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From Rights in Rem to Rights in Personam: Remedies Against Infringement of IP Rights Under the Law of Torts and Arbitration

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Abstract

This paper examines the legal protection of intellectual property (IP) and the evolving interface between *rights in rem* and *rights in personam* within tort law and arbitration. IP Rights safeguard intangible assets such as patents, trademarks and copyrights, enabling creators to seek redress for infringement. The study outlines how IP protection has expanded from narrow statutory frameworks to encompass broader common law principles. It highlights challenges arising from the overlap of tort, contract, and arbitration regimes, and analyses available civil remedies under tort law (e.g. injunctions, damages, search orders and accounts of profits) that reflect the *erga omnes* character of IP rights. The paper also explores the growing role of arbitration in resolving IP disputes, particularly concerning licensing and commercial exploitation and discusses issues of arbitrability through landmark cases. Simultaneously, an international comparison of arbitration frameworks such as WIPO's system and laws in the US, UK and Switzerland, provides a global perspective. Concluding, the study calls for clearer Indian legislative and judicial guidance to integrate IP enforcement with contemporary dispute resolution while preserving the public nature of IP rights.

Keywords: intellectual property (IP), Torts law, Arbitration, the Jan Vishwas Act ('JV Act")

Introduction

IP such as patents, trademarks, copyrights, and designs is essential contributor to commercial value. These play an important role in forming the base of many innovative companies like pharmaceuticals, entertainment, publishing, and Information technology industries within

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today's economy.[2] Historically, IP was seen as a state's ownership, a legal monopoly granted by the state that functioned as a *right in rem* or a right against the world at large.[3] Now, the focus of IP enforcement moved toward the recognition of *rights in personam* or interests protected only against particular parties, which has frequently resolved through the law of torts and private arbitration. However, a conceptual change has been required due to the growth of complex business transactions, and the prevalence of Multinational Licensing Agreements and Cross-Border Technology Transfer.[4]

The traditional legislative frameworks in India embodied in the Copyright Act, 1957,[5] the Patents Act, 1970,[6] and the Trade Marks Act, 1999,[7] offer codified remedies against infringement but they do not comprehensively outline the scope of enforcement mechanisms. An extensive array of common law tort doctrines continues to mould and reinforce statutory enforcement particularly where legislative remedies are silent, insufficient or where similar tort doctrines previously addressed unlawful intervention with intangible property.

This second part of the paper examines the complex transition from the rigid concept of *rights in rem* to the more flexible and party-centric framework of *rights in personam*. Additionally, the third part investigates the use of statutory tort remedies for the enforcement of IP infringements and the analogy between the rights *in rem* and *personam* model, which affects the arbitrability of IP disputes in India and other jurisdictions. The fourth part deals with the most recent amendments to the IP system in terms of how the Jan Vishwas (Amendment of Provisions) Act, 2023[8] has changed the methods of enforcement of IP in India.

This final part of the paper will explore the evolving landscape of IP remedies because of advancements in technology and commerce and how all parties can address these issues to create a more efficient and effective means of supporting and facilitating innovation and creativity for creators and businesses alike and protecting and preserving the underlying integrity of the existing IP System.

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[2] Shruti Khanijow and Sugandha Nayak, *In Court or No Court: Efficacy of Arbitration in IP Dispute Resolution,* II NLIU LR 141, 141-142 (2011).
[3] Nidhisha Garg, *Arguing for the Arbitrability of IPR Disputes,* 10 IJIPL 33, 39-40 (2019).
[4] Swapnil Mukherjee, *The Impact of Arbitration on Resolving IPR Licensing and Contract Disputes in India: A Critical Legal Analysis*, III IP BULLETIN 52, 53-54 (2022).
[5] The Copyright Act, 1957, No. 14 of 1957 (India).
[6] The Patents Act, No. 39 of 1970 (India).
[7] The Trade Marks Act, No. 47 of 1999 (India).
[8] Jan Vishwas (Amendment of Provisions) Act, No. 18 of 2023 (India).

Doctrinal Framework of Rights in Rem and in Personam

The distinction between actions *in rem* and those *in personam* is highly contentious because there are many ambiguities in the classification for the purpose of determining arbitrability. The historical roots of this distinction may be easily traced back to Roman law, which separated property (*in rem*) from personal rights (*in personam*). This is important to consider when examining and resolving disputes between intellectual property owners and those who engage in infringement of those rights, as it gives further perspective and definition to these rights.[9] IP has characteristics of both rights *in rem* and rights *in personam*.

