in/Documents/Copyrightrules1957.pdf>

²⁰ Tuijin Jishu/Journal of Propulsion Technology ISSN: 1001-4055 Vol. 45 No. 2 (2024)

- https://ipindia.gov.in/writereaddata/portal/ipoact/1_31_1_patent-act-1970-11march2015.pdf
- <https://wto.org/trips>
- <https://spicyip.com/2007/09/delhi-high-court-ruling-on-early.html>
- <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1089&context=nlsblr>
- <https://ijlmh.com/paper/alternative-disputes-resolution-and-intellectual-property-rights-indian-perspective/>
- <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-rn2023-5-8-en-alternative-dispute-resolution-for-disputes-related-to-intellectual-property-and-traditional-knowledge-traditional-cultural-expressions-and-genetic-resources.pdf>
- <https://articles.manupatra.com/article-details/ADVOCATING-FOR-ALTERNATIVE-DISPUTE-RESOLUTION-IN-INTELLECTUAL-PROPERTY-RIGHTS-NEED-OF-THE-HOUR>

