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ARBITRABILITY OF INTELLECTUAL PROPERTY RIGHTS DISPUTES IN INDIA

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ABSTRACT

The arbitrability of intellectual property (IP) disputes in India covers both the laws the arbitration laws and the intellectual property laws. This essay will examine the intellectual property laws and their compatibility with the arbitration laws in India, would consider the statutory laws, judicial antecedents and judgements, and policy available and its consistency with the other law. While arbitration offers a private dispute resolution system where the parties can choose their own rules and seats and venues, the arbitrability of IP disputes in India is challenge as it involves the public interest at large. By the analysis of the previous judicial judgements this essay will examine the laws and the legislative intent and the judiciary approach about the arbitrability of the IP disputes. IP disputes can be arbitrated in India, highlighting key considerations for practitioners, policymakers, and stakeholders in promoting effective and efficient resolution mechanisms for IP disputes. Intellectual property (IP) rights are important in promoting innovation and creativity by providing creators with legal protection and benefits arising from this. As the IP would grow, disagreements, disputes over these rights would also increase. The courts have been the primary venues for resolving such disputes, but arbitration has emerged as a preferred alternative due to its efficiency, confidentiality of the procedure, and the ability to adjudicate the matter by specialized arbitrators. This research paper would collect the inputs from the lawyers, students, etc. to check their view on this issue.

Introduction:

The Arbitration and Conciliation Act, 1996, is based on the UNCITRAL Model law. The purpose of the UNCITRAL model laws was to facilitate the trade disputes among the nations peacefully and to flourish the cross-border trade. On the basis of UNCITRAL Model Law, each country legislates the laws. The Arbitration and Conciliation Act, 1996 is the primary acts to administer the arbitration in India. IP rights covers various intellectual properties like patent, trademark, copyright, designs of semiconductor etc. there are also new categories are demanded to add into the category of intellectual property. In India, different legislations are present like Patent Act,1970, Trademark Act 1999 for the safeguard of Trademarks, Copyright Act, 1957 for the safeguard of copyrights.

Arbitrability is the application of the arbitration in to new areas to resolve the disputes. India's courts face a significant backlog of pending cases, exacerbated by a shortage of judges, understaffed courts, and procedural issues like expense and reduced litigation participation. India has made policy changes to make it an arbitration-friendly country, including amending the Arbitration Act in 2015 and passing the New Delhi International Arbitration Centre (NDIAC) Bill 2019. However, policymakers have not addressed the issue of determining dispute arbitrability, as the Arbitration Act does not define arbitrability or provide a comprehensive list.

In a case involving Shree Vardhman Rice and Gen Mills, the Indian Supreme Court emphasized the need for expedited resolution of trademark, copyright, and patent disputes. It noted that such cases often revolve around temporary injunctions and can drag on for years without a final decision. Similarly, in a separate case involving Bajaj Auto Limited and TVS Motor Company, the Supreme Court expressed dissatisfaction with the state of intellectual property disputes and directed courts and tribunals to prioritize such cases and provide a final judgment within four months. Arbitration an effective, efficient method to resolve IP disputes due to procedural difficulties. It offers tailor-made adjudication, confidentiality, and finality of the award. Businesses prefer arbitration for its cost-effectiveness and speed. Additionally, arbitration allows cross border arbitrability of IP, settling disputes in a single forum and enforcing awards in the jurisdiction. Judges often lack the expertise to understand the complexities of these disputes, making adjudication time-consuming and costly. Parties can choose an arbitrator having the specific knowledge surpassing the limitations of the law. Expertise in the technology and knowledge of IP laws are crucial for effective enforcement of IP rights.

In Booz-Allen & Hamilton Inc. v SBI Home Finance Ltd., the Supreme Court identified three aspects of arbitrability. Firstly, the nature and subject matter of the dispute determine whether it can be resolved by an arbitral tribunal or falls under the Court's jurisdiction. Secondly, the arbitration agreement should specifically include the dispute to be resolved through arbitration. Lastly, the dispute should be included in the joint list of disputes

referred to arbitration. The Court clarified that dispute arising from 'rights in personam' are arbitrable, while disputes arising from 'rights in rem' are not within the scope of arbitration. In Vidya Drolia, the Court established a fourfold test to determine non-arbitrable subject matter, emphasizing that these tests are not rigid compartments but aid in determining non-arbitrability.