For instance, IP laws such as patents, trademarks and copyrights are considered to be *rights in rem*_because they provide a legal right to prevent people from using or copying without the creator's permission. Even though it is intangible, the registration of a trademark or patent creates a legally binding exclusivity that restricts the public from unauthorised use. The violation of such right is an infringement against the ownership interest itself and is not limited to a specific defendant.

This universality results in disputes concerning public monopolies, rectification of registration and challenges to the validity of IP rights being reserved for public courts and considered inappropriate for private as highlighted in contemporary legal commentary. On the contrary, *rights in personam* are restricted between specific parties and usually result from contracts, licenses or clearly apparent tortious behaviour. It arises from a violation of contract.[10] For example, A licensing contract imposes obligations that are enforceable against the licensee but not against the general public by granting authorisation to utilise an intellectual property right.

The enforcement against a specific infringement relies on personal accountability rather than the status of the IP right itself, although the fundamental right is still *in rem*. This distinction serves as the legal basis for arbitrability in IP disputes, as arbitration is intrinsically consensual and restricted to addressing inter partes rights. Historically, common law torts played an important role in protecting intangible interests prior to the development of modern statutory IP laws. In instances where statutory protection is insufficient, weak or where a claim of

[9] 12, P. J. Fitzgerald (ed.), SALMOND ON JURISPRUDENCE, 237 (Universal Law Publishing Co. Pvt. Ltd. 2016).
[10] Badrinath Srinivasan, *Arbitrability of Intellectual Property Disputes in India : A Critique,* VI NLS Bus L Rev 30, 34-35 (2020).

personal injury exists, tort law continues to hold conceptual significance for determining available remedies for acts of infringement against IP.

i. Defamation

Defamation refers to an injury to the reputation of a person. It is one of the torts that explains how intellectual property addresses issues and rights that differ from private rights. The court in the case law ***Bindrim v. Mitchell,***[11] examined whether a literary work protected under the Copyright Act, 1957 can constitute libel due to a fictitious portrayal of actual persons in the work. It established the "reasonable reader" test despite of the work's fictional nature and held that liability might occur if a person with knowledge of the facts surrounding it could construe the fictional depiction as belonging to the plaintiff. Instead of interfering with copyright ownership, the remedy was *in personam* which as intended to restore damages to one's professional reputation. This case shows that although copyright is a right *in rem*, its use may be limited in situations when it violates personal rights protected under tort law.

ii. Invasion of Privacy

Similar restrictions on the use of IP rights are highlighted by the tort of invasion of privacy. In ***Dresbach v. Doubleday & Co.,***[12] the publication of a narrative work: *Life for Death* was challenged for exposing personal information that were no longer relevant to the public concern. The court in *Dresbach* noted that this tort is divided into four parts: unjustified intrusion upon privacy, publicity provided to private life, misappropriation of name or identity and presenting people in a false light. It also recognised that the privacy tort provides protection for emotional and public interests as opposed to defamation. The copyright may allow the publication of content but it may restrict uses of the published work that violate a person's legitimate expectations of privacy. Both privacy and use of a published work are personal concepts that require maintaining a balance between one's right to free expression and personal autonomy.[13]

[11] *Bindrim v. Mitchell*, 444 U.S. 984 (1979).
[12] *Dresbach v. Doubleday & Co,* 518 F. Supp. 1285 (1981).
[13] Anupam Singh, *Intellectual Property rights an Overview, and influence of Torts on it*, LAWFOYER (Jan 10, 2026, 11:00 A.M.), https://lawfoyer.in/intellectual-property-rights/.

iii. Passing Off

The transition from *rem* to *personam* is perhaps most historically established in the common law tort of passing off. It was first explicitly defined in ***Perry v. Truefitt***[14]**,** where the court condemned dishonest behaviour that disguised the origin of products while rejecting the idea of a proprietary right over a trade name.[15]This ruling established the conventional trinity of goodwill, misrepresentation and damage in passing off.

It is an *in personam* action because it results from the specific misleading activities of one trader against another, regardless of any statutory approval. It is particularly arbitrable in cases where parties have consented to private dispute resolution, and it continues to play a vital role in countries like India for unregistered trademarks.

iv. Misappropriation

The protection of personal identity as a private interest was further expanded in ***Cohen v. Herbal Concepts Inc.***[16]In this case, the unauthorised commercial use of a photograph resulted in liability even in the absence of facial identification. The court emphasised that the law protects a person's identity rather than just a facial portrait. This tortious remedy safeguards personality and publicity rights distinct from copyright or trademark but increasingly relevant in merchandising and endorsement disputes. Such assertions support the philosophical idea that personal remedies may be justified since property may encompass the aspects of personality.

v. Joint Tortfeasors and Contributory Liability

Several parties are frequently involved in the enforcement of IP rights by utilising the concepts of joint tortfeasorship. The UK Supreme Court established the standard for determining joint liability in tort cases in ***Sea Shepherd UK v. Fish & Fish.*** [17]This principle of joint tortfeasorship refers to an infringement of IP where there exists joint liability for any infringement, critical in IP infringement involving corporations, directors, and facilitators.

