

# ARBITRATION FOR RESOLVING IP DISPUTES AMONGST E-COMMERCE ENTITIES

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## ABSTRACT

Intellectual property (IP) is a legal term that encompasses industrial property, copyright, and related rights, including patents, trademarks, designs, geographical indications, utility models, trade dress, and layout designs of integrated circuits. IP is valuable, especially intangible, due to its importance in the modern economy. It is crucial in e-commerce, protecting products and services like music, pictures, software, designs, and systems. Trademarks are essential for branding, customer recognition, and goodwill, protected by trademarks and unfair competition law. E-commerce businesses often rely on product or patent licensing, outsourcing development, or sharing technologies through licensing arrangements. As IP disputes become more prevalent in the globalized economy, alternative dispute resolution (ADR) mechanisms like mediation, arbitration, and negotiation are emerging. Future perspectives include digitalizing processes, increasing global IP disputes, and integrating ADR mechanisms into international agreements. Staying updated on IP law developments is recommended. The study explores the applicability of ADR methods to navigate complex disputes in online environments, focusing on e-commerce and intellectual property realms. By analyzing legal frameworks and practical implications, this paper highlights the benefits and challenges of employing ADR to resolve intricate disputes arising in the digital landscape.

**Keywords:** Arbitration, E-commerce, Intellectual Property, Licensing, Disputes, ADR

## INTRODUCTION

ADR is a paradigm shift in dispute resolution, replacing the rigid nature of traditional litigation with a more dynamic and flexible model. ADR can be exceptionally well applied in internet business where the development of e-commerce has changed the way of conducting transactions, breaking geographical boundaries and increasing markets internationally. But with this expanded accessibility, a whole new set of challenges is presented, including the problems associated with cross-border transactions, leading to disputes that can easily become complex in the traditional judicial practices of different parties who fall under the laws of other countries. ADR focuses

on the notions of impartiality and flexibility, giving parties a language to manage the complexities of jurisdiction. Mediation provides a relatively controlled, yet not formal, setting in which the parties can jointly arrive at resolutions to their disputes so that international conflicts are not dragged into the ether of bureaucracy.

Cyberspace is globally connected, and as such, many activities take place in its development, for example, e-commerce and intellectual rights. These electronic transfers can be more than legal systems can handle, as the nature of such is frequently bigger than geographical reachability, making the old law techniques bulky and expensive. The ADR

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techniques, such as mediation, arbitration and negotiation, provide an advanced way of handling such complicated disputes. ADR works best in addressing cases involving intellectual property, and thus, this method applies best in cases involving copyright infringement, trademark infringement and domain name issues. Arbitration resolves this tension between legal interpretation, on the one hand and technical complexities, on the other hand, and will be instrumental in the intricate interaction between legal concepts and technological specificities of cyberspace. The flexibility of ADR is beneficial during this age of digitalisation, since technological advancement and legal regulations can start lagging. Streamlining the usually cumbersome nature of conventional litigation barriers, ADR enhances efficiency, professionalism and fairness in the otherwise complicated cyberspace.

The given paper discusses the changing nature of ADR mechanisms, especially arbitration and mediation, in addressing legal-technical disputes that have emerged in the digital economy, especially e-commerce and intellectual property (IP) disputes. The paper deals with increasing complexities within cyberspace, which makes it clear how civil litigation that is based on tradition will not suffice in addressing the high-paced cross-border disputes of a digital nature. It reviews the issues that are involved in e-commerce transactions and jurisdictions, as it includes the contracting parties making transactions online and in different countries, there is therefore a lack of clarity on the laws that will be applied, the forum that disputes will be resolved, and the enforcement of the judgments. Particular focus is paid to the integration of IP and cyber laws in digital dispute resolution (in particular, the domain of arbitration, due to which it has become an increasingly popular way of resolving disputes due to its efficacy, confidentiality and enforceability). The article addresses the risks of ODR systems like the issues of cybersecurity, data protection, legal ambiguities and access to justice, particularly when they are cross-national. It reveals that the current practice of using specialized ADR to the digital economy calls out to specific attention; the tinge of a balanced approach in resolving digital disputes in an interconnected world is compelled by the enhancement of the legal framework, such as updating e-commerce legislations coupled with making ODR systems accessible to a broader

audience.