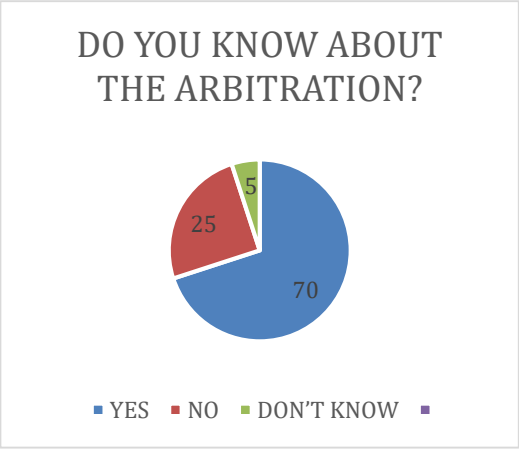
Most non-arbitrable disputes are determined by courts, with only a few barred by statutes. This also applies to IP disputes, which have undergone judicial scrutiny resulting in changes to the law. Judicial decisions play a crucial role in interpreting and redefining laws, as discussed in this article. the arbitrability of intellectual property disputes in various jurisdictions, with a focus on Switzerland. The federal Court in Switzerland has affirmed that states don't have monopoly over the ip disputes, paving the way for arbitration. However, the court did not address the arbitrator's power to rule on validity issues. Later it allowed tribunals to concerning IP validity arbitrable. If the award is recognized by the Swiss court with jurisdiction, it will be recorded in the federal intellectual property register, giving it erga omnes effect. Switzerland restricts in arbitrability to issues that intersect with core areas of public policy, such as expropriation or mandatory licensing. As a result, tribunals have the same jurisdiction as national public authorities in adjudicating all types of IP disputes.

Germany has historically not considered IP disputes within the realm of arbitration, limiting the ability to settle outside of court. However, in 1996, the Federal Court of Justice ruled that patent cases, except for those involving validity, could be arbitrated. Changes to the German Code of Civil Procedure in 1998 further clarified the requirements for arbitrability in patent disputes. Infringement disputes were to be handled by the standard court, while the validity of patents was determined by the Federal Patent Office, with validity claims going to the Federal Patent Court. This division of jurisdiction created a dualistic nature in patent dispute resolution.

Empirical Data

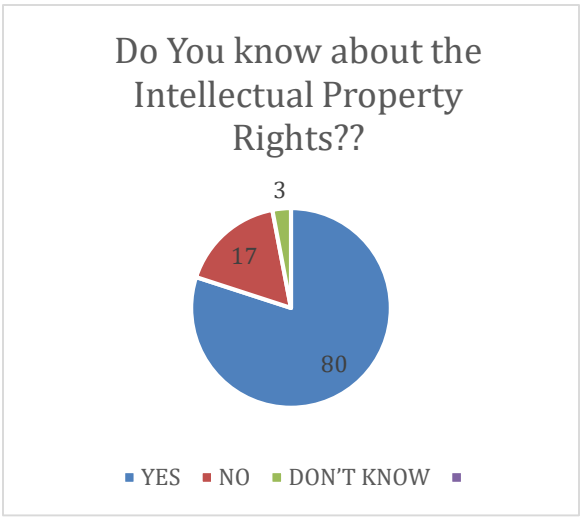
A series of questions have been prepared. A google form was prepared to circulate in the groups of various universities and the lawyers to collect the responses. The group sent the responses and to collect the data of 300 people is presenting in the form of pie chart to show the result.

Do You Know about the arbitration?



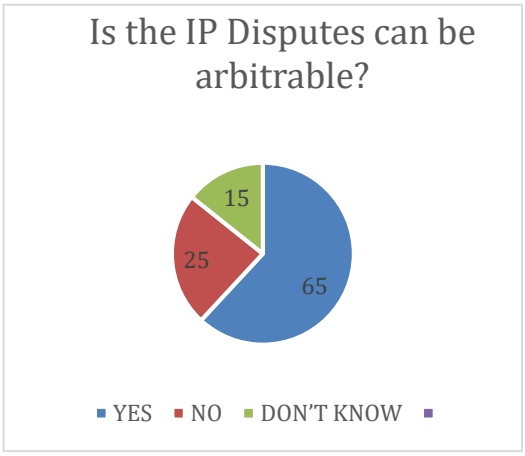
By the interpretation of the pie chart is clear that they know the term arbitration. Arbitration is the private mechanism to settle the disputes in the peaceful manner. 70 percent people affirms yes, 25 percent people affirms No, 5 percent people answered as Don't know. Arbitration can be of two types, the ad hoc arbitration and the institutional arbitration.