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[14] *Perry v. Truefitt,* (1842) 49 E.R. 749.
[15] WENDY J. GORDON, INTELLECTUAL PROPERTY LAW , in Oxford Handbook of Legal Studies 617 (Peter Cane & Mark Tushnet ed., 2003, available at: https://scholarship.law.bu.edu/faculty_scholarship/1916.
[16] *Cohen v. Herbal Concepts Inc.,* (1948) 482 N.Y.S.2d 457.
[17] *Sea Shepherd UK v. Fish & Fish,* (2015) 2 WLR 694.

Individuals may still be held personally liable for knowing aiding or directing infringement, even while responsibility of corporations is controlled by attribution principles like the "directing mind" test outlined in ***Tesco Supermarkets Ltd v. Nattrass.***[18]The company will be held vicariously accountable if employees commit a civil wrong while acting in the course of their employment, the corporation will be vicarious liable. In some situations, a business may be held principally accountable for actions or omissions of senior management personnel that are attributed to the corporation.[19]These individuals are perceived as being part of the corporation's directing mind and will rather than acting on behalf of the company. These doctrines highlights that IP remedies often focus on behaviour (*personam*) instead of just safeguarding the private *res*.

In sum, IP rights are primarily rights *in rem* and their enforcement through tort law frequently takes the form of rights *in personam*. This duality is central to determining remedies, responsibility and arbitrability. Courts continue to strike a balance between private responsibilities and public monopolies, assuring that the use of exclusive rights does not unfairly violate personal, reputational or commercial interests. Therefore, arbitration finds validity in settling individual disputed resulting from the abuse of IP rights rather than determining the existence of such rights.

Remedies Against IP Infringement Under Tort Law

Previously, IP rights were codified in modern statutes and infringements were primarily regarded as harm done to intangible property under the general body of tort law. The definition of the term 'property' and its different characteristics were extensively discussed. The Supreme Court recognised patents and copyrights as *rights in* rem while classifying property into movable and immovable property and exemplifying their different aspects.

In the case of ***Common Cause v. Union of India,***[20] the Supreme Court (SC) discussed tortious responsibility and defined "tort" as a breach of a right in rem. This connection has been upheld by contemporary Indian courts which frequently interpret IP infringement as a type of property infringement that demands equitable remedies. The primary purposes of these remedies are to

[18] *Tesco Supermarkets Ltd. v. Nattrass*, (1971) UKHL 1.
[19] KANGS SOLICITORS, https://www.kangssolicitors.co.uk/news-insights/intellectual-property-infringement/ (last visited Jan. 8, 2026).
[20] *Common Cause v. Union of India*, 2018 (5) SCC 1.

compensate the IP owner for any losses that have occurred and to prevent further misuse of the IP. An individual can obtain relief from such IP infringements under tort law, statutory laws or under alternative dispute resolution such as arbitration. In India, these remedies consist of both statutory-based doctrines and common law doctrines, with a focus placed upon obtaining injunctions, monetary damages and ancillary remedies through trial courts or arbitral tribunals.

A critical component of tort-based remedies in IP is the "Fair Use" or "Fair Dealing" defence. This doctrine acknowledges that the exclusive monopoly granted to an intellectual property owner is not absolute and must give way to certain social and educational goals. According to tort law, damages are compensatory since copyright infringement is tortious in nature. The fair use argument in copyright law permits that unauthorised use of works for purposes such as criticism, news reporting, teaching and research. IP infringement is principally enforceable as a wrong under tort law that gives rise to remedies intended to prevent, discourage and compensate. The most often used remedies are civil ones which serve as the foundation for enforcement. However, courts have both legal and equitable authority to customise remedy based on the nature and severity of violation.

i. Injunctive Relief

Injunctions are the main remedy at the initial phase of litigation in order to prevent ongoing or impending infringement. An interlocutory injunction[21] can be granted ex parte or after notice which prohibits the violator from carrying out the wrongful conduct during the proceedings are pending. A permanent injunction may be granted following a substantive trial which requires the defendant to halt the unlawful conduct permanently. These orders prevent irreparable damage that cannot only be remedied by monetary compensation but protecting the rights *in rem* that intellectual property rights embody.[22]

