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ALTERNATIVE DISPUTE RESOLUTION AS A DISPUTE RESOLUTION MECHANISM TO INTELLECTUAL PROPERTY RIGHTS ISSUES: AN ANAYLSIS

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INTRODUCTION

The need of advancing Alternative Dispute Resolution, or "ADR," is progressing similarly everywhere in the globe, developed or developing. Some common reasons for why people look for alternatives include overworked courts, procedural annoyances, court delays, and costs. The glaring disparity between the no. of cases filed annually and the number of cases that are resolved justifies the necessity for these alternative systems by causing cases to languish in court for years. Due to the adversarial nature of the system, people often believe that long-standing institutionalized mechanisms—particularly those for resolving disputes in the public domain—are trustworthy.

However, the Indian Legal system is being criticised widely due to negligible disposal rates leading to delay in delivering justice accompanied with unnecessary expenses. Due to the existing crisis in the judicial system there felt a need for seeking alternatives leading to the quest for Alternative Dispute Resolution (ADR). ADR has gained incredible international recognition since the 1980s, and ADR initiatives have thrived on a worldwide basis. ADR's increasing popularity can be ascribed to its universal appeal, since it offers a another avenue for granting access to justice.

ADR is a method when a neutral agent actively participates in the presence and resolution of a dispute. In its ideal state, alternative dispute resolution (ADR) is seen as having restored the parties' pre-conflict connection in addition to resolving the problem.

In its ideal form, ADR is perceived not only as resolving the dispute but also as placing back the relationship of the parties status quo ante the conflict.¹

ADR typically includes Mediation, Arbitration, Conciliation, Negotiation and Lok Adalat. While

¹ P.C. Rao and William Sheffield, *Alternative Dispute Resolution-What is it and how it works?* 82 (Universal Law Publishing Company Pvt. Ltd., Delhi, 1997).

arbitration and mediation stand as the most prevalent forms of Alternative Dispute Resolution, negotiation often precedes them, offering parties a chance to resolve conflicts directly. Specific cases like auto accidents, family disputes, bank loans, and workmen's compensation fall under the purview of Lok Adalat, an accepted ADR method. Arbitration, discussed earlier, is a formal process providing an alternative to court litigation, allowing parties to opt for a sole arbitrator or a panel of three, typically experts in the field. Conversely, mediation, a non-adversarial approach, involves a neutral mediator aiding parties in crafting their own mutually agreeable solutions. Therefore, it can be concluded that the alternative conflict resolution approach offers a cheap, easy, adaptable, rapid, and accessible means of resolving disputes amicably.

Despite the fact that alternative dispute resolution (ADR) is growing in popularity in other legal fields, many intellectual property lawyers do not regard ADR as a viable choice. When dealing with an IP issue, business executives and lawyers often overlook the special qualities and possible benefits of alternative conflict resolution.

In ADR, the process and procedure involved in settlement of dispute is non-judicial in nature. Any process of dispute resolution would be considered an alternative in the real sense only if it can do away with the adjudicatory process, even when it is completely consensual. Under ADR, a neutral third party generally of parties' own choice helps in bridging the gap between them². The process is expeditious and inexpensive sans the procedural technicalities. More efficient conflict resolution is the aim. The availability of ADR gives the legal system additional options. In addition to calling for greater justice standards, the ADR movement was born out of criticism of the current system. It brings people and their issues closer to the legal system.

The emphasis in ADR, which is not formal or rigid, is on "helping the parties to help themselves".³ One of the basic principles of ADR is cooperative problem solving.⁴ ADR is based on more direct participation of parties in settlement rather than being run by judges and lawyers. This type of involvement increases the overall satisfaction level of the parties. By reducing the adversarial mindset and promoting greater transparency and communication between the parties, alternative dispute resolution (ADR) techniques seek to reach a mutually agreeable conclusion. The target of the alternative dispute resolution (ADR) approach are to eliminate the adversarial element from the process, help the parties see their shared interests, discourage them from taking

² Dr. Singh Avtar, Law of Arbitration and Conciliation (including ADR Systems), Eastern Book Company, Lucknow, 11th Edition(2018).

³ K.S. Chauhan, "Alternative Dispute Resolution in India", available at: <http://icadr.ap.nic.in/articles/articles.html> (last visited on April 18th 2024).

⁴ S.B. Sinha, "Courts and Alternatives" available at: www.delhimediaioncentre.nic.in.

hard stances, and encourage them to reach a negotiated settlement. The parties are in charge of the conflict resolution procedure and its result, and it is up to them to resolve the disagreement in a way that is workable, reasonable, and acceptable to all parties.

