

IN-DEPTH

Technology Disputes

EDITION 3

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 LEXOLOGY



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INDIA

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I OVERVIEW

Technology law disputes in India encompass a wide range of issues, primarily revolving around contractual disputes and the enforcement of statutory or common law rights. As the business landscape increasingly moves into cyberspace, the legal framework and jurisprudence surrounding public policy and privacy have evolved over time. This chapter will explore the current state of technology law disputes in India, considering the prevailing legal regime and the challenges that arise within this dynamic field.

Contractual disputes form a significant part of technology-related conflicts, with the resolution often relying on the interpretation of contractual terms and conditions, in conjunction with relevant statutory provisions. Because of the technical nature of these agreements, specialised expertise may be required to unravel complex terms and obligations arising from such contractual issues.

Another important category of technology law disputes pertains to intellectual property, specifically patents, trademarks and domain names, copyrights, software and piracy. Indian courts have consistently worked towards establishing a robust intellectual property framework, protecting privacy rights, combating online piracy and promoting innovation across various technological domains. These judicial rulings play a pivotal role in shaping a legal landscape that encourages creativity, safeguards rights and maintains a fair and equitable approach to intellectual property disputes.

Given the ever increasing reliance on technology, data privacy concerns have become more pronounced. In response, India has recently sought to codify laws that address the right to privacy while considering public policy imperatives. Furthermore, the Rules on Intermediary Liability have also undergone significant changes, imposing stringent compliance requirements and acknowledging the role of intermediaries in online gaming.

i Domain names

A unique name capable of distinguishing a company's goods or services on the internet can be registered and protected as a trademark if it meets the statutory requirements. With the rise of commercial activity online, courts have recognised that domain names serve as identifiers for companies and have increasing value, often leading to disputes.² Courts have issued

1 Ashish Singh and Juhi Chawla are partners at Dua Associates.

2 *Satyam Infoway Ltd v. Siffynet Solutions Pvt Ltd*, Appeal (Civil) 3028 of 2004.

injunctions in cases where traffic is diverted to a website because of typing errors,³ as such errors can confuse users into believing the domain belongs to the same source. Passing-off laws have also been applied to protect well-known marks and domain names.⁴

In a series of recent decisions, the courts addressed the evolving law concerning domain names and emphasised the need for specific relief in cases of trademark infringement involving domain names, rather than granting blanket injunctions.⁵ The courts called for the implementation of abuse policies by domain name registrars, including measures such as cancellation or transfer of infringing domain names.⁶ Additionally, the courts have directed registrars of domain names located outside India to disclose registrant details and payment information to prevent evasion of injunction orders.⁷ They also clarified that trademark infringement suits should focus on individual cases and cannot impose a broad ban on future use of trademarks.⁸ These decisions reflect a trend towards targeted actions, protection of intellectual property rights and the efficient enforcement of court orders in the domain name context.

ii Copyright protection and cyberspace

The rapid advancement of technology has impacted on copyright law, leading to an expansion of its scope. While technology enables high-quality digital copies and widespread distribution, it hinders copyright enforcement in cyberspace. Tools and means such as file downloading and uploading, copy-cut-paste, deep-linking and file-sharing challenge copyright principles. Internet infringement poses challenges in identifying and acting against infringers.

Copyright Act 1957

In India, the Copyright Act of 1957 underwent an amendment in 2012, which was a significant step towards copyright protection in the digital sphere. The amended Act recognises ‘computer-generated work’⁹ and designates the person or persons responsible for generating such works as their author.¹⁰ The term ‘broadcast’ is defined as any means of communication to the public, including re-broadcasting.¹¹ The act defines ‘communication to the public’ as making any work or performance available to the public directly or through any means of display.¹²

Under the Copyright Act, computer¹³ programs¹⁴ and databases are protected as literary works. Reproduction of literary, dramatic, musical or artistic works in any form other than cinematographic films is considered copyright infringement. The rights of copyright holders regarding computer programs are specifically enumerated.

3 *Rediff Communication Limited v. Cyberbooth & Another*, 1999 (4) BomCR 278.

4 *Yahoo! Inc v. Akash Arora and Another*, 1999 Arb L R 620.

5 *GoDaddy.com LLC v. Bundl Technologies (P) Ltd*, 2023 SCC OnLine Bom 227.