The concept of injunctions is expanded by equitable remedies such as Mareva and Anton Piller orders. The Mareva injunction freezes the infringer's assets to prevent dissipation before judgment whereas the Anton Piller order permits the plaintiff to enter the defendant's property

[21] IPLEADERS, https://blog.ipleaders.in/civil-remedies-copyright-infringement/ (last visited Jan. 9, 2026).
[22] Louis Tambaro, *Stop! … In the Name of Injunctions: The Benefits of Seeking Temporary Restraints and Injunctive Relief in Intellectual Property Disputes and Measures for Litigation Avoidance,* OFFIT KURMAN (Jan. 9, 2026, 3:00 P.M.), available at: https://offit.gjassets.com/content/uploads/pdf/injunctive-relief-ip-disputes.pdf.

for search and seize infringing materials and evidence without prior notice to preserve evidence that could have been destroyed.[23]

ii. Damages and Account of Profits

A plaintiff can seek two forms of monetary relief (damages or an account of profits) for civil infringements. Actual damages are the amount of compensation paid to the rights holder for any legal losses, whereas the accounting of profits requires the infringer to give up any unlawful profits which the infringer was aware of at the time of infringement, made from the illegal use of the protected IP. In addition to damages and an accounting of profits, the courts have the authority to require the infringer to return or destroy any infringing items or materials and to reimburse the plaintiff for all reasonable attorney fees incurred in connection with the lawsuit. The plaintiff may request either or both forms of civil remedy, i.e., injunctions or monetary damages based on the circumstances such as whether they can show actual loss by producing evidence of the infringer's profit margin over time. Additionally, depending on the severity of the wilful infringement and the defendant's conduct, some cases may also result in an award of statutory or punitive damages.

iii. Passing Off

The tort of passing off at common law is a situation where the actions of one party have created an injury to the goodwill of the other party by presenting an incorrect representation of its products or services as those of the other. In the course of a passing off action, the court may grant injunctive relief or monetary damages to the prior user of the mark to prevent the continued use of misleading representations that will cause confusion and deception in the market. Even with the existence of legislation, the common law tort principles continue to fill in legislative gaps. It remains particularly relevant for unregistered IP rights such as trademarks, thereby reinforcing the importance of tort principles within the overall framework for IP enforcement.[24]

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[23] Kern Alexander, *The Mareva Injunction and Anton Piller Order: The Nuclear Weapons of English Commercial Litigation*, XI FJIL 488, 489-492 (1997).
[24] Peter Charleton and Sinead Reilly, *Passing Off: An Uncertain Remedy*, paper delivered at Fordham Intellectual Property Conference, Cambridge University, 5-7 (2015), available at: https://fordhamipinstitute.com/wp-content/uploads/2015/08/7B-4-Charleton-Peter-PDF.pdf.

iv. Criminal and Administrative Remedies

Copyright and trademarks are two examples of statutory frameworks that provide remedies for deliberate or commercial scale infringement. Such penalties are found in Section 63 of the Copyright Act[25] and Section 103 of the Trademark Act.[26] Unlike tort law, if a violation occurs, it may result in imprisonment and fines which represent the punitive intentions of the criminal justice system.[27] Civil law provides remedies for private wrongs.

Many legislative acts in the United States contain *fair use* provisions to allow a balance between the interests of the owner of an exclusive right and the public. The case of ***Harper & Row Publishers v. Nation Enterprises***[28] illustrates how the fair use doctrine serves as an equitable defence to balance the author's right to protect his or her work against society's interest in access to information. While U.S. cases are not binding on the courts of India, they provide significant insight into how equitable defences operate under statutory frameworks. The application of these doctrines is consistent with the principles of tort law because it limits the exclusive rights by the rights of others such as free speech and the right to develop innovative products and services.