BASIC MECHANISMS OF ADR

Following are the broad mechanisms of ADR. They include:

- Arbitration
- Mediation
- Conciliation;
- Lok Adalat
- Negotiation
- Other Hybrid Forms

The following mechanisms will be discussed in detail below:

Arbitration

Among ADR, arbitration is one of the most popular and well-known. People have an option to settle their dispute outside of court via this legally binding form of private arbitration. Only if a valid arbitration agreement between the parties predates the question's emergence may the intervention process get underway.

Mediation

Through a solution that both parties have agreed upon, the parties can create their own resolution through the mediation process. Facilitating the parties' agreement-making process is the mediator's role..

Conciliation

A conciliator or mediator, who is an impartial third person, aids to come to a acceptable decision through the non-binding process of conciliation. Any of the parties may request that the other side designate a conciliator, and this process does not require any prior agreements.

Lok Adalat

Each Lok Adalat is considered to be a Civil Court and all procedures in that are esteemed to be legal procedures.

Negotiation

Negotiation is a mere conversation or a dialogue between two parties with the intent to resolve disputes by reaching a mutually agreed solution by considering the interest of both the parties by

crafting outcomes satisfying their interests..

IPR INFRINGEMENT

Since the development in technology, the knowledge and expertise can be transferred anywhere around the globe through exchange of information leading to loss of innovative and creative works overnight. Thus, to strengthen the economics of knowledge in India, there is a dire need to create an environment for promotion of knowledge driven entrepreneurship with major emphasis on providing due protection to the intellectual properties by creating a stringent IPR regime. If the rights are unenforceable, their very purpose is rendered moot. The owners of intellectual property must act as their own defenders and turn to the legal system if their rights are violated. There is no denying that the Indian courts have made significant progress in developing an intellectual property regime in India; but, if alternate conflict resolution mechanisms were included, the courts could make better use of the resources at their disposal. Moreover, matters dealing with patent law and copyright law need special adjudicating officers for a better understanding of interdisciplinary nature of the case at hand since the same involves intersection with science and technology. Due to the restricted protection afforded to intellectual property rights holders, systems for enforcing prompt and efficient justice must be developed. The legislations in relation to Intellectual Property enforcement in India are:

- CPC, 1908
- IPC, 1862
- CRPC, 1973

On the one hand, civil remedies and their implementation through civil courts are provided under the Code of Civil Procedure. On the other hand, punitive remedies are provided by the Indian punitive Code. The enforcement procedure's finalities are determined by the Indian Supreme Court, High Court, and lower courts' customary practices.

Common law is practiced in India, where rulings made by the Supreme Court are binding on the nation's lower courts. The enforcement of laws by statute is provided by the intellectual property laws. The important legislations relating to Intellectual Property laws are as follows:

- The Patents Act, 1970
- The Trade Marks Act, 1999 along with The Trade Mark (Amendment) Act

2010

- The Copyright Act, 1957 &
- The Designs Act, 2001

The above legislations are complemented with the rules which are as follows:

- The Patents Rules, 1972 as amended by the Patents (Amendment) Act of 1999
- The Trade Rules, 2002
- The Copyright Rules, 1958
- The Designs Rules, 2000

The main legislations post WTO agreement are:

- The Geographical Indications Act, 1999
- The Semi-Conductors integrated Circuits Layout Design Act, 2000
- The Biological Diversity Act, 2002

AVAILABLE REMEDIES

There exist both civil and criminal remedies under the laws dealing with the IPR infringement in India.

2.2.1 Civil Remedies

In general, the civil remedies that are available to a copyright owner, trademark owner and patent owner under The Copyright Act, 1957, The Trade Marks Act, 1999 and The Patents Act, 1970 respectively are as follows:

1) Interlocutory/Temporary/Ad Interim Injunctions:

The principles on which interlocutory injunctions should be granted was discussed way back in the English case of *American Cyanamid v Ethicon Ltd.*⁵. It is an optional alleviation accessible just if offended party can set up an at first sight case to support him, adjust of comfort is to support him and there is no unsalvageable misfortune or damage.⁶

2) Pecuniary orders: Change the name

In Indian law, there is a departure from the norm, as outlined in sections 55 and 58 of the Copyright Act, 1957. Here, the plaintiff has the right to seek recovery of all three remedies: (a) account of profits, (b) compensatory damages, and (c) conversion damages, which are determined based on the value of the converted article.

⁵ [1975] 2 WLR 316.

⁶ Civil Remedies in India, available at <http://www.ssrana.in/Intellectual%20Property/IP-Enforcement-And-Litigation/Civil-Remedies-in-India.aspx> (visited on 3rd April, 2024).

