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Need for Revamping the Dispute Resolution Mechanism of Copyright Matters in India

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ABSTRACT

It is noteworthy that the dispute resolution mechanism for Copyright issues has always been under scrutiny for not being as effective, which is something that can be said for all the other domains of IPR as well. The situation has worsened all the more in the wake of Covid-19; having seen the imposition of 'lockdown' time & again. A chunk of India's population has been under various types of lockdowns — full, partial, or weekend — according to the orders issued by Central as well as different state governments. The mechanism for the resolution of disputes in this light, for Copyright matters, however, has always been somewhat of a glint.

In 2017, an amendment to the Copyright Act, 1957 by way of the Finance Act, 2017 substituted the Copyright Board with another authority which came about to be known as the Intellectual Property Appellate Board (IPAB), which was created through Trade Marks Act, 1999 with the aim of clubbing all the Intellectual Property disputes to be handled by a single authority. This essentially proved to be inconsequential. The trend of incompetency of the Copyright Board in dealing effectively with the dispute due to lack of technical personnel continued post substitution to IPAB as well.

As it turned out, the IPAB turned out to be yet another stillborn provision that was meant for handling copyright disputes as it was dissolved by a government notification in April 2021. This scenario in the wake of and now post-Covid begs the question as to when will the need of having an effective mechanism for resolving disputes be heeded, a question that has been in existence for about two decades.

Keywords: Copyright, Pending IPR cases, Dispute Resolution Mechanism & Arbitration resolution.

I. INTRODUCTION

Though there are no express provisions for speedy trial and timely justice under the constitutional scheme, by judicial interpretation, the Supreme Court has discovered the same to be inherently there under Article 21 of the Constitution as the right on the accused.³ It is in the

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³ Abdul Rehman v. R.S Nayak, 1988 AIR 1531.

interest of all the concerned that a case is disposed off quickly and justice is seen to occur.

In this light, it is interesting to note that the dispute resolution mechanism for Copyright issues has always been under scrutiny for not being as effective, which is something that can be said for all the other domains of IPRs as well. The situation has all the more been adversely affected in the wake of Covid; having seen imposition of 'lockdown' time & again and various other resultant restrictions upon the human movement and contact. A chunk of India's population has been under various types of lockdowns at various points in time — full, partial or weekend — according to the orders issued by Central as well as different state governments. This scenario has affected the judicial system all the more; already overburdened with over 41 million cases pending in the lower judiciary⁴ and over 5.6 million cases still undecided across the High Courts⁵ of the country. There will never be a better time to start looking for practical solutions for resolution of disputes that prevail.

The regime of copyright in India appreciates originality in the works. It protects the originality in works even though it may lack artistic quality, so long it is not an unauthorised use or a reproduction of an existing work in any degree.⁶ The mechanism for resolution of disputes in this light, however, has always been somewhat of a glint.

At the inception, the first recourse was with the Copyright Board, which was set up with an object to determine and resolve issues such as reasonableness of rates or royalties, considerations of applications for general licenses and assessment of compensation. This body had been in existence since 1958 and was provided for under Section 11 of the Copyright Act 1957 prior to the amendment. As per this pre-amendment Section 11 of the Copyright Act 1957, the Central Government was to appoint a Secretary and other officers '*as may be considered necessary for the efficient discharge of the functions of the Copyright Board.*'

This was, however, a transition in the national regime and thus it could be said that the Copyright Board was a stillborn provision in the Copyright Act, 1957 as its functioning for the purpose it was meant to serve never came to be.

In 2017, an amendment to the Copyright Act, 1957 by way of Finance Act, 2017⁷ substituted the Copyright Board with another authority in Intellectual Property Appellate

⁴ National Judicial Data Grid (District and Taluka Courts of India), (Feb. 6, 2022, 10:42 PM), <https://njdg.ecourts.gov.in/njdgnew/index.php>.

⁵ National Judicial Data Grid (High Courts of India), (Feb. 6, 2022, 10:43 PM), <https://njdg.ecourts.gov.in/hcnjdgnew/>.

⁶ The Copyright Act, 1957, Act 14, Acts of Parliament, 1957. §. 2(c)(i).

⁷ THE FINANCE ACT, 2017, Act 7, Acts of Parliament, 2017 (Feb. 3, 2022, 10:27 PM), <https://www.civilaviation.gov.in/sites/default/files/MoL%20amp%3BJ%20%28Legislative%20Dept%29%20The%20Finance%20Act%20.pdf>.

Board (IPAB) which was created through Trade Marks Act, 1999; with the aim of clubbing all the Intellectual Property disputes to be handled by a single authority.