Arbitrability of IP Disputes

Although there is still a lot of uncertainty surrounding alternative dispute resolution (ADR), arbitration has proven to be a popular method for resolving IP issues, particularly in commercial agreements between parties who expect to have disputes involving cross-border or specialised technical issues. It resolves through its ability to provide both parties with a voluntary and flexible way of resolving their differences. In short, it provides several advantages over litigation including the ability to maintain confidentiality, exercise autonomy with regard to procedure, offer flexibility with respect to the time and place of the hearing, provide for the use of technical experts and facilitate the international enforcement of IP disputes. Furthermore, both Section 17 of the Arbitration and Conciliation Act[29] and the international arbitration

[25] The Copyright Act, 1957 § 63 (India) (Act No. 14 of 1957, June 4, 1957).
[26] The Trade Marks Act, 1999 § 103 (India) (Act No. 47 of 1999).
[27] BISWAJIT SARKAR ADVOCATES- IP ATTORNEYS, https://www.biswajitsarkar.com/blog/remedies-for-copyright-infringement.html (last visited Jan. 12, 2016).
[28] *Harper & Row Publishers v. Nation Enterprises*, 471 U.S. 539 (1985).
[29] The Arbitration and Conciliation Act, 1996 § 17 (India) (Act No. 26 of 1996, Aug. 16, 1996)

frameworks like UNCITRAL Model Law,[30] empower arbitral tribunals with the same authority to grant interim measures as common law courts. For example, the authority to order a party to refrain from taking action that would disrupt the status quo, to preserve assets or to protect evidence from being destroyed or lost before the hearing.

Such interim relief is especially beneficial when there is a continuing infringement that poses a significant chance of irreparable harm before the final decision is made[31]. It is also possible to obtain *final* as well as *permanent relief* from arbitral tribunals, similar to court orders such as monetary compensation, declarations or enforcement of contractual obligations. However, if an arbitrator wishes to impose an interim or final order, he or she often must seek court assistance, thereby showing the relationship between judicial and arbitral relief. Furthermore, the parties may limit such interim and permanent reliefs from their respective tribunals by the terms of their respective agreements and by the restrictions of domestic arbitrability laws.

Disputes related to IP rights create unique difficulties for courts because they have implications for both private parties and the general public. Many IP rights in India are still governed by their traditional forms (*in rem*), which means they can be issued by judicial bodies and can only be enforced through national courts[32]. A comprehensive analysis of the laws concerning when an arbitral tribunal has the authority to exercise jurisdiction and when the case must be transferred to public courts is necessary since the arbitrability of IP disputes in India is still a contentious and developing area of Indian law.

The issue at the core of this debate is the conflicting relationship between the statutory IP rights of *in rem* nature and arbitration agreements of *in personam* nature. IP rights such as patents, trademarks and copyrights are statutory monopolies granted by the state with an *erga omnes* effect which is enforceable against the world at large. This public aspect has traditionally anchored such rights within court jurisdiction[33]. On the other hand, Arbitration is dependent on party autonomy that binds only the parties to the arbitration agreement and has no direct impact on the rights of third parties. Indian courts have struggled with these contours, evolving a

[30] UNCITRAL Model Law on International Commercial Arbitration art. 17 (1985) (as amended 2006), https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09955_e_ebook.pdf (last visited Jan.11, 2026)
[31] Shruti Khanijow and Sugandha Nayak, *In Court or No Court: Efficacy of Arbitration in IP Dispute Resolution*, 2 NLIU LR 141, 153 (2011).
[32] Nidhisha, supranote 2, at 2..
[33] Job Michael Mathew, *Arbitrability of Intellectual Property Disputes in India*, 2 JIPL 1, 6 (2017).

doctrine that aims to strike a compromise between the protection of public legal interests and effective dispute resolution.

Statutory frameworks for arbitrability in Indian law

In India, there is no straightforward answer to the issue of arbitrability of IP disputes from the applicable statutory law or the juridical decisions. A look into the relevant provisions of the major IP legislations mainly Section 104 of the Patents Act, 1970[34], Section 134 of the Trademarks Act, 1999[35] and Section 55 of the Indian Copyright Act, 1957 read with Section 62[36] which suggest that IP was traditionally considered and treated only as a right in rem. Therefore, the aforesaid provisions do not provide a clear answer to the conundrum of the arbitrability of IP disputes[37].

Likewise, the Arbitration and Conciliation Act, 1996[38], does not expressly define what disputes are non-arbitrable. Consequently, Indian jurisprudence has developed principles of arbitrability through judicial interpretation to identify whether a particular subject matter falls within the competence of an arbitral tribunal or must be adjudicated by courts. Under this framework, *rights in rem* are generally considered unsuitable for private arbitration whereas **rights in personam** which arises from contractual or personal obligations, fall within the ambit of arbitrable subject matter. **Section 34(2)(b)** of the Arbitration Act[39] permits setting aside an award if the subject matter is not capable of settlement by arbitration, a provision that effectively empowers courts to police the boundaries of arbitral jurisdiction.