3) Mareva Injunction:

The Mareva Injunction is designed to safeguard the interests of plaintiffs during ongoing legal proceedings. It can be issued to prevent defendants from disposing of their assets within the jurisdiction until the trial concludes or a judgment is reached in a case of infringement. This injunction aims to prevent defendants from evading potential judgments by preserving their assets.

4) Anton Piller orders:

The Anton Piller Order derives its name from a Court of Appeal decision in *Anton Pillar AG V. Manufacturing Processes*.⁷ In appropriate circumstances, the court has an inherent authority, upon an ex parte and in camera application by the aggrieved party, to compel the litigant to allow the aggrieved party to access their premises and examine important records and articles, and to make copies and remove them from custody. Such orders are necessary when there is a serious risk of relevant documents and articles being removed or destroyed to obstruct justice.

5) John Doe Orders:

John Doe Orders are issued by court to seek/seize against unknown or anonymous litigants which essentially moves unobstructed power in the hands of the offended parties helped by court designated local officials to strike any premises where infringing exercises are indulged into.

6) Permanent/Perpetual Injunction:

It is a last order of the court abstaining a man from specific exercises for all time or taking activities in interminability.

7) Damages and accounts of Profits:

Damages or Accounts of Profits are two totally unrelated cures allowed to the offended parties. Damages are conceded to the offended party to make up for the misfortunes endured by the offended party by virtue of the demonstrations of the respondents and accounts of profit is an equitable remedy requiring the defendant to give the actual profits earned through infringing activities to the plaintiff.

8) Delivery up and Destruction: Is this a separate remedy

⁷ [1975 A. No. 6292].

Under this the infringing goods are either delivered or destroyed to the plaintiff. Under which act is the remedy available?

Criminal Remedies

The criminal remedies that are available to a copyright owner, trademark owner and patent owner are as follows:

The Trademarks Act, 1999

The principal legislation pertaining to trademarks in India is the Trademarks Act, 1999. The aforementioned Act lists a number of trademark-related violations, such as intentionally misrepresenting a trademark, fabricating or possessing tools to do so, using a fraudulent exchange symbol, using the wrong country of origin, and so on. A punishable offense is the misrepresentation and improper use of a trademark associated with food and medication. The punishment for the above offences varies from every offence to offence, however the maximum punishment that can be given is three years with or without fine.⁸

The Copyright Act, 1957

Another crime that can be prosecuted is copyright infringement. Copyright infringement is defined as an offence under the Copyright Act, 1957. The maximum sentence for this offense is three years in imprisonment, with a required six-month sentence as well as a fine of at least 50,000 rupees, up to two lakh rupees.

The Patents Act, 1970

Many patent-related offenses are included in the Patents Act, 1970 under chapter XX, including falsifying registration entries, unauthorized patent rights claims, refusing to provide information, and more.

COMPLEXITY OF TRIALS IN INTELLECTUAL PROPERTY DISPUTES

Without a doubt, the Indian court is generally quite progressive, and current developments have significantly boosted businesses' confidence in the nation. Nonetheless, the massive backlog of cases in the courts and the length of time it takes to complete a trial cast a shade over the progress.

⁸Criminal Remedies in India available at, <http://www.ssrana.in/Intellectual%20Property/IP-Enforcement-And-Litigation/Criminal-Remedies-in-India.aspx>(visited on 3rd April, 2024).

There are currently over thirty million open cases, and it often takes years for a case to get to the trial stage. Similar lawsuits concerning intellectual property are being heard in courts that handle matters related to real estate, marriage, succession, and recovery. It is usually observed that the said matters are decided at the interlocutory stage wherein the losing party does not wish to battle it out till the end and chooses to settle outside the court.

In such cases, trial proceeds with a long delay till the final resolution is passed. Even though The High Court of Delhi, receives perhaps the maximum number of trademark and copyright suits in India, it takes a minimum of three-five years for a trial to conclude followed by pronouncement of judgment and passing of decree. In certain cases the Courts even take more than ten years to conclude a trial. This leads to the importance of granting interim relief as an instant and effective remedy for the Intellectual property right owners.

JUDICIAL PRNOUNCEMENTS IN IPR DISPUTES HIGHLIGHTING ADR METHODS

While evaluating the performance shown by the Indian judiciary in cases related to intellectual property rights, in a landmark judgment in the case of *Bawa Masala Co. v. Bawa Masala Co. Pvt. Ltd. and Anr.*⁹, where a number of legal disputes were resolved through a process of alternate dispute resolution, the Delhi High Court passed orders for adoption of a process known as early neutral evaluation, in an intellectual property based litigation suit. The Court in this case, under the umbrella of section 89 of the Civil Procedure Code, 1908 mooted for the inclusion of such procedures for amicable settlement of disputes.