### CYBERSPACE AND COMPLEX LEGAL-TECHNICAL ISSUES: NEED FOR SPECIALIZED DISPUTE RESOLUTION

The digital revolution has influenced commerce and legal procedures and created instant cross-border business transactions with the decentralised means of cyberspace, which is still expanding and enhancing. The digital revolution has introduced new efficiencies that were unthinkable before, but it has led to complex legal issues that have transcended the traditional legal jurisdiction. Digital conflicts in the modern world have garnered a variety of factors that include intellectual property (IP) theft combined with cybersecurity threats, as well as data privacy breaches that are inherently cross-border in nature and significantly affected by technology.<sup>1</sup> Digital India initiatives advance a high degree of digitisation that fuels a progressive wave of online activities, hence making it highly necessary to have robust legal processes in India. The Information Technology Act, enacted in 2000, dominates cyberspace regulation in India. The act also encompasses the issues of unauthorised use and data theft by using Sections 43 and 66, but does not provide full protection measures for artificial intelligence and blockchain technologies due to their novelty. The Copyright Act of 1957, the Patent Act of 1970, and the Trademarks Act of 1999 that form the Indian intellectual property system have challenges concerning the protection of digital goods and enforcing rights within the virtual worlds. Alternative Dispute Resolution (“ADR”) systems with arbitration and mediation, and Online Dispute Resolution (“ODR”) operate as practical solutions that overcome traditional court litigation problems in digital disputes.<sup>2</sup> After amending the Arbitration and Conciliation Act of 1996, the legislation expanded its support of party self-determination and flexible procedures to handle complex technological disputes. Section 89 of the Code of Civil Procedure, 1908, enforces the use of ADR to reduce courtloads while providing expert solutions for resolving IP and cyber disputes more efficiently.<sup>3</sup>

3 Ridhima Mohanty, "Emerging Issues Pertaining to Violation of IPR in Cyberspace," 5 Indian J.L. & Legal Rsch. 1 (2023).

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### JURISDICTIONAL CHALLENGES AND THE INADEQUACY OF CONVENTIONAL LITIGATION

Determining jurisdiction stands as one major legal obstacle in internet-based disputes because all internet activity lacks clear geographic boundaries. The process of digital decentralization where parties, servers, and intermediaries exist across multiple jurisdictions, makes traditional territorial jurisdiction doctrines unsuitable. Three countries engage in e-commerce activities through this transaction: an Indian seller serves customers based in the United States by hosting servers in Singapore. Such complexities of the borderless internet have led the Indian legal system to evolve new judicial and statutory mechanisms for response. Under Section 75 of the Information Technology Act 2000, cyber law from India extends its jurisdiction to criminal offences carried out by anyone if the computer system hosting the act is located inside India.<sup>4</sup> Through section 81 of the Act, India establishes an overriding effect that supersedes other legislation, which strengthens the application of cyber laws in dispute resolution. Jurisprudence in "Banyan Tree Holding (P) Ltd. v. A. Murali Krishna Reddy" introduced the 'targeting' test, emphasising the intention of a website or service to cater to users in a particular jurisdiction as a key determinant of forum selection.

The enforcement process for IPR within cyberspace faces distinct obstacles alongside jurisdictional matters. Digital piracy, along with domain name squatting and unauthorised streaming, represent problems faced by the Copyright Act, 1957, Trade Marks Act, 1999, and Patents Act, 1970. Complex technical disputes now require ADR mechanisms such as arbitration and ODR, and domain name dispute procedures under the INDRP (Indian Domain Name Dispute Resolution Policy) to be declared essential. The Arbitration and Conciliation Act of 1996, along with IT Act provisions, established these mechanisms, which provide efficient expert-based forums for resolving technological legal

disputes that normal litigation faces challenges with.<sup>5</sup>

### RISE OF LEGAL-TECH CONFLICTS AND THE ROLE OF ADR

The ongoing expansion of technology-oriented transactions in the modern digital environment has led to a significant increase in legal-tech conflicts. Alternatively, these disputes usually occur in relation to software licensing arrangements, domain name registration disputes, standards of data protection and internet-based transactions. These controversies eloquently combine jurisprudence with exacting considerations in technology, and as such, they oblige practitioners to combine law with technology. Owing to their characteristic complexity, such cases are often beyond the potential scope of more traditional litigation regimes, which are often limited by a strict approach to required procedure and relatively inexperienced with technology.

Modern tech-based form of disputes can, therefore, best be resolved using ADR procedures, especially arbitration and mediation, whose platforms are flexible and efficient compared to the litigation process. The Arbitration and Conciliation Act of 1996 itself favours commercial disputes, especially those arising out of the technology sector. Indian arbitration practice has been updated with the latest revisions to the Act in 2015 and 2019 to be consistent with the UNCITRAL Model Law and strengthen the principle of autonomy of the parties and make the arbitral award unquestionable. Moreover, ADR enables the courts to have professionals with elaborate knowledge in software development alongside expertise in encryption and artificial intelligence, thus providing the necessary technical skills in the process of adjudication.

Cyber-related disputes in India can be resolved through the IT Act 2000 alongside IPR laws that include the Copyright Act 1957 and the Patents Act 1970. ADR processes receive support from these legal frameworks because they establish clear guidelines to protect digital assets and intellectual property involved in technology disputes. ADR functions as an essential dispute resolution method

4 Unnati Khanna, "Analysing Jurisdictional Complexities in the Cyberspace: The Indian Perspective." *Jus Corpus LJ* 2, 270 (2021).

5 Atmaram Shelke & Shashikala Gurpur, "Problem of Jurisdiction in Cyberspace and Its Impact on International and Domestic Laws," SSRN (2019), <https://ssrn.com/abstract=3500049>.

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to handle sophisticated issues that combine law and technological expertise.