In the case of ***Booz Allen & Hamilton Inc. v. SBI Home Finance Ltd. (2011)[40],***the SC ruled that only the parties to a contractual dispute have the ability to arbitrate their disputes, and the courts must hear all disputes based on a third-party claim or right. It also clarified that subordinate rights in personam arising from rights in rem have always been considered to be arbitrable. In addition to defining arbitrability by the legal concept of personal against public

[34] The Patents Act, 1970 § 104 (India) (Act No. 39 of 1970).
[35] The Trade Marks Act, 1999 § 134 (India) (Act No. 47 of 1999).
[36] The Copyright Act, 1957 § 55 and 62 (India) (Act No. 14 of 1957, June 4, 1957).
[37] Aakash Laad and Mayank Gaurav, *Arbitrating IPR and Competition Law Disputes in India: Issues, Scope and Challenges*, 6 IJLPP 26, 29-30 (2019).
[38] The Arbitration and Conciliation Act, 1996, No. 26 of 1996, Aug. 22, 1996 (India).
[39] *Id,*. § 34(2)(b).
[40] *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd*., (2011) 5 SCC 532, para 28.

right, this case set the basis for many IP cases in the future as to their eligibility for arbitration based on the contract under which the IP rights were created.

i. The fourfold test of Vidya Drolia[41]

Soon after Booz Allen a similar approach was adopted by the Supreme Court of India in ***Vidya Drolia v. Durga Trading Corporation***[42] which stated that to properly determine whether a dispute is capable of being arbitrated, a **fourfold test** must be satisfied to establish that there is no issue for arbitration if:

1. The first test applies when a dispute arises or relates to something that would normally require an in rem action, and therefore does not directly involve a personal relationship, unless it pertains to an individual right that arises out of an *in rem* relationship.
2. The second test is where a third party would be impacted by the Court's decision or has a common legal interest in the subject matter of the dispute, thus necessitating a consolidated hearing before one court.
3. The third test is where the nature of the dispute involves the exercise of the state's inalienable sovereign powers or public interest.
4. The fourth test is where the statute expressly or impliedly prohibits submission of a matter to arbitration.

The significance of the test is that it demonstrates how the analytic framework has nuanced the distinction previously made between actions considered *in rem* and those considered *in personam*. It determines whether a matter is arbitrable more dependent on the ultimate effect of the award than on the statutory definition of the type of right involved. In summary, though a certain right categorised as of an *in personam* nature, it does not follow that such an action is inarbitrable.[43] Rather, the analysis must take into consideration whether an arbitral award would be binding or in some other way affect anyone who is not an actual party to the arbitration. Thus, it involves the furtherance of the public interest or statutory requirement or injure any of the state or public interests.

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[41] Pallavi Rao & Robin Grover, *Arbitrability of IP Disputes – A Step Forward?*, CYRIL AMARCHAND MANGALDAS (Jan. 11, 2026, 7:00 P.M.), https://disputeresolution.cyrilamarchandblogs.com/2023/08/arbitrability-of-ip-disputes-a-step-forward/#.
[42] *Vidya Drolia v. Durga Trading Corporation,* (2021) 2 SCC 1.
[43] *Id* at 11.

The fact that the public benefits from the use of IP rights as well as the state's conferral of them creates issues of uncertainty with respect to these rights under his/her test. IPR include the key principles regarding the granting, revocation, validity and ownership of it as these rights have implications for every party involved. Thus, the core principles related to the determination of these rights need to remain within the power of the common law courts. Conversely, commercial or contractual disputes between consenting parties are more suitable for commercial arbitration. This approach rejects strict limitations based upon arbitrary classifications, emphasising functional arbitrability over mechanical categorisation.

Judicial differences on IP arbitrability

The Supreme Court has not made a definitive statement regarding disputes concerning intellectual property rights. Although it has ruled on the types of IPR that could be arbitrable by categorising them into rights *in personam* and *in rem*, there is still inconsistency in how different courts will interpret this area of law when applying it to IP disputes. In fact, the Supreme Court has identified the principles of arbitrability but each of the courts below it has developed its own interpretation of the same principles.[44]

i. Restrictive Approach of Delhi High Court (HC)

In the case of ***Mundipharma AG v. Wockhardt Ltd***[45], the Delhi HC took a restrictive approach on interpreting statutory remedies such as injunctions and damages, arising from copyright infringement as non-arbitrable. The reasoning was that because Section 62 of the Copyright Act provides filing of suit and that suits must not be filed in any court lower than the jurisdiction of the District Court, which indicates it as a public interest matter and ousts arbitration. Thus, the court found that statutory entitlements to remedies are not arbitrable based on their public nature and the enforcement of intellectual property rights is also to be treated as a public interest matter. Similar conclusions were reached in different rulings holding copyright and trademark rights as rights *in rem* and non-arbitrable.