Repeating its position in *Bajaj Auto Ltd. v. TVS Motor Company Ltd.*,¹⁰ the By issuing this ruling on the matter of interest, the Supreme Court of India has synchronized all Indian courts to facilitate speedy trial times and court transfers.

In *Booze Allen & Hamilton Inc. v. SBI Home Finance Ltd.*¹¹ the Supreme Court held:

“Every civil or commercial dispute, either contractual or non-contractual. Each thoughtful or business debate, either authoritative or non-legally binding, which can be chosen by a court, is on a fundamental level fit for being mediated and settled by discretion unless the ward of the

⁹ AIR 2007 Delhi 284.

¹⁰ (2009) 12 SCC 103.

¹¹ (2011) 5 SCC 532.

Arbitral Tribunals is rejected either explicitly or by vital ramifications. Judicial inspection of specific classifications of procedures are saved by the law making body solely for open fora as an issue of open arrangement. Certain different classes of cases, however not explicitly held for settling by open fora (courts and councils), may by important ramifications stand rejected from the domain of private.

Although there is no authoritative judgment of the Hon'ble Supreme Court relating to the present issue of arbitrability of IPR disputes. However, the Hon'ble High Courts had followed the observations relating to 'right in rem' and "right in personam" laid down by the Hon'ble Supreme Court in landmark judgement of *Booze Allen & Hamilton Inc. v. SBI Home Finance Ltd* and have concluded that IPR disputes are arbitrable in nature.

Referring the observation of the Hon'ble Supreme Court in *Booze Allen & Hamilton Inc. v. SBI Home Finance Ltd*, The Hon'ble Bombay High Court in the case of *Eros International Media Ltd v. Telemax Links India Pvt Ltd*,¹² held regarding the position of law with respect to the arbitrability of IP disputes. The judge has observed that:

"An action in personam is the only possible course of action and remedy in any dispute involving two claims to a copyright or trade mark, whether it be through infringement or passing off. It's never a real-time action.

In the very recent verdict of the Hon'ble Madras High Court in *Q.D. Seatoman Designs Pvt. Ltd. v. Lifestyle Equities CV*¹³, the Hon'ble Court has followed the observations of Hon'ble Supreme Court given in landmark judgement of *Booze Allen & Hamilton Inc. v. SBI Home Finance Ltd* and referred a dispute concerning copyright infringement to arbitration.

The traditional civil law and criminal law remedies are very tedious and delay the entire process and fail to fulfil the object of dispensing justice at the earliest. This turns out to be fatal in intellectual property suits which involve huge stakes and are required to be tried expeditiously leading to the need for alternative dispute resolution mechanisms. Moreover, the Indian judiciary has also started to accept the idea of the use of alternative dispute resolution in the IPR infringement matter. The adversarial aspect of the legal system makes the issue worse. It destroys social and professional ties, making it almost impossible for the parties to get back together. Two parties to a lawsuit who are mutually exclusive, aggressive, competitive, combative, and unyielding are formed under the adversarial system. There is no atmosphere of agreement, accommodation, or collaboration under this regime. Litigation leads to dispute after conflict as it

¹² 2016 (6) ARBLR (BOM).

¹³ A. No. 6729 of 2017 in CS No. 678 of 2017 (decided on March 1, 2019).

develops. Upon the conclusion of legal proceedings, one side is declared the winner and the other is positioned as the loser. Litigation involving adversaries rarely ends amicably. The parties become more resentful of one another, which shows up as increased litigation between them or even their descendants. This state of affairs has caused discontent among disputants paving the way for more flexible means of dispute resolution.

Due to the shortcomings in the traditional justice delivery system, alternative dispute resolution (ADR) techniques have been increasingly popular over the past ten years. The business community's and common citizens' expectations of justice have not been satisfied by the established judicial system. There are numerous causes for this. Many people are thereby deprived of access to justice. The creation of novel methods for resolving disputes without resorting to litigation has become crucial, given the shortcomings of the conventional conflict resolution procedures. It is imperative that appropriate measures be taken immediately to expedite the resolution of cases and address the growing backlog of cases, all while adhering to the principles of justice, equity, and fair play.