6 *Snapdeal Private Limited v. GoDaddycom LLC*, 2022 SCC OnLine Del 2044.

7 *Dabur India Ltd v. Ashok Kumar*, 2022 SCC OnLine Del 1784.

8 *GoDaddy.com LLC v. Bundl Technologies (P) Ltd*, 2023 SCC OnLine Bom 227.

9 See Section 2(d)(vi) of the Copyright Act 1957, as amended, available at <https://copyright.gov.in/documents/copyrightrules1957.pdf>.

10 *ibid.*, Section 2(d).

11 *ibid.*, Section 2(dd).

12 *ibid.*, Section 2(ff).

13 *ibid.*, Section 2(ffb).

14 *ibid.*, Section 2(ffc).

Temporary copying, known as ‘caching’, plays a significant role in internet transmission. According to Indian law, reproduction not only must occur in a physical form but also includes storing in any medium by electronic means,¹⁵ making caching a copyright violation. Furthermore, the Copyright Act protects databases as literary works. Violators of copyright can be fined under the Information Technology Act,¹⁶ which criminalises various offences, including computer trespass, digital copying, invasion of privacy and data theft.

When it comes to determining liability for copyright infringement, it is crucial to establish who is responsible: the party receiving the work, the internet service provider or the person transmitting the work. Section 79 of the Information Technology Act does not hold the intermediary liable if they can demonstrate that the breach or offence was committed without their knowledge or that they took all reasonable measures to prevent such a breach or offence from occurring.¹⁷

iii Data privacy

Information Technology Act

The Information Technology Act penalises ‘cyber contraventions’,¹⁸ which attract civil prosecution, and ‘cyber offences’,¹⁹ which attract criminal action. The original Act had no express provisions regarding data security. Accordingly, amendments were introduced that, among other things, incorporated Section 43A²⁰ and Section 72A²¹ to provide remedies to persons who have suffered or are likely to suffer a loss on account of their data not having been adequately protected.

Personal Data Protection Statute

The Digital Personal Data Protection Act of 2023 was notified on 11 August 2023.

The law applies to the processing of digital personal data, with the requirement that such data should be collected online or digitised from offline sources. Non-digital personal data and non-automated processing are excluded from the scope of the law. The law also has provisions for extraterritorial application, specifying that digital personal data processed outside India in connection with offering goods or services to data principals within India may fall under the purview of the law.²²

Consent²³ plays a crucial role in data processing under India’s data privacy laws. Businesses (data fiduciaries)²⁴ are required to obtain free, specific, informed, unconditional and unambiguous consent, expressed with clear affirmative action, from data principals.²⁵

15 *ibid.*, Section 14.

16 The Information Technology Act 2000, available at <https://www.meity.gov.in/writereaddata/files/The%20Information%20Technology%20Act%2C%202000%283%29.pdf>.

17 *ibid.*, Section 79.

18 *ibid.* Offences in Chapter XI or anything contained in any law currently in force at that time.

19 *ibid.*, Chapter XI.

20 *ibid.*, Section 43A.

21 *ibid.*, Section 72A.

22 See Section 3 of the Digital Personal Data Protection Act of 2023, ‘Application of the Act’, available at <https://www.meity.gov.in/writereaddata/files/Digital%20Personal%20Data%20Protection%20Act%202023.pdf>.

23 See Section 6 of the Digital Personal Data Protection Act of 2023, ‘Consent’.

24 Section 2(i) of the Digital Personal Data Protection Act of 2023, ‘Definitions: “Data Fiduciary”’.

25 Section 2(j) of the Digital Personal Data Protection Act of 2023, ‘Definitions: “Data Principal”’.

The businesses must provide clear and comprehensive notices to data principals, including the purpose and description of personal data being collected. The laws also emphasise the right to withdraw consent and businesses must make the process for withdrawal as easy as giving consent. Consent managers may be engaged to facilitate the management of consent on behalf of data principals.

As regards data breaches and reporting, businesses and processors are required to report personal data breaches to affected data principals and to the Data Protection Board.²⁶ The laws define personal data breaches²⁷ as any unauthorised processing or accidental disclosure, acquisition, sharing, use, alteration, destruction or loss of access to personal data that compromises its confidentiality, integrity or availability. Clear guidelines are needed to determine the reporting process and ensure effective communication with affected data principals.