[44] Sakshi Shairwal, *Can issues of Intellectual Property Rights be addressed through arbitration?,* SHANKAR LAW ASSOCIATES (Jan. 11, 2026, 1:00 P.M.), https://www.lexology.com/library/detail.aspx?g=f2e7d3c3-812d-4025-bfff-3be6ea2b429d.
[45] *Mundipharma AG v. Wockhardt Ltd*, ILR (1991) 1 Del 606.

ii. Liberal Approach of Bombay High Court

On the other hand, Justice G.S. Patel of the Bombay HC rejected the reasoning of the Mundipharma case in the ruling of ***Eros International Media Ltd. v. Telemax Links India Pvt. Ltd.***[46]The court emphasisedthat a copyright infringement claim between private parties constitutes an action in personam and its effect is *inter partes,* therefore arbitrable. It reasoned that statutory provisions delineating court jurisdiction do not expunge arbitration, and that **commercial disputes involving specific reliefs against defined parties** do not affect rights in rem. The Court also held that arbitrators possess the power to grant relief comparable to courts, including injunctions and damages, so long as the relief is strictly inter partes and does not bind third parties.

In ***Indian Performing Right Society Ltd.(IPRS) v. Entertainment Network (India) Ltd.***[47]**,** the Bombay HC set aside an arbitral award because it granted a relief that effectively declared the licensor (IPRS) had no entitlement to the works it had licensed. The court ruled that when a decision affects the rights of IPRS against other entities and also impacts all of society at large; it crosses over into the realm of a judgment *in rem,* which is an order that cannot be granted by an arbitrator because it affects public interest.

This reasoning is consistent with the concept in the case of Vidya Drolia of functional consequences, whereby an award rendered under arbitration will not have any effect on the legal status of a public right to an IP unless it creates only personal rights and obligations[48]. This approach benefits party autonomy and provides commercial certainty in relation to licensing disputes, assignments and breaches of contract terms.

iii. Madras HC

In the recent case of ***Lifestyle Equities CV v. QD Seatoman Designs Private Limited***[49], the bench also referenced the judgments from both the Delhi and Bombay HC and reached the same conclusion that it could refer all of the disputes arising from the parties' arbitration

[46] *Eros International Media Ltd. v. Telemax Links India Pvt. Ltd.,* 20216 6 Bom CR 321.
[47] *Indian Performing Right Society Ltd.(IPRS) v. Entertainment Network (India) Ltd*., 2016 SCC OnLine Bom 5893.
[48] supra note 23, at 11.
[49] *Lifestyle Equities CV v. QD Seatoman Designs Private Limited.*

agreement to arbitration but the question as to whether these disputes were arbitrable should remain subject to the jurisdiction of the arbitral tribunal that is to be constituted.

iv. Mixed Outcomes

In addition to the various decisions discussing the challenges associated with distinguishing between contractual disputes that are subject to arbitration and non-arbitrable core rights. The rulings are clearly reaffirming the need to protect people's rights against a total loss of control over their rights due to the award of an arbitration. These cases underscore that the relief claimed often determines arbitrability rather than the nominal subject matter. Where an award directly affects erga omnes titles, courts will intervene to uphold statutory adjudication.

It is clear from the study of the aforementioned cases that there cannot be a general prohibition against the arbitrability of IPR issues and whether IPR disputes are arbitrable is still fluctuating and adjustable[50]; it will rely on the facts of each individual case. The guarantee of "**subject matter secrecy**" among the parties is the main selling factor for arbitration in IP disputes. However, in a nation like India, it can be challenging to strike a balance between the parties' interests in retaining secrecy and the "interests of the public", which prevents the arbitration of conflicts involving real property rights or the interests of third parties. Arbitration is increasingly accepted for resolving **contractual IP disputes** such as license interpretations, royalty disagreements, and breach of exclusivity, where the rights and obligations at issue are essentially private and confined to the pacta sunt servanda principle.