The issue of case arrears was publicly lamented by Hon. Mr. Justice P.N. Bhagwati in his 1985 Law Day speech, when he declared that "the judicial system of the country is almost on the verge of collapse." "The burden of arrears is making our adjudicatory system groan. These considerations have, in one way or another, made it necessary to develop alternative conflict resolution procedures in order to diversify the processes and relieve some of the strain on the legal system. As a result of a number of developments in almost every aspect of human interaction the need of the hour is to change and reform the means of dispute resolution. These significant changes necessitate the introduction of alternate methods of redressal. There is a pressing need to supplement the already existing mechanism by the means of alternate dispute resolution system.

VARIOUS REASONS FOR PREFERING ADR IN RESOLVING IP DISPUTES:

Party Autonomy

Intellectual property disputes have distinguishing characteristics: they involve technical specialised matters, complex laws and confidential information and they lie in various jurisdictions..

Jurisdictional Neutrality: Certainty as to Forum:

Since Intellectual Property rights are regional in nature, they can exist as independent pieces

under household laws of different wards, for example, copyright, trademarks and licenses in different signatory nations. The increase in cross- border trade along with the exploitation of the intellectual property rights internationally implies that the same are likely to impact in multiple jurisdictions.¹⁴

Time Saving

The correctly oversight, arbitration and other ADR systems have a tendency to give quick resolutions of disagreements regarding suit because of the procedural adaptability of mediation/ADR brings about the procedure taking less time.

Independent Specialised Expertise

In ADR one can choose a specialised and neutral facilitator. The correctly oversight, arbitration and other ADR systems have a tendency to give quick resolutions of disagreements regarding suit because of the procedural adaptability of mediation/ADR brings about the procedure taking less time.

Cost Savings

The ADR mechanism saves money for the parties and allows them to avoid costly litigation.

Flexibility

ADR procedures usually simple and adaptable. It is challenging to resolve intellectual property rights issues by normal procedures or litigation because of the complicated relationship between the disputes, the parties' varied interests, and the demand for variety. With ADR, parties can decide how to proceed and choose their own processes, which guarantees a great deal of freedom and physical variability.

Confidentiality

A key consideration in many intellectual property issues is confidentiality. There are a lot of trade secrets and other private internal details involved, like how products are made, how production works, what technologies and data customers use, company goals, operational strategies, R&D experiment results, costs, and profits. It may be necessary to reveal this material in court, which could be harmful to the parties' interests and their businesses. Through alternative dispute resolution (ADR), parties can efficiently manage the disclosure of confidential information.

¹⁴ Julia A Martin, *Arbitrating in the Alps Rather Than Litigating in Los Angeles: The Advantages of International Intellectual Property-Specific Alternative Dispute Resolution* 49 (Stanford Law Review 917,930 1997).

Finality:

Arbitral awards are designed in such a way that they are final and conclusive in nature and the appeals to the same are rarely successful. There is reluctance in hearing the appeals since the purpose of resorting to arbitration over court litigation is defeated. The finality of decision in arbitration gives party a conclusive decision as to the extent of their intellectual property rights.

CONCLUSION

IPR litigants, like other litigants approach the courts of law with a strong belief of seeking justice against the infringement of their IPR. Their belief prevent themselves from taking the law into their own hands and pose their trust in the IPR justice delivery system of India. On the other hand, the Judiciary owes a parallel obligation to them to deliver just, quick, reasoned and inexpensive justice.

However, the reality is that the cases relating to IP infringement are increasing day by day. The Courts of law are facing the challenges of judicial arrears and delays by the increased rate of filing and decreased rate of disposals. Ultimately, leading to judicial crises along with the discontent and unrest among the disputant public.

The creation of alternative techniques for conflict resolution in place of litigation has become crucial due to the shortcomings of the conventional dispute settlement processes and to maintain the confidence of the general public in the legal system. Today, effective steps are required to expedite the resolution of IP infringement cases and resolve the growing arrears of IP infringement cases, all while adhering to the standards of justice, equity, and fair play.

Since IP infringement disputes vary in nature and roots, the type of processes suitable for the resolution of those disputes must also vary. Hence, no single dispute resolution process can be suitable for all types of IP infringement disputes. Ideally justice must be delivered speedily, efficiently and with minimum costs, but practical experience has proved otherwise. Concept of speedy justice in resolving IP infringement disputes are one among the cause of development of the ADR processes. The term ADR can refer to everything from facilitated settlement negotiations in which disputants are encouraged to negotiate directly with each other prior to some other legal process, to arbitration systems or mini trials that look and feel very much like a courtroom process.

Considering the trend of law courts in pushing the regime of ADR, witnessing the existing crisis of overburdening of judiciary and eyeing the numerous advantages of ADR over court room litigation, it can be said that surely that ADR mechanisms are actually a better alternative in resolving intellectual property rights infringement disputes over court room litigation.