The development of ODR in India exists to provide necessary, efficient dispute resolution mechanisms because of the rising digital economy. ODR serves as an ADR sub-category which employs technology to solve disputes through virtual means efficiently with low-value disputes and high-volume cases. The UNCITRAL Technical Notes on ODR (2016) explain how digital platforms enable smoother resolution processes, which lighten the load for conventional judicial systems.<sup>6</sup> NITI Aayog launched the 2020 ODR Policy Plan in India to integrate ODR into commercial and civil adjudication with special attention on consumer disputes in e-commerce and fintech industries. The urgent need to handle exclusive problems that emerge from disputes in digital spaces has led to this recognition of importance.<sup>7</sup>

IP and cybersecurity-related disputes need specialised resolution systems to work effectively under ODR frameworks. Specialised institutions called arbitration centres perform their activities alongside panels which contain experienced experts who understand cyber law as well as data protection rules and intellectual properties. According to the Digital Personal Data Protection Act, 2023, which controls data privacy rules, there are many legal challenges in online transactions. The Information Technology Act of 2000 and the Indian Patent Act of 1970, together with other related laws, create the appropriate regulatory mechanism. Specialised handling of cases attains legal compliance along with delivering fair, equitable, and expedient outcomes in digital spaces.

The recent dynamism over digital commerce has necessitated the unification between the intellectual property (IP) law and the cyber law in suppressing current legal-technical wars in cyberspace. This kind of convergence is necessary since the digital platforms will habitually present congruent challenges, such as copyright violation of software as Section 14 of The Copyright Act of 1957, trademark dilution, for instance, of internet impersonation as the Trade Marks Act of 1999, and cross-border patent

infringement as the Patents Act of 1970. Moreover, unauthorised extraction of information and hacking violations of cybersecurity as a result of violation of Sections 43 and 66 of the Information Technology Act, 2000, also form the core of the Indian cyber law enforcement system.

The interrelatedness of these areas dictates the need to have harmonised dispute resolution processes that reflect the hybrid nature of online crimes. In this case, ADR, particularly ODR, plays a crucial role. Although the complexity of digital IP infringement and the fast pace in such courts might be a problem, ADR provides a more flexible and well-equipped point of dealing with these issues. With specialised arbitration centers composed of skilled legal panels familiar with both the IP and the cyber law, faster and correct adjudication, especially on complex cases that require technical evidence, including code examination, licensing verifications or metadata tracking, can be achieved more easily.

Internationally, the WIPO Arbitration and Mediation Centre has provided a working model for this convergence by handling cases that merge IP violations and cyber-related concerns (such as domain name disputes under the Uniform Domain-Name Dispute-Resolution Policy, or UDRP). In jurisdictions like the United States, 35 U.S. Code § 294 allows for the arbitration of patent disputes, provided arbitral awards are filed with the USPTO, thereby maintaining public interest safeguards. Similarly, the European Union has created institutional synergies between data protection and IP enforcement under GDPR and cross-border ODR regulations (Regulation EU No 524/2013).

Indian institutions such as the 'Indian Council of Arbitration' (ICA) and the 'Nani Palkhivala Arbitration Centre' (NPAC) must adapt to these international best practices by creating dedicated panels for 'digital legal disputes' that bring IP and cyber expertise together. The recent Digital Personal Data Protection Act, 2023, also mandates that any technological adjudication process—including ODR—must respect data privacy norms, which further reinforces the need for integrated handling of IP and cyber cases.

Notably, Indian courts have begun to recognise this intersection. In *Bright Lifecare Pvt. Ltd. v. Vini Cosmetics Pvt. Ltd.*<sup>8</sup>, the Delhi High Court

6 Brand, Ronald A. "Online dispute resolution." *The Elgar Companion to UNCITRAL* (2023): 277-294.

7 Sekhri, Desh Gaurav, and NITI OSD. "Designing the future of dispute resolution: The ODR policy plan for India." Message posted to (2020).

8 2020 SCC OnLine Del 925

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addressed issues of online trademark infringement and consumer confusion in the digital marketplace, implying the necessity for technologically sensitive legal interpretations. Likewise, in *'Hindustan Unilever Ltd. v. Reckitt Benckiser India Ltd'*<sup>9</sup>, the court emphasised the digital dissemination of comparative advertisements and highlighted the role of cyber laws in IP enforcement.