Do You know about the Intellectual Property Rights?



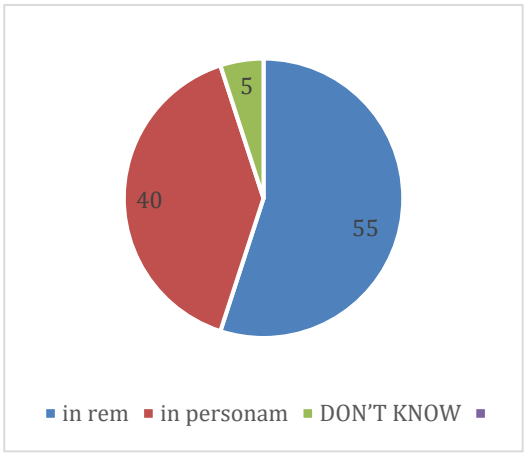
By the interpretation of the pie chart, it is clear that 80 percent people knows about the Intellectual property rights, 17 percent people don't know about the Intellectual Property rights, 3 percent people don't know about it. Intellectual property rights are the creation of the mind. They are used for the creation of the mind.

Is the IP Disputes can be arbitrable?



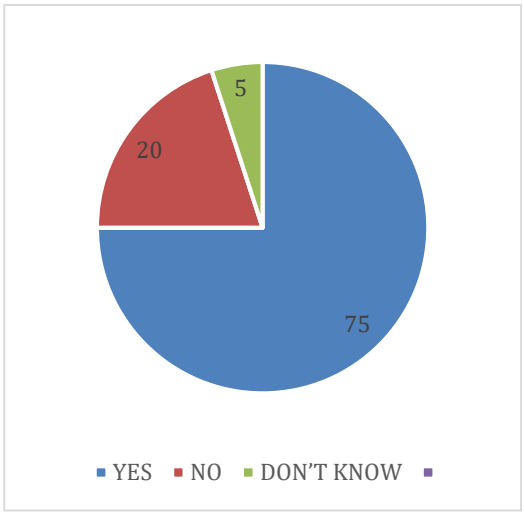
In this question, the 65 percent people answers positively, 25 percent people answered in the negative sense whereas 15 percent people answered as don't know. Arbitrability is the application of the arbitration to tackle the disputes other than the commercial matters. IP disputes are rising as the business is growing around the world. The identity of the businesses is in the form of brands, trademarks and the patents. So, IP disputes remain pending in the courts from multiple years and certainly it results in the loss. So, arbitration can be the fastest method to resolve these disputes amicably.

IP Disputes are in rem or in personam?



IP disputes are in rem or in personam. In rem rights that a person can claim against the whole world whereas the IP disputes in personam means the in personam rights which it can be claimed against a particular person. Here 55 percent consider that the ip disputes are rights in rem where as 40 percent people consider that these are right in personam where as 5 percent people don't know about it.

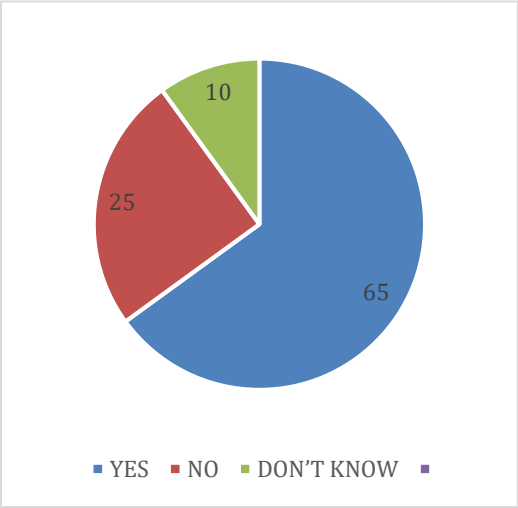
Do you know about the Booz Allen & Hamilton Inc. Vs SBI Home Finance Ltd.?



Here the 75 percent answered as yes whereas 20 percent people answered as NO whereas 5 percent people answered as Don't know. In the Booz Allen & Hamilton Inc. Vs SBI Home Finance Ltd., the supreme court discussed about that the IP rights are in rem or in personam. Further discussed that the rights which are in rem or against the world are not arbitrable, only the rights in personam are arbitrable.