The data privacy laws in India would require businesses to review and update their internal policies related to information technology (IT), data protection, data retention, cybersecurity and consent management. Businesses need to establish reasonable safeguards for handling personal information, facilitate data subject rights and provide information on data transfer conditions.

II YEAR IN REVIEW

i Dynamic injunctions and rogue websites

Dynamic injunctions have become an essential tool in safeguarding intellectual property rights in the digital landscape, as demonstrated by various cases. For instance, a court issued a dynamic injunction restraining rogue websites from streaming films copyrighted by Warner Bros²⁸ and Sony Pictures Animation Inc, including films such as *Spider-Man: Across the Spider-Verse* and *Spider-Man: Into the Spider-Verse*.²⁹ This reflects the court's commitment to combating online piracy. Another significant decision saw an injunction granted against unauthorised streaming of the film *Brahmastra Part One: Shiva*,³⁰ highlighting the importance of enforcing copyright laws.

In addressing the challenge of unidentified infringers, a court issued an unstoppable dynamic John Doe injunction,³¹ enabling rights holders to seek injunctions against unknown parties involved in infringement. Furthermore, courts have effectively employed permanent injunctions against rogue websites engaged in piracy, preventing unauthorised distribution of copyrighted content³² specifically where the film had already been released and the rights of the plaintiffs were not in question.

26 See Section 8(6) of the Digital Personal Data Protection Act of 2023, 'General obligations of Data Fiduciary'.

27 Section 2(u) of the Digital Personal Data Protection Act of 2023, 'Definitions: "personal data breach"'.

28 *Warner Bros. Entertainment Inc v. www.uwatchfree.st*, 2022 SCC OnLine Del 2826.

29 *Sony Pictures Animation Inc v. FLIXHD.CC*, 2023 SCC OnLine Del 3286.

30 *Star India Private Limited v. 7MOVIERULZ.TC*, 2022 SCC OnLine Del 2744.

31 *Arha Media and Broadcasting Limited v. www.vcinema.com*, CS (COMM) 925 of 2022, decided on 28 December 2022 by Delhi High Court.

32 *Star India Pvt Ltd v. Moviesghar.art*, 2022 SCC OnLine Del 3819.

These cases collectively exemplify the judiciary's proactive stance in protecting intellectual property rights and curbing online piracy, thereby fostering a secure environment for content creators and industries reliant on copyright protection.

Dynamic injunctions are particularly useful in cases where infringing websites attempt to evade blocks by reappearing as redirecting, mirror or alphanumeric websites.³³ In India, courts have adopted a procedure whereby plaintiffs can file subsequent applications to add additional web addresses (known as 'uniform resource locators' – URLs) or mirror sites to the existing injunction. High courts allow extension orders to be passed by subordinate courts upon receiving such applications, ensuring the efficacy of the injunctions.

ii Guidelines for intermediaries

The Ministry of Electronics and Information Technology introduced the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules (the IT Intermediaries Rules) in 2021, replacing the previous rules from 2011. These rules focused on personal data protection, grievance redressal and user safety. They differentiated between social media intermediaries³⁴ and significant social media intermediaries³⁵ based on user numbers, imposing heavier obligations on the latter. Significant social media intermediaries were required to appoint a chief compliance officer and a nodal contact person, publish monthly compliance reports and adhere to various restrictions and obligations.

In 2023, the IT Intermediaries Rules were subject to amendment³⁶ to introduce further regulations. Intermediaries were obligated to prevent the hosting and advertisement of unapproved online games and refrain from sharing false information about the Indian government. Online gaming platforms were required to register with self-regulatory bodies to ensure compliance with legal requirements and safety measures. Fact-checking obligations were also emphasised, with intermediaries required to prevent the dissemination of fake or misleading information about the government, as determined by the government's fact-checking unit.

The 2023 amendments aimed to address harmful online games, fact-checking and online gaming regulation. However, discussions regarding the scope of intermediaries' responsibilities, the efficacy of self-regulation and the appropriate legislative process for online gaming rules remain ongoing, emphasising the need for careful consideration and balanced approaches in these areas.

iii Patentability of computer software

In a recent case, a patent application by Microsoft underwent review, challenging its rejection, which had been based on the use of computer-executable instructions and algorithms. The court deemed the rejection incorrect and clarified that although computer programs

33 *UTV Software Communication Ltd & Ors v. 1337x To & Ors*, (2019) 78 PTC 375; *Disney Enterprises, Inc & Ors v. Kimcartoon To & Ors*, CS (COMM) 275/2020.