Therefore, a seamless integration of IP and cyber law within ADR mechanisms—primarily through a regulated and expert-driven ODR framework—offers a coherent and efficient approach to legal-technical complexity in the digital economy. A unified legal-technical dispute resolution system will not only reduce judicial backlog but also enhance trust, transparency, and enforceability in the evolving landscape of cyberspace litigation

### ADR IN E-COMMERCE DISPUTES: CROSS-BORDER TRANSACTIONS AND JURISDICTIONAL CHALLENGES

#### *The Rise of E-Commerce and The Transformation of Legal Disputes*

The rise of the digital era established a borderless international marketplace that outpaces geographical restrictions. The rapid development of modern technologies through e-commerce makes it possible to exchange goods and services between international locations without obstacles. Online commercial freedom without geographical limitations leads to new legal problems, which are challenging to solve. The contrasting laws and regulatory systems and different enforcement methods in different bordering nations render conventional court litigation an unsuitable and protracted method for e-commerce dispute resolution. ADR demonstrates itself as an adaptable solution that is an effective and internationally acceptable mechanism for handling such conflicts through its arbitration alongside mediation and negotiation methods. The Indian Arbitration and Conciliation Act of 1996 achieved its revisions through the Arbitration and Conciliation (Amendment) Act of 2021 to create a legal ADR framework which follows global standards, including the UNCITRAL Model Law. This legal structure strengthens the use of private technology-mediated

neutral dispute resolution institutions to handle conflicts that arise from cross-border e-commerce transactions when usual court systems encounter jurisdictional constraints.

#### ***Jurisdictional Complexities in Cross-Border Transactions***

The exponential rise in e-commerce and digital transactions has posed serious jurisdictional dilemmas, especially in disputes involving parties from different sovereign jurisdictions. Determining the appropriate forum and applicable law becomes contentious where contracts are concluded electronically, often via clickwrap or browsewrap agreements. Section 10-A of the Information Technology Act, 2000 validates electronic contracts, yet remains inadequate in resolving cross-border jurisdictional ambiguities. Notably, in *'Swami Ramdev v. Facebook Inc'*<sup>10</sup>, the Delhi High Court asserted that global takedown orders could be enforced even against foreign entities if their digital footprint impacts Indian users, thereby extending India's jurisdiction extraterritorially.<sup>11</sup>

Further complexity arises in IPR violations across digital platforms. The Copyright Act, 1957, the Trade Marks Act, 1999, and the Patents Act, 1970 do not comprehensively address jurisdiction in cross-border digital infringements. In *'Amazon Seller Services Pvt. Ltd. v. Amway India Enterprises Pvt. Ltd'*<sup>12</sup>, the court emphasised that e-commerce platforms may be liable for third-party IP violations, thereby intertwining platform responsibility with territorial jurisdiction.

To mitigate such complexities, the Arbitration and Conciliation Act, 1996, particularly Sections 28 and 20, allows parties to predetermine the substantive law and seat of arbitration. Embedding robust arbitration clauses in e-contracts empowers parties to bypass conventional jurisdictional challenges, ensuring expeditious and autonomous resolution through institutional or ad hoc arbitration mechanisms.

9 2020 SCC OnLine Del 1379

10 (2020) SCC OnLine Del 761

11 Dokania, Yashraj. "Arbitration for Dispute Arising from E-Commerce Transaction." *Supremo Amicus* 21 (2020).

12 2020 SCC OnLine Del 454

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### ***Role of Arbitration and Mediation in Resolving E-Commerce Disputes***

Arbitration has emerged as a highly suitable mechanism for resolving e-commerce disputes due to its adaptability in addressing both technical and commercial intricacies. It allows parties to tailor proceedings, including the choice of institutional forums such as the 'Singapore International Arbitration Centre' (SIAC), 'London Court of International Arbitration' (LCIA), and 'Mumbai Centre for International Arbitration' (MCIA), which facilitate virtual hearings and permit electronic submissions—features well-suited to digital transactions. The Arbitration and Conciliation Act, 1996, through Section 7, validates electronic arbitration agreements, enabling seamless integration into digital commerce. Moreover, Sections 34 and 48 of the Act, read in conjunction with the New York Convention, 1958, ensure that both domestic and foreign arbitral awards are respected and enforceable, providing cross-border legal certainty.<sup>13</sup>

Mediation also plays a critical role in preserving ongoing commercial relationships in the e-commerce environment, where reputational trust and consumer satisfaction are paramount. The Mediation Act, 2023, institutionalises mediation in India by establishing a structured framework for voluntary and pre-litigation settlement, which is especially beneficial for fast-paced digital markets. For e-commerce entities, mediation offers an avenue to resolve disputes confidentially and efficiently without compromising business goodwill. This is particularly crucial for startups and SMEs, where prolonged litigation can drain financial resources and erode consumer confidence. Thus, both arbitration and mediation, when applied in a complementary manner, serve as efficient and context-sensitive tools to resolve digital commerce conflicts, aligning legal processes with the demands of the borderless, technology-driven marketplace.<sup>14</sup>

### ***Data Privacy, Confidentiality, and Enforcement Concerns***

Alternative Dispute Resolution approaches in e-commerce and cross-border cases cause serious issues about protecting confidential digital

information, together with personal data privacy. The cost-effective and efficient method of ODR requires participants to exchange personal data and trade secrets along with proprietary technology, which triggers applicable regulations. Under Indian law, the 'Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011' of Section 43A in the 'Information Technology Act, 2000' requires all body corporates to protect their data through strict defence protocols. The upcoming Digital Personal Data Protection Act, 2023, will establish rigorous data management requirements that require minimal data processing, consent-based data handling procedures and regional data storage standards, which directly influence how virtual ADR operations are performed.