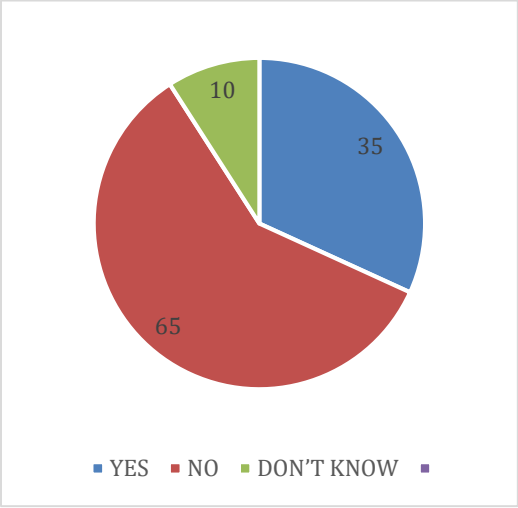
Are legal regulations are required for efficient IP arbitration?

Here 65 percent people think that the regulations are required to make the IP disputes arbitrable where as 25 percent people thinks that the regulations are not required whereas 10 percent people don't know about it. Regulations would plan the infrastructure to setup the institutional setup to arbitrate the IP disputes.



Is there enough awareness about the arbitrability of IP disputes?

By interpreting this data, 65 percent people thinks that there is lack of awareness among the IP rights creators to settle the disputes, whereas 35 percent people think that there is no lack of awareness about the arbitrability of IP disputes whereas 10 percent people don't know about it.



Conclusion

The Court's IP dispute resolution is hindered by IP monopoly and cumbersome procedures. Arbitration offers a fair alternative, but ambiguity in India's IP arbitration system deters parties from choosing it. Removing exclusive control to party autonomy would provide a flexible, efficient, and seamless arbitration mechanism, benefiting the IP sector and India's goal of becoming an international arbitration hub.All IP disputes should be arbitrable, excluding those under state monopoly or inalienable functions. Arbitration offers cost-effective, speedy, and out-of-court settlement, avoiding parallel proceedings and ensuring validity is determined by a competent forum.

REFERENCES:

1. ICOMM Tele Ltd. v Punjab State Water Supply and Sewerage Board, AIR 2019 SC 2682.
2. Vijay Karia v Prysmian Cavi E Sistemi Srl, AIR 2020 SC 1807.
3. Glencore International AG v Indian Potash Limited, 2019 (5) ArbLR 1 (Delhi).
4. The Arbitration and Conciliation (Amendment) Act, 2015 (Act 3 of 2016).
5. PRS India, The New Delhi International Arbitration Centre Bill, 2019 (July 2019) https://www.prsindia.org/billtrack/newdelhi-international-arbitration-centre-bill-2019 (accessed on 23 October 2020).
6. Boog C &Menz J, Arbitrating IP Disputes: The 2014 WIPO Arbitration Rules,Journal of Arbitration Studies,24 (2014) 105.

7. International Chamber of Commerce, Adjudicating Intellectual Property Disputes: An ICC Report on Specialised IP Jurisdictions Worldwide, 2016.
8. WIPO Arbitration and Mediation Center, World Intellectual Property Organization, https://www.wipo.int/amc/en/center/background.html (accessed on 8 March 2021).
9. WIPO Alternative Dispute Resolution (ADR) Options for Intellectual Property and Technology Cases Pending before National Courts (World Intellectual Property Organization) https://www.wipo.int/amc/en/clauses/national_court.html (accessed on 8 March 2021).
10. Shree Vardhman Rice and Gen Mills v Amar Singh Chawalwala, (2009) 10 SCC 257.
11. Bajaj Auto Limited v TVS Motor Company Limited, (2009) 9 SCC 797.
12. Smit H, The future of international commercial arbitration: A single transnational institution, Columbia Journal of Transnational Law, 25 (1) (1986) 9-34.
13. Price Waterhouse Coopers and Queen Mary University of London School of International Arbitration, 2013 International Arbitration Survey: Corporate Choices in International Arbitration Industry Perspectives, 2013.
14. Lee JY, Identifying effective dispute resolution mechanisms for intellectual property disputes in the international context, Journal of Arbitration Studies,25 (2015), 155, 167.