34 See Section 2(1)(w) of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, 'Definitions', available at <https://www.meity.gov.in/writereaddata/files/Information%20Technology%20%28Intermediary%20Guidelines%20and%20Digital%20Media%20Ethics%20Code%29%20Rules%2C%202021%20%28updated%2006.04.2023%29-.pdf>.

35 *ibid.*, Section 2(1)(v).

36 Published on 6 April 2023.

themselves are not patentable, computer-related inventions incorporating novel hardware components or providing technical contributions beyond the program can be eligible for patent protection.³⁷

The court highlighted that the invention in question offered a technical solution to a security problem, surpassing mere user-interface enhancements and enhancing the overall user experience. It criticised the narrow interpretation and lack of consideration shown for the invention's technical advancements by the responsible authority. Consequently, the court set aside the decision, prompting a re-examination emphasising comprehensive assessment based on technical effects and contributions, rather than focusing solely on algorithms.³⁸

Furthermore, the court called for a reconsideration of exclusions listed under the relevant section of the Patents Act of 1970,³⁹ which pertain to software-related inventions. It argued that these exclusions are outdated and it urged legislative revision to align with the technological advancements and inventions to be found in the field of business methods or application of computing and digital technologies.⁴⁰

The court stressed the need to update the Manual of Patent Office Practice and Procedure, providing clearer guidance to examiners and controllers, particularly regarding complex patents in areas such as artificial intelligence systems, agrochemicals and pharmaceuticals. It directed the Patent Office to grant the patent, subject to necessary formalities, and recommended training for examiners and controllers in technical and patent analytics, aiming to improve the patent application process and ensure equitable treatment of innovative inventions.⁴¹

iv Privacy and right to be forgotten

Addressing privacy in the digital age, a petitioner's request for anonymity in a judgment related to a rape case was granted. The court found no evidence against the petitioner beyond reasonable doubt, and it acknowledged the negative impact of having the judgment available online. As a result, the petitioner's name was masked in the judgment. Direction has also been issued to the legal depository involved to provide an affidavit outlining its policy on the 'right to be forgotten' and name-masking in similar cases.⁴² While the general right to be forgotten is not universally recognised, this decision aims to protect individuals' privacy and establish guidelines for handling sensitive information online.

v Safe harbour provision for intermediaries

In a significant ruling, an Indian court granted Flipkart the status of an intermediary under the Information Technology Act. Flipkart complied with the requirements of Section 79(2)–(3) of the Information Technology Act,⁴³ as well as, the Information Technology (Intermediaries

37 *Microsoft Technology Licensing, LLC v. The Assistant Controller of Patents and Designs*, 2023 SCC OnLine Del 2772.

38 *ibid.*

39 Section 3(k): 'a mathematical or business method or a computer programme per se or algorithms'.

40 *OpenTV Inc v. The Controller of Patents and Designs*, 2023 SCC OnLine Del 2771.

41 *AGFA NV v. The Assistant Controller of Patents and Designs*, 2023 SCC OnLine Del 3493.

42 *SK v. Union of India*, 2023 SCC OnLine Del 3544.

43 See Section 79(2)–(3) of the Information Technology Act 2000 (see footnote 16).

Guidelines) Rules 2011, which exempted the company from any liability under Section 79⁴⁴ of the Information Technology Act.⁴⁵ The court's recognition of Flipkart as an intermediary underscore the importance of balanced regulation of e-commerce platforms.

Similarly, another court quashed a criminal case against Flipkart, acknowledging its intermediary protection under the Information Technology Act and compliance with 'due diligence' requirements.⁴⁶ This contributes to the understanding of intermediary liability and advocates for a fair approach to holding online platforms accountable.