ADR proceedings must maintain confidentiality according to Section 42-A of the Arbitration and Conciliation Act 1996 because it limits disclosures only to requirements established by law. Marital law enforcement continues to face difficulties, especially when it relates to mediated settlements. Arbitral awards receive protection through the New York Convention, 1958, but mediated settlements do not share this worldwide forceful implementation because India has not yet ratified the Singapore Convention on Mediation (2019). India signed the Singapore Convention on Mediation in 2019, yet it has not taken the necessary step of ratification, thus preventing the enforcement of cross-border mediation results. Successive parties need to construct mediated agreements to match enforceable contract criteria found in the Indian Contract Act 1872 for legal validity, along with judicial recognition.<sup>15</sup>

### ***Power Imbalance and Access to Justice in ADR for E-Commerce***

E-commerce disputes between individual consumers or micro-enterprises versus multinational digital companies demonstrate substantial power inequalities. Large entities create one-sided arbitration agreements using clickwrap contracts, which specify offshore arbitration locations and expensive institutional centres, discouraging weaker parties from making valid claims. The Consumer

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<sup>15</sup> Julien Chaisse, "Arbitration in Cross-Border Data Protection Disputes," 15 J. Int'l Disp. Settlement 534 (2024).

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Protection (E-Commerce) Rules of 2020, which fall under the Consumer Protection Act of 2019, seek to address discrepancies between consumers and e-commerce participants in India. The e-commerce platforms must develop fair, transparent and timely mechanisms for grievance redressal according to consumer welfare principles under 'Rule 6 of the Consumer Protection (E-Commerce) Rules, 2020'.<sup>16</sup>

Parties exercising their autonomy rights under Sections 20 and 28 of the Arbitration and Conciliation Act, 1996, must do so without harming less-resourced parties according to the law. The Indian digital dispute resolution framework advances through ODR adoption, which creates a practical approach to justice using technology-based and multilingual systems for broad access to justice services. The U.S. Federal Arbitration Act demonstrates differing priorities from India because it supports arbitration clauses under all circumstances, including consumer allegations of unconscionability. The EU protects its consumers through the 'ODR Regulation (EU) No 524/2013',<sup>17</sup> which requires companies to offer direct ODR platform access to their customers.

### ARBITRATION AS A VIABLE MECHANISM FOR RESOLVING IP DISPUTES: AN INDIAN CONTEXT

The growth of arbitration as a primary avenue for commercial dispute settlement increased mainly because it combines flexible procedures with autonomous rules and global enforcement capabilities. India adopted the Arbitration and Conciliation Act of 1996 based on the UNCITRAL Model Law on International Commercial Arbitration to build its contemporary arbitration system. Section 5 was revised in 2015 and 2019, in conjunction with the institutionalisation of Part IA and the enforcement changes of the New York Convention in Part II during the 2021 annual revisions to the Arbitration and Conciliation Act. India demonstrates its commitment to establishing itself as a preferred arbitration centre

by advancing international arbitration standards via law reforms.<sup>18</sup>

Commercial transactions which include IPR, such as cross-border licensing, technology transfers and franchising, use arbitration as their preferred method of dispute resolution. Indian laws, such as the Copyright Act of 1957 and other statutes, do not specify arbitration procedures for IPR disputes, yet domestic courts have begun to approve the arbitration of IP-related commercial agreements since 1999. The Delhi High Court confirmed arbitration as an acceptable method for resolving trademark licensing disputes in *'Hero Electric Vehicles Pvt. Ltd. v. Lectro E-Mobility Pvt. Ltd.'*<sup>19</sup>

IP disputes can be arbitrated in U.S. and EU jurisdictions only after establishing proper safeguards for each process. The Federal Arbitration Act compels U.S. courts to support arbitration clauses found in IP licensing agreements. Intellectual property rights arbitration is allowed in the EU through national IP laws and the Brussels I Regulation when the disputed matters do not challenge the fundamental validity of rights. The expanding digital economy under cyber law and international data exchanges makes arbitration emerge as an indispensable mechanism for solving challenging business conflicts as well as intellectual property disputes.

A central question in the arbitration of IP disputes concerns the arbitrability of such matters, especially given their statutory and sovereign roots. Historically, certain jurisdictions—including India—expressed reluctance to submit IP disputes to arbitration, considering them matters involving public interest due to their creation and recognition by sovereign authorities.

Indian courts have clarified the distinction between rights in rem (against the world) and rights in personam (between parties). The Supreme Court in *'Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd.'*<sup>20</sup> held that only disputes concerning rights in personam are arbitrable. In contrast, those involving rights in rem—such as questions of IP validity or

16 Neelam Chawla & Basanta Kumar, "E-commerce and Consumer Protection in India: The Emerging Trend," 180 J. Bus. Ethics 581 (2022).

17 I.M. Zunko, "Implementation of the ODR (Online Dispute Resolution) Platform According to the Regulation (EU) No 524/2013 on Online Dispute Resolution for Consumer Disputes," in 16th Int'l Sci. Conf. on Econ. & Soc. Dev.—The Legal Challenges of Modern World, Split 264 (Sept. 2016).