The relevant Section 160 in the said Act read as follows:

"160. In the Copyright Act, 1957,— (a) for the words "Copyright Board", wherever they occur, the words "Appellate Board" shall be substituted; (b) in section 2, after clause (a), the following clause shall be inserted, namely:— '(aa) "Appellate Board" means the Appellate Board referred to in section 11'; (c) for section 11, the following section shall be substituted, namely:— "11. The Appellate Board established under section 83 of the Trade Marks Act, 1999 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Appellate Board for the purposes of this Act and the said Appellate Board shall exercise the jurisdiction, powers and authority conferred on it by or under this Act."; (d) in section 12, sub-sections (3) and (4) shall be omitted; (e) in section 78, in sub-section (2), clause (a) shall be omitted."

II. BACKDROP

The transition from Copyright Board to IPAB had essentially proved to be inconsequential. The trend of incompetency of Copyright Board in dealing effectively with the dispute due to lack of technical personnel continued post substitution to IPAB as well.

A number of pending IPR cases continued to lie. With the rapid growth of cases dealing with IPR laws – including patents, trademarks, copyrights and design laws – there were a total number of 727 cases filed at the High Courts at Delhi and the Bombay alone during 2020. Out of these, 531 cases related to trade marks, followed by copyrights (157), designs (14) and patents (42). There were approximately 532 cases in which ex parte injunctions were granted and there were 661 cases in which permanent injunctions were granted. Only 92 cases were settled in the last year.⁸

As most recently pointed out in the Delhi HC judgment in the case of Mylan Laboratories⁹, a total of 3953 IP cases are lying pending before the IPAB, all having been untouched, out of which 2626 are Trademark cases, 617 are Patent cases, 691 are Copyright cases and 1 is a GI (geographical indication) case; all due to various vacancies. **There was never a technical member on the Board for the Copyright cases ever since IPAB has had the power to try Copyright cases.**

The quorum for adjudication requires one judicial member and one technical member on the

⁸ Varun Sharma & Gautam Kumar, *Intellectual Property Rights*, LexOrbis (Feb 7, 2022, 10:22 PM), <https://www.lexology.com/library/detail.aspx?g=5f17ee47-b5c9-4578-9201-8a31eab8c2a7>.

⁹ Mylan Laboratories Limited v Union of India & ors., (2019) (80) PTC 374 (Del).

bench to decide the matter. However, the bench could not be constituted to hear the copyright matters for the reason that the post of Technical Member of Copyright is lying vacant till date. This is a sad state of affairs as years are going by and the situation doesn't seem to be getting resolved anytime soon.

III. ARBITRABILITY OF IP DISPUTES

Arbitration has always been an exciting avenue for resolution of disputes of various natures. Despite the increasing restrictions and complete lockdown in the country, some arbitral proceedings, which are of urgent nature, may be conducted virtually. Section 19 of the Arbitration & Conciliation Act, 1996 states that the Arbitral Tribunal shall neither be bound by the Code of Civil Procedure, 1908 nor the Indian Evidence Act, 1872. The parties to the arbitration proceeding or the Arbitral Tribunal may decide on the procedure to be followed in the conduct of such arbitration proceedings.

While the Arbitration & Conciliation Act, 1996 is silent on the conduct of arbitration proceedings through video conferencing, section 19 of the Act certainly empowers the Arbitral Tribunal to allow the same. The Arbitral Tribunal can direct the parties to the arbitration proceedings to file pleadings through electronic mail and conduct proceedings through the means of video conferences aiding social distancing with minimal loss of productivity.

In fact, Arbitral Tribunals in consonance with the changing technology and the strict statutory timelines enumerated in the Arbitration & Conciliation Act, 1996 may even resort to video conferencing in routine circumstances for convenience as well as cost-effectiveness even in domestic arbitration proceedings.¹⁰

IV. JUDICIAL TRENDS TOWARDS ARBITRABILITY

Supreme Court of India has in the case of *Shree Vardhman Rice case*¹¹ held that

“...In our opinion, in matters relating to trademarks, copyright and patents, the proviso to Order XVII Rule 1(2) C.P.C. should be strictly complied with by all the Courts, and the hearing of the suit in such matters should proceed on a day to day basis and the final judgment should be given normally within four months from the date of the filing of the suit.”

¹⁰ [Mirza Aslam Beg](#) & [Chandni Arora](#), *Impact Of Covid-19 On Arbitration Proceedings In India*, King, Stubb & Kasiva (Feb. 5, 2022, 10:17 PM), <https://www.mondaq.com/india/operational-impacts-and-strategy/911554/impact-of-covid-19-on-arbitration-proceedings-in-india>.

¹¹ *Shree Vardhman Rice & Gen Mills v. Amar Singh Chawalwala*, (2009) 10 SCC 257.

This view has been upheld in the case of *Eros International Media Limited*¹² where the Bombay High Court distinguished Intellectual Property Rights as having an element of right in rem in contrast to right in personam. The Court held that the element of right in personam in a private dispute between two parties arising out of commercial contracts, where an infringement claim is involved in Intellectual Property disputes could be decided through arbitration. Where there are matters of commercial disputes and parties have consciously decided to refer these disputes arising from that contract to a private forum, no question arises of those disputes being non-arbitrable. Such actions are always actions in personam, one party seeking a specific particularized relief against a particular defined party, not against the world at large.