These cases highlight the evolving legal landscape surrounding e-commerce platforms and their responsibilities, reinforcing the importance of defining their role as intermediaries and ensuring a balanced regulatory framework.

vi Disclosure by intermediaries

The Delhi High Court has issued a ruling that mandates the disclosure of details regarding infringing defaulters in a copyright infringement case.⁴⁷ This decision reinforces the fight against online copyright violations by compelling platforms and intermediaries to share information about individuals engaged in infringing activities. It highlights the significance of safeguarding intellectual property rights and ensuring a fair online ecosystem.

vii Game of skill and chance and use of non-fungible tokens

A court ruled that online skill-based games, including rummy, are not taxable as 'betting' or 'gambling' under the Central Goods and Services Tax Act of 2017. The court highlighted the distinction between games of skill and games of chance, stating that rummy is predominantly a game of skill. A game of skill whether played with stakes or without stakes is not gambling. A game of mixed chance and skill is not gambling, if it is substantially and preponderantly a game of skill and not of chance; Rummy is substantially and preponderantly a game of skill and not of chance. Rummy whether played with stakes or without stakes is not gambling.⁴⁸

In a case concerning non-fungible tokens (NFTs), the court noted that the use of players' names, images and statistics by the defendants falls under the right to freedom of speech and expression, and the publicly available information cannot be exclusively licensed. The court also emphasised that the defendants' use of NFT technology did not imply endorsement or association with the players. NFT technology is a freely available technology.⁴⁹

44 *ibid.*, Section 79.

45 *Flipkart Internet Private Limited v. State of UP*, 2022 SCC OnLine All 706.

46 *Flipkart Internet Pvt Ltd v. State of NCT of Delhi*, 2022 SCC OnLine Del 2439.

47 *Neetu Singh v. Telegram FZ LLC*, CS (Comm) 282 of 2020, decided on 30 August, 2022 by Delhi High Court.

48 *Gameskraft Technologies Pvt Ltd v. DGGSTI*, 2023 SCC OnLine Kar 18.

49 *Digital Collectibles Pte Ltd v. Galactus Funware Technology Pvt Ltd*, 2023 SCC OnLine Del 2306.

III CLAIMS AND REMEDIES

i Types of relief for infringement

Patent

Patent infringement in technology disputes may arise when the technology is considered a patentable invention. Although the Patents Act does not explicitly define infringement, it grants exclusive rights to the patentee. Violation of these rights constitutes infringement. The Patents Act also outlines the types of relief a court can provide in infringement suits, including injunctions, damages or an account of profits. Moreover, the court may order the seizure, forfeiture or destruction of infringing goods.

Copyright

Section 51 of the Copyright Act outlines what constitutes infringement. Infringement occurs when a person, without the owner's licence or in violation of the licence conditions:

- a engages in activities reserved exclusively for the copyright owner;
- b offers the copyrighted object for sale or hire;
- c distributes the copyrighted object for trade purposes or to the extent that it detrimentally affects the owner of the copyright; or
- d publicly exhibits or imports the copyrighted object for trade. The Copyright Act provides both civil and criminal remedies for infringement.

ii Anton Piller orders

A party may move the court for an *Anton Piller* order if it seeks detention, preservation or inspection of any premises or material forming subject matter of proceedings. When allowing an application of this nature, the court may authorise a person designated by the court to take samples and search and seize the infringing material necessary for obtaining full information or evidence.

Commissioners may also be appointed for a scientific investigation or to conduct local investigations. A court commissioner has wide powers and is 'an extended arm and agent of the Court'.⁵⁰

iii Damages and compensation

In suits for infringement, a plaintiff is entitled to seek damages or an account of profits. A recent trend of awarding damages has been observed particularly in cases of software piracy. Principles for grant of damages have evolved with time and courts are inclined to grant both compensatory and punitive damages.

iv Interim injunctions and permanent injunctions

Typically, interim injunctions (or temporary injunctions) are sought in every suit for a permanent injunction (of infringement, or matters seeking to restrain use or display in any form) to protect the rights and interest of the party *lis pendens*.

⁵⁰ *Autodesk Inc & Anr v. Arup Das & Ors*, 2013 SCC OnLine Del 4225; and *Anil K Aggarwal v. Union of India*, 2014 SCC OnLine Del 2292.

Interim injunctions are granted in cases wherein prima facie proof of infringement and the balance of convenience is found to be in favour of the plaintiff owing to the likelihood of irreparable injury if an interim injunction is not granted.