18 "Arbitration and Conciliation (Amendment) Act, 2019: Key Amendments and Critical Analysis – iPleaders," iPleaders (Aug. 18, 2020), <https://blog.iplayers.in/arbitration-conciliation-amendment-act-2019-key-amendments-critical-analysis/> (accessed June 22, 2025).

19 2021 SCC OnLine Del 1051

20 2011) 5 SCC 532

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statutory infringement—generally fall outside the domain of arbitration.

However, the Court also acknowledged that disputes arising from contractual arrangements, such as licensing or assignment of IP, are personal and hence, arbitrable. In *'Eros International Media Ltd. v. Telemex Links India Pvt. Ltd.'*<sup>21</sup>, the Bombay High Court, per Justice G.S. Patel, ruled that disputes arising from commercial contracts involving IP were arbitrable, holding that Section 62(1) of the Copyright Act, 1957, does not exclude arbitration.

In contrast, in *'Indian Performing Right Society Ltd. v. Entertainment Network (India) Ltd.'*<sup>22</sup>, the Bombay High Court, per Justice Dhanuka, held that infringement-related remedies such as damages or injunctions under the Copyright Act could only be granted by a civil court and were therefore not amenable to arbitration. This dichotomy underscores the evolving and somewhat inconsistent judicial stance on the arbitrability of IP disputes in India.

### **Scope and Limitations in Patent and Trademark Arbitration**

The patent-trademark dispute is a part of the legally complex area regarding arbitrability. The question of validity or cancellation of patents and trademarks -which may be regarded as rights in rem- is said not to fall necessarily within the sphere of arbitral proceedings, even though licensing agreements, disputes of royalty, breach of contract as far as the use of an intellectual property is concerned, are within the jurisdiction of arbitral proceedings.

The Patents Act, 1970, under S. 84 notes that the Controller determines the matters regarding compulsory licensing. Moreover, the grounds for revoking a patent are provided in Section 64 of the Act, and the issue of its discovery should not be within the competency of the arbitral tribunal. Still, the issues based on the patent licensing or technology transfer agreements, which frequently concern performance breaches or the royalty calculation, could be arbitrarily addressed.

Various institutions aspire to the effective use of ADR in IP throughout the world, such as the WIPO Arbitration and Mediation Center, which offers specialized procedural frameworks on the

matter. Indian legal system can also stand to gain by benefiting the best practices available as in the case of the United States, which legislatively allows arbitration of patent litigation in 35 U.S. Code SS 294, such that arbitration of patent disputes may occur so long as a copy of the arbitral award is filed with the USPTO. Similarly, under Swiss law, Article 193(2) of the Swiss Private International Law Act entails the registration of the arbitral awards in the context of the validity, thus protecting the public interest.

### **CHALLENGES IN ODR FOR E-COMMERCE, IP, AND CONSUMER PROTECTION**

#### **Cybersecurity, Data Protection, And AI Bias**

The adoption of ODR in resolving conflicts arising from e-commerce, intellectual property (IP), and consumer protection matters has presented several technological challenges, particularly in relation to cybersecurity, data privacy, and artificial intelligence (AI). As per the Information Technology Act, 2000 (as amended), particularly Sections 43A and 72A, any negligence in handling sensitive personal data or information resulting in a breach may attract legal liability. Given that ODR platforms routinely process sensitive commercial and personal data, breaches or cyberattacks could lead to significant legal implications. In the case of *'K.S. Puttaswamy v. Union of India'*,<sup>23</sup> the Supreme Court recognized the right to privacy as a fundamental right under Article 21 of the Constitution, thereby adding a constitutional dimension to data protection concerns within ODR processes.

Additionally, the reliance on AI-driven tools in ODR mechanisms—such as predictive algorithms and automated decision-making—raises concerns about algorithmic bias. AI systems, trained on historical datasets, often replicate and reinforce existing biases. This was highlighted in academic discussions following *Justice K.S. Puttaswamy* and the subsequent proposals under the draft Digital Personal Data Protection Act, 2023, which underscore the need for transparent and accountable digital systems. In ODR, the opacity of AI decision-making can hinder fair adjudication, especially in consumer and IP-related disputes where factual nuances play

21 2016 SCC OnLine Bom 2173

22 2021 SCC OnLine Bom 732

23 (2017) 10 SCC 1

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a vital role.