V. REFORMS

The Ministry of Commerce and Industry published a draft Copyright Rules¹³ in 2019 to amend the pre-existing Copyright Rules 2013. The rules are yet to be implemented but they very much cover the things needed to be taken care of. One of the key suggestions is the according substitution of Appellate Board in place of the Copyright Board.

The rules also lay down the manner of appointment as well the qualifications for the Appellate Board. The provision is as follows:

“3. Appellate Board –

(1) The Chairman and other members of the Board shall be appointed as per the provisions of the Trade Marks Act, 1999;

Provided that the Technical Member of the Board for the purposes of the Act shall have the qualifications as specified in sub-rule (2).

(2) A person shall not be qualified for appointment as a Technical Member for the purposes of this Act unless he—

(a) is or has been a member of the Indian Legal Service and has held a post in Grade I of that Service for atleast three years; or

(b) has, for at least ten years, held a judicial office; or

(c) is or has been a Member of a Tribunal or Civil Service not below the rank of a Joint Secretary to Government of India or equivalent with three years' experience in the field of

¹² *Eros International Media Limited v. Telexmax Links India Pvt Limited*, 2016(6) BomC R321.

¹³ Copyright (Amendment) Rules, 2019, NOTIFICATION, MINISTRY OF COMMERCE AND INDUSTRY (Feb. 6, 2022, 3:21 PM), https://dipp.gov.in/sites/default/files/Draft_Copyright_Amendment_Rules_2019.pdf.

Copyright; or

(d) has, for at least ten years, been an advocate of a proven specialized experience in Copyright Law.

Provided that at least one member out of the two shall have the qualification as prescribed under clause (a), (b) or (d).”

As can be seen above and was noted earlier as well, all the disputes pertaining to Copyright matters were thus to be handled by the IPAB; however this alteration in the letter of the law was subsequently quashed by a government ordinance¹⁴ and a subsequent notification¹⁵ dissolved IPAB. Section 15 of the ordinance provides for the dissolution of the IPAB along with several other tribunals provided in the schedule therein and transfers the pending cases to the respective courts having jurisdiction.

VI. CONCLUSION

In today's day and age, the ever evolving technology is the ultimate aid and assistance, if not the solution, to almost all our problems. The information age, as it's so called, is going to be consequential to us overcoming this problem as well, especially in the wake of Covid-19 which has imposed so many restrictions and bearings upon human movement & contact.

One such practical solution could be insertion of a separate category for IPR disputes in the Article 323B of The Constitution of India, clause (2) of which consists of various subject matters for which tribunals could be established, by way of an amendment. The provision reads as follow:

“Tribunals for other matters.

(1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws.

(2) The matters referred to in clause (1) are the following, namely: —

(a) levy, assessment, collection and enforcement of any tax;

(b) foreign exchange, import and export across customs frontiers;

¹⁴ THE TRIBUNALS REFORMS (RATIONALISATION AND CONDITIONS OF SERVICE) ORDINANCE, 2021, ACT 2 OF 2021, MINISTRY OF LAW AND JUSTICE, (Feb. 16, 2022, 10:22 PM), <https://dpiit.gov.in/sites/default/files/IPAB-Ordinance2021-29June2021.pdf>.

¹⁵ NOTIFICATION, MINISTRY OF COMMERCE AND INDUSTRY (Department for Promotion of Industry and Internal Trade), (Feb. 16, 2022, 10:25 PM), <https://dpiit.gov.in/sites/default/files/IPAB-GazetteNotification-29June2021.pdf>.

(c) industrial and labour disputes;

(d) land reforms by way of acquisition by the State of any estate as defined in article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way;

(e) ceiling on urban property;

(f) elections to either House of Parliament or the House or either House of the Legislature of a State, but excluding the matters referred to in article 329 and article 329A;

(g) production, procurement, supply and distribution of food-stuffs (including edible oilseeds and oils) and such other goods as the President may, by public notification, declare to be essential goods for the purpose of this article and control of prices of such goods;

(h) rent, its regulation and control and tenancy issues including the right, title and interest of landlords and tenants;

(i) offences against laws with respect to any of the matters specified in sub-clauses (a) to (h) and fees in respect of any of those matters;

(j) any matter incidental to any of the matters specified in sub-clauses (a) to (i). ”

As can be clearly observed, any matter of Intellectual property is not enlisted in the above provision and the inclusion of the same would mean that there will be specialised IPR courts, with judicial officers to deal with the IPR disputes.

Instantaneous appointments in such subsequently created tribunals could resolve the problem to a great deal and would serve as an immediate solution to the problem. As noted in the introduction of this research article, with well over 46 million cases still pending across all the High Courts & Lower Courts of the country as of today, it is only fitting that some of the burden upon the judicial institutions of the country be reduced. It is high time that practical solutions are resorted to as far as the avenues for some of the intellectual property disputes resolution vis-à-vis copyright is concerned.

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