A permanent injunction usually follows, after conclusion of trial, on appreciation and examination of evidence, if the court is satisfied as to ownership, unauthorised use, infringement or such other action or omission as has been complained of.

v Invocation of writ court

Often, intermediaries and other body corporates approach courts under their writ jurisdiction seeking intervention and quashing of action taken pursuant to the Information Technology Act and the rules framed thereunder, including the IT Intermediaries Rules. Arguments usually canvassed by such body corporates pertain to freedom to do business, overarching provisions of onerous compliance causing impediment in their right to do business, and causing or prohibiting a statutory or other state authority to perform or refrain from performing an action.

Specific rules may also be challenged as being *ultra vires* while invoking the writ jurisdiction of the court. There is no embargo for invocation of writ court, even for seeking quashing of a notice issued under criminal statute, information on a user, origin of a message or blocking of accounts, among other things. Writ jurisdiction is only vested in the high courts and the Supreme Court.

vi Criminal proceedings and offence

Criminal action and cognisance can only be taken in relation to offences as provided for in law. For instance, the Copyright Act provides for certain actions classified as offences. Further, notices may also be issued under the Information Technology Act and the rules framed thereunder for such matters as are described therein, including but not limited to search, seizure and takedown notices. The Supreme Court has also clarified that the offence of infringement under Section 63⁵¹ of the Copyright Act is cognisable and a non-bailable offence.⁵²

IV COURTS AND PROCEDURES

i Courts

Currently, India does not have specialised technology courts or tribunals. The judicial system consists of district courts, high courts of each state, and the Supreme Court as the final appellate court. High courts have supervisory authority over all courts and tribunals within their territorial jurisdiction. The choice of court is based on territorial jurisdiction and pecuniary limits. District courts generally have unlimited pecuniary jurisdiction, except in certain jurisdictions such as Delhi, Mumbai, Kolkata, Madras and Shimla.

High courts also have first-instance jurisdiction and cases filed invoking writ jurisdiction are usually filed before the high court.

51 See Section 63 of the Copyright Act 1957 (see footnote 9).

52 *Knit Pro International v. State of NCT of Delhi*, 2022 SCC OnLine SC 668,

ii Protection of trade secrets

In technology-related suits, confidential information is filed with the court under seal, because case files are public records. However, courts have deprecated this practice and to maintain confidentiality, courts are exploring the use of 'confidentiality clubs'. These clubs involve an agreement between parties that restricts the dissemination of confidential information and documents to authorised individuals. Access to these documents and information is limited to authorised persons by court order or through the agreement itself. The establishment and regulation of confidentiality clubs are still developing concepts in Indian jurisprudence, as yet with limited codified rules and procedures.

V EVIDENCE AND WITNESSES

The Indian Evidence Act of 1872 governs the presentation of oral and documentary evidence in civil and criminal actions. Specialised statutes may address ancillary issues related to the nature, authority, validity or certification of documents.

i Discovery

The Civil Procedure Code of 1908 provides for discovery, a pretrial procedure allowing each party to obtain evidence from the opposing party. Discovery involves the exchange of information on witnesses and evidence that will be presented during the trial. Its purpose is to inform parties about the case and prevent ambiguity in claims or factual issues. Various types of discovery include interrogatories, requests for production of documents and inspection, requests for admissions, depositions, subpoenas *duces tecum* and physical and mental examinations.

ii Interrogatories

Interrogatories are written sets of questions initiated by one party and directed to the other party, with the court's permission. They are answered through an affidavit within a prescribed period.

iii Cross-examination

Interrogatories occur before the trial, while cross-examination (oral testimony) takes place during the trial. Confidential information may be obtained during cross-examination, which is not permissible through interrogatories.

iv Recordal of evidence

Oral evidence is presented on the issues framed by the court. The court formulates issues and assigns the burden of proof for each issue. Depending on the forum, evidence is recorded by the presiding judge in district courts, junior or subordinate judges in high courts, or appointed judicial officers or competent persons.

Specifically in the case of patent infringement or other proceedings relating to patents, Indian law provides for the appointment of an independent scientific adviser to inquire and report on the question of fact.⁵³

v Expert witnesses

Expert evidence is recognised and given due consideration under central procedural statutes.⁵⁴ Expert evidence is required for matters beyond the knowledge of a layperson and involving scientific questions outside the court's knowledge. Courts have developed guidelines through precedents on how to handle expert testimony.