Cross-border e-commerce transactions further complicate cybersecurity and data privacy protections. The differential application of regulations like the European Union's 'General Data Protection Regulation' (GDPR) vis-à-vis Indian data protection norms poses significant compliance challenges for international platforms. For example, Indian laws presently lack an extraterritorial enforcement mechanism akin to Article 3 of the GDPR, creating loopholes in cases involving foreign parties.<sup>24</sup>

### Legal Ambiguities in Digital Dispute Resolution

The legal architecture governing ADR mechanisms under the Arbitration and Conciliation Act, 1996, does not explicitly provide for ODR, thereby creating uncertainties regarding the enforceability and procedural validity of online processes. While Section 4 of the Act allows parties autonomy in deciding the mode and procedure of arbitration, the lack of express statutory recognition of ODR in India may deter parties from adopting it for fear of enforceability issues.<sup>25</sup>

In IP disputes, the traditional reliance on statutory adjudication under legislations like the Copyright Act, 1957, the Trade Marks Act, 1999, and the Patents Act, 1970, creates additional hurdles in transitioning to ODR. These statutes emphasize adjudication through tribunals or courts, such as the 'Intellectual Property Appellate Board' (IPAB), which was dissolved in 2021, shifting appellate jurisdiction to High Courts. The absence of a defined ADR or ODR mechanism under these legislations continues to stifle their adaptability in digital forums.

Further, tortious liability for online acts such as defamation, data misuse, or product misrepresentation in consumer transactions remains inadequately addressed in India's current civil law framework. Unlike the United States, where Restatement (Second) of Torts allows for adaptive

tort claims in digital contexts, Indian tort law—primarily based on common law—lacks a codified or customized approach. This issue was brought to light in '*Avnish Bajaj v. State (NCT of Delhi)*',<sup>26</sup> where the court highlighted the liability of intermediaries in cyber offences, underlining the legal vacuum concerning online tortious acts.

### Jurisdictional And Enforcement Challenges in Cross-Border ODR

ODR processes frequently involve parties across national borders, making jurisdiction a contentious issue. In the absence of a uniform international legal framework for recognizing and enforcing ODR outcomes, parties face procedural complications. While the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, to which India is a signatory, facilitates the enforcement of arbitral awards, its applicability to online arbitration—particularly where procedural irregularities or lack of physical hearings are raised—remains contentious.<sup>27</sup>

In "*Centrotrade Minerals and Metals Inc. v. Hindustan Copper Ltd.*",<sup>28</sup> the Supreme Court upheld the validity of a two-tier arbitration clause involving a foreign arbitral seat, thus supporting flexibility in procedural arbitration frameworks. However, the decision also emphasized strict compliance with procedural fairness and natural justice principles that are not always guaranteed in AI-driven or automated ODR systems.

Moreover, enforceability becomes especially problematic in cases where one party refuses to recognize the outcome of an ODR process conducted under foreign or platform-specific rules. The absence of bilateral or multilateral treaties specifically recognizing ODR decisions further weakens their enforceability, particularly in consumer and SME disputes in e-commerce. Courts may also be reluctant to enforce decisions that do not align with local public policy or that bypass national procedural safeguards.

24 Anna Vladimirovna Pokrovskaya, "Infringement of AI Intellectual Property Rights and Legal Liability on e-Commerce Marketplaces: New Challenges," 7 Soc'y & Sec. Insights 91 (2024).

25 P. Danesh, A.H. Yazdani & L. Rahimi, "The Future of Online Dispute Resolution: Legal Frameworks for Managing Digital Disputes in E-Commerce, Intellectual Property, and Consumer Protection," 2 Legal Stud. Digit. Age 37 (2023).

26 (2005) 3 Comp LJ 364 Del

27 Bhupinder Singh, "Unleashing Alternative Dispute Resolution (ADR) in Resolving Complex Legal-Technical Issues Arising in Cyberspace Lensing E-Commerce and Intellectual Property: Proliferation of E-Commerce Digital Economy", 5(10) RBADR 81 (2023).

28 (2017) 2 SCC 228

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### Accessibility, Digital Literacy, and Equity Concerns in ODR

A foundational requirement for the successful implementation of ODR mechanisms is equitable access. However, the digital divide in India—particularly between urban and rural areas—limits the ability of several users to participate in ODR proceedings effectively. As per the Telecom Regulatory Authority of India (TRAI), rural internet penetration remains significantly lower than urban counterparts. This gap disproportionately affects consumers and small businesses in rural regions, undermining the inclusiveness of ODR.

Moreover, Sections 12 and 13 of the Consumer Protection Act, 2019, provide for the filing of complaints through electronic means, but these are limited to the e-Daakhil portal for consumer disputes and do not comprehensively integrate full-fledged ODR procedures. The lack of standardized ODR interfaces and the use of English as the default medium further alienate large sections of the population who lack adequate digital or language literacy.<sup>29</sup>

Gender, socio-economic status, and education levels also play a role in determining access to technology and dispute resolution platforms. In this context, the principle of "equal access to justice," enshrined under Article 39A of the Constitution of India, appears undermined. There is also a growing concern regarding AI bias in automated resolution systems that may reproduce social inequalities. For example, if a data set used to train an AI decision-making model underrepresents female or minority consumers, the outcomes of disputes could skew unfavourably.<sup>30</sup>

Additionally, there is minimal regulatory oversight to audit or challenge algorithmic decisions made by private ODR platforms. This regulatory vacuum creates concerns under Articles 14 and 21 of the Constitution, relating to equality before law and

protection of life and personal liberty, respectively.