VI ENFORCEMENT

A temporary or interlocutory injunction can be granted before the conclusion of proceedings. If a party disobeys or breaches an interim relief granted by the court, the affected party can seek enforcement. The plaintiff can invoke the court's powers under Order 39, Rule 2A of the Code of Civil Procedure 1908, which addresses the consequences of disobedience. The court has extensive powers to address wilful disobedience, such as civil imprisonment or asset attachment.

For breach of any other court order during litigation, one can request the court to take action under the Contempt of Courts Act 1971. The court has wide powers to impose imprisonment or fines for the redressal of such breaches.

Similar enforcement measures apply to permanent injunctions. To enforce a decree of permanent injunction, one must apply under Order 21 to seek enforcement.

Regarding orders for damages, if the amount specified in the court order is not remitted to the plaintiff within the stipulated time, the court has broad execution powers. The court can order asset attachment or sale to realise the amount due. Other specific orders, such as delivery up and inspection, are carried out by court-appointed receivers and commissioners according to the court's directions.

Complaints and criminal proceedings, including seizure and arrest, are handled by local or other investigative authorities.

VII ALTERNATE DISPUTE RESOLUTION

The technology industry has experienced significant growth in the past decade, resulting in the emergence of contractual disputes, as well as disputes involving assertions of common law rights and protection of intellectual property.

Technology industry agreements primarily revolve around obligations related to confidentiality; information sharing, exchange, storage and management; licensing; and payment and collection of royalties. While the agreements outline the obligations and their performance, resolving disputes often requires technical expertise and specialised knowledge. As a result, parties involved in commercial transactions have increasingly turned to alternate dispute resolution (ADR) mechanisms.

53 The Patents Act 1970, Section 115.

54 Sections 45 to 51 of the Indian Evidence Act 1872.

In India, there is no specialised tribunal, court or establishment dedicated to addressing these highly technical disputes. Given the intersection of science and technology in these cases, there is a need for adjudicating officers who can comprehend the interdisciplinary nature of the disputes. This is where ADR plays a crucial role in bridging the gap.

i Arbitration

The arbitrability of claims is typically assessed based on whether the dispute relates to rights *in rem* (rights over a thing) or rights *in personam* (rights against a person).⁵⁵ Disputes arising from contracts that also involve intellectual property rights have been subject to analysis. In commercial disputes where parties have agreed to refer the dispute to a private forum, the actions are *in personam*, with one party seeking specific relief against another defined party rather than the world at large.⁵⁶

The Supreme Court has clarified the position regarding the arbitrability of disputes and established a fourfold test. According to this test, the subject matter of the dispute is not arbitrable when the cause of action and subject matter:

- a* relate to actions *in rem* that do not pertain to subordinate rights *in personam* arising from rights *in rem*;
- b* affect third-party rights, necessitating centralised adjudication where mutual adjudication would be inappropriate or unenforceable;
- c* relate to inalienable sovereign and public interest functions of the state, rendering mutual adjudication unenforceable; or
- d* are expressly or implicitly non-arbitrable under mandatory statutes.⁵⁷

While these tests are not absolute, they complement each other. A holistic and pragmatic application of these tests assists in determining when a dispute or subject matter is not arbitrable under Indian law. Interestingly, the Delhi High Court, applying the fourfold test to a dispute involving overlapping issues of exclusive rights and validity of registration in intellectual property, considered the dispute arbitrable. The Court concluded that the dispute focused on the right to use, which arises from an agreement between the parties.⁵⁸

ii Pre-institution mediation

Disputes arising from contracts involving technology would be likely to fall within the scope of commercial disputes under the Commercial Courts Act 2015.⁵⁹ In 2018, the Commercial Courts Act was amended to introduce the concept of pre-institution mediation under Section 12A. This Section mandates that parties must exhaust the remedy of mediation before initiating a civil action, with the exception of cases where urgent relief is sought.

The amendment led to the promulgation of the Commercial Courts (Pre-Institution Mediation and Settlement Rules) 2018, which provide clarity on procedure and timelines. The plaintiff must file an application with the relevant authority to initiate mediation. Upon receiving the application, the authority issues a notice to the opposing party, inviting them to participate in mediation proceedings. A final notice is issued in the absence of a response.