These challenges emphasize the urgent need for a comprehensive regulatory framework that governs the use of AI, ensures data privacy, standardizes procedures across platforms, and promotes accessibility to ODR mechanisms across socio-economic strata. While pilot projects and private initiatives (e.g., Sama, Presolv360) show promise, state-sponsored guidelines and legal codification remain essential for institutionalizing trust in ODR systems in India.

### CONCLUSION

The rapid advancement of the digital economy has triggered complex legal and technological challenges especially in areas relating to e-commerce and intellectual property (IP). Traditional litigation systems are often proven unsatisfactory, as its elements of procedural autonomy, jurisdictional limitations, and protraction are inevitably present. This has elicited the emergence of alternative dispute resolution (ADR), which involves arbitration, mediation and ODR, as the solution that cannot be ignored in coming to grips with these complexities.

In India, reform has been legislative: the Act 1996 and its 2015, 2019 and 2021 amendments have harmonised ADR systems, and reinforced the autonomy of the parties, and minimized court involvement. These measures are in line with international standards and they help in the process of settling cross-border disputes. Special interest should be paid to the introduction of the ADR processes in IP dispute cases because the confidentiality they offer, combined with the presence of technical expertise and the possibility of faster results, is of paramount importance in the dynamic digital context.

At an international level, other bodies like the World Intellectual Property Organization (WIPO) have propelled the ADR with tools like the Uniform Domain Name Dispute Resolution Policy (UDRP), which offer simplified channels resolving domain name disputes. Besides, the incorporation of the emerging technologies into ADR, including AI-aided mediation to blockchain-related arbitration, also advances efficiency and accessibility.

However, a number of barriers still exist: the binding nature of ADR decisions internationally, the

<sup>29</sup> Aakruti Adwani, Shaista Peerzada & Nagesh Sawant, "ADR (Alternative Dispute Resolution) in Intellectual Property Disputes: Trends and Challenges", 45(2) J. Propulsion Tech. 4

<sup>30</sup> J. Suresh Kumar & D. Shobana, "E-Commerce and Intellectual Property: Resolving Disputes in the Digital Marketplace", in National Conference Proceedings on Intellectual Property Rights in Digital Era: Issues and Challenges 53 (2023).

## ARBITRATION FOR RESOLVING IP DISPUTES AMONGST E-COMMERCE ENTITIES

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limited access, and the technological differences. Multidimensional legal reform, on one hand, technological innovation and, on the other hand, capacity building are needed to ensure the full potential of ADR in the digital economy.

### SUGGESTIONS

- **Codify Arbitrability of IP Disputes:** Although arbitration has become the norm in resolving commercial disputes across India, the statutory equivalent of arbitrability of intellectual property (IP) disputes has been yet to be found. Researchers argue that all open rules and regulations, copyright Act, 1957, the trade marks Act, 1999, as well as Patents Act, 1970, should have clauses that clearly stipulate the use of arbitration as a method of resolving the commercial aspects of IP rights. Having such an amendment would provide clarity and give incentive to the businesses and the IP holders to use the arbitration process, because of its affordability, confidentiality and the quicker compared to litigation especially in a case involving the right of licensing, infringement and royalty issues.
  - **Strengthen IT Act Provisions:** Information Technology Act, 2000 (IT Act) is one of such key legal mechanisms used to ensure e-commerce transactions and contracts have been validly entered into. However, in a number of important issues, such as the cross-border jurisdiction and the recognition of awards, the legislation remains silent. These gaps need to be filled in by amending the IT Act, as this is vital to develop a consistent manner to settle disputes in the e-commerce scenario. Such revision ought to be clear and give an effect to international arbitration awards and resolve jurisdictional problems in situations where these transactions cross jurisdictional lines.
  - **Establish Specialised IP & E-Commerce ADR Tribunals:** India is facing a high rate of inter-par-
- tes disputes in terms of quantity and complexity of cases, currently, in the digital era. Therefore, adjudicative organisations dedicated to this area are necessary to find an adequate solution to these issues. In this regard, it would be beneficial to establish special ADR tribunals or arbitration venues (singularly focused on the intellectual property law and e-commerce). One would expect such a centre to be manned by practising professionals who are not only knowledgeable in the law but with sound knowledge of the necessary technological fields hence enabling them to give judgments in areas where they are thoroughly conversant both on the industry involved and the technicalities associated with the situation.
- **Incorporate International ADR Protocols:** To align with global standards, India should harmonise its ADR framework with international instruments such as the *Singapore Convention on Mediation* and the *WIPO Arbitration and Mediation Rules*. This would help Indian businesses resolve cross-border disputes more effectively and ensure that ADR outcomes are enforceable in other jurisdictions, thereby fostering international trade and cooperation.
  - **Mandate ADR Clauses in E-Commerce Contracts:** E-commerce platforms should be encouraged or required to incorporate mandatory ADR clauses in their terms and conditions. These clauses should specify the choice of forum, governing law, and dispute resolution mechanisms to pre-emptively address disputes, reducing the burden on traditional courts and promoting a more streamlined and efficient process for resolving digital disputes.