55 *Booz-Allen & Hamilton Inc v. SBI Home Finance Ltd & Ors*, (2011) 5 SCC 532.

56 *Eros International Media Limited v. Telemax Links India Pvt Limited*, 2016 (6) Bom CR 321.

57 *Vidya Drolia and Ors v. Durga Trading Corp*, (2021) 2 SCC 1.

58 *Hero Electric v. Lectro E-Mobility*, 2021 SCC OnLine Del 1058.

59 Commercial Courts Act 2015, Section 2(c).

If the opposing party fails to appear or refuses to participate, the authority considers the mediation process to be a non-starter and prepares a report accordingly. If the opposing party agrees to participate, the mediation process commences. Pre-institution mediation for commercial suits must be completed within three months of the date of application, with a possible extension of two months subject to the parties' consent. One drawback of this procedure is that the opposing party can refuse to participate.

Additionally, the courts have interpreted the exception to Section 12A (cases where urgent relief is sought) to specifically cover cases of intellectual property, and in such cases interim relief has been identified to be extremely important.⁶⁰ Nonetheless, the tool of pre-institution mediation can significantly contribute to settling disputes at the initial stage rather than undergoing a lengthy trial process. There has been a notable trend recently of cases concerning protection of intellectual property being referred to post-suit registration mediation as well.⁶¹

iii Early neutral evaluation

Early neutral evaluation (ENE) is predominantly employed in litigation related to intellectual property. However, it also holds significance in resolving disputes involving the interplay of science and technology.

ENE shares similarities with mediation, with the crucial distinction being that, in mediation,⁶² the solution typically emerges from the parties themselves, whereas in ENE, the evaluator acts as a neutral person to assess the strengths and weaknesses of the parties. The ENE process is confidential and cannot be used against either party. It proves to be a cost-effective tool, especially in disputes related to licensing, patentability, copyright of software, and biotechnology.

iv Online dispute resolution

Online dispute resolution (ODR) may also have a positive impact in the realm of dispute resolution concerning domain names and domain registrars. Additionally, easy processes may also be implemented for reporting abuses concerning data breaches by intermediaries. Intermediaries may also resolve consumer disputes by implementing efficacious ODR tools.

VIII OUTLOOK AND CONCLUSIONS

In conclusion, India's current legal regime for technology law disputes is a commendable effort but requires further refinement to meet the demands of our rapidly evolving digital landscape. While the judiciary has made significant strides in understanding complex technological issues, there is room for improvement in certain areas.

Firstly, expedited resolution mechanisms need implementation to cope with the expeditious nature of technology-related cases. Secondly, the regulatory framework must be more attuned to emerging technologies such as artificial intelligence, blockchain and data privacy. By fostering clearer and more adaptable laws, India can foster innovation while safeguarding user rights.

60 *Bolt Technology OU v. Ujoy Technology (P) Ltd*, 2022 SCC OnLine Del 2639.

61 *Sunshine Teahouse (P) Ltd (Sunshine) v. MRTM Global (P) Ltd (MRTM)*, 2022 SCC OnLine Del 2831.

62 *Bawa Masala Co v. Bawa Masala Co Pvt Ltd And Anr*, AIR 2007 Delhi 284.

To address these challenges, ADR mechanisms such as mediation and arbitration are likely to play a crucial role in settling technology-related disputes. These mechanisms not only save judicial resources but also reduce dependency on courts, prompting the government to focus on developing institutions and passing legislation to streamline the process.

Furthermore, with the proposed revamp of laws through the Digital India Bill, laws concerning data privacy and cybersecurity, consolidation of information technology laws, and intermediary guidelines are expected to be a key focus. The government's openness to industry dialogue indicates the importance of addressing these issues comprehensively. Additionally, there may be an upswing in laws pertaining to digital lending and grievance redressal, reflecting the need for regulatory frameworks to keep pace with evolving technology.

In conclusion, India's legal regime for technology law disputes is poised for further developments. India's legal system has made commendable progress in handling technology law disputes; however, continuous updates and adaptations are essential to ensure its effectiveness in the dynamic digital era. Only through improvements of this kind can we bolster investor confidence, stimulate technological innovation and uphold justice for all stakeholders involved.