However, disputes that require **judicial determination of statutory rights**, such as validity contests or challenges to a registered IP's legal existence are viewed as belonging to the public sphere. In particular, the fact that one party's registered right could be invalidated or revoked through a private arbitration award has severe implications for other persons with those rights and the integrity of the public at large. This type of adjudication by arbitrators would completely disregard the legislated purpose of the law and create an unnecessary blurring of the line between the concepts of private law and public dispute resolution systems. Under Section 89 of the Code of Civil Procedure of 1908[51], a court may allow the methods of

[50] Chinmoy Pradip Sharma, *Resolution of Disputes involving IPR through Arbitration in India – An Analysis of the Legal Position,* BAR AND BENCH (Jan. 12, 10:00 P.M.), https://www.barandbench.com/columns/resolution-of-disputes-involving-ipr-through-arbitration-in-india.
[51] Code of Civil Procedure, 1908 § 89, Act No. 5 of 1908 (India).

arbitration to settle disputes between parties outside the courts only in appropriate circumstances.

Comparative Perspectives on Arbitrability of IP Disputes

The globalisation of the way in which IP is dealt with through arbitration has been influenced by developments in international trade and commerce which have led to an increased acceptance and recognition of arbitration as a method of resolving many complicated and complex IP-related disputes.[52] Even though the global community has reached a point at which it is largely accepted that arbitration is a viable forum to resolve complicated IP disputes, there are still many differences between the various jurisdictions concerning how far the scope of arbitrability of the rights of the parties to an IP-related matter will be extended. Among the advantages of using arbitration to achieve resolution, particularly with complex, international disputes with regard to IP matters are efficiency, confidentiality and flexibility. Although all of these features are important, particularly in the resolution of complicated, highly technical and international disputes relating to IP, there are still large variances in the level of acceptance of the use of arbitration in the subsequent validity, infringement, and ownership and enforceability of the IP rights involved. The comparative landscape reveals several horizontal and vertical levels of legal approaches to arbitration, which exist with respect to varying degrees of permissibility and of restrictiveness of the use of arbitration, that represent differing policy approaches to balancing the interests of the parties with respect to the public's enforcement of the parties' rights.[53]

Foundations of International IP Arbitrability

Arbitration is widely accepted as a method of resolving disputes in the global IP arena due to its unique characteristics, including speed, confidentiality, expert decision-makers and increased enforceability for both technical and commercial sensitive disputes[54]. The acceptance of arbitration as a valid mechanism to resolve contract agreements, technology transfer

[52] Thomas Legler, *Arbitration of Intellectual Property Disputes*, 2 *ASA Bull.* 291 (2019)(Legler).
[53] ACERIS LAW LLC**,** *International Arbitration and Intellectual Property (IP) Disputes,* https://www.acerislaw.com/international-arbitration-and-intellectual-property-ip-disputes/#_ftnref24 (last visited Jan. 13, 2026).
[54]*Id.* at 10.

agreements or exploitation of IP rights has been supported by many international arbitration centres and national legal systems. The World Intellectual Property Organization (WIPO) has established the WIPO Arbitration and Mediation Center[55] as a leading authority advocating for arbitrability for IP disputes where parties are free to reach an agreement on resolution. The parties to the arbitration might use this discretionary power of choice to initiate proceedings that are appropriate for the technical aspects of IP disputes, appoint experts as arbitrators and provide legally binding awards that are enforceable without the public interest associated with court proceedings.

While there is a growing trend towards using arbitration as a method to resolve IP disputes, many jurisdictions have differing views as to the arbitrability of various IP disputes. Many countries permit the arbitration of almost all IP disputes involving even public issues of validity, whereas others apply some sort of limitation to the arbitration of contractual and inter partes disputes only. The differences between these various legal systems reflect concerns about preserving sovereign powers, maintaining public registries and protecting third party interests in IP.

i. United States

The statutory process concerning patent validity and patent infringement in the United States is very clear as described in 35 U.S.C. §294.[56] The result of an arbitration conducted under this section is "final and binding as between the parties," although it will not be enforced until such time as a notice of award has been recorded with the U.S. Patent and Trademark Office (USPTO). There is no restriction on the types of agreements between the parties regarding the arbitration of patent validity or patent infringement claims.[57] The U.S. model strikes a balance between party autonomy and public policy by allowing for the reporting of arbitration results to the USPTO. It also provides public access to arbitration results and allows private arbitration as part of U.S. intellectual property system. This system removes the potential for hidden awards or agreements that would mislead innocent third parties regarding the rights of patent holders. Furthermore, despite the mandatory nature of arbitration decisions as between the

[55] WIPO Arbitration and Mediation Center, Background, World Intellectual Property Organization, Geneva (last visited Jan. 15, 2026), https://www.wipo.int/amc/en/center/background.html.
[56] 35 U.S.C. § 294 (2018).
[57] GAR, *The Guide to IP Arbitration* 29 (John V.H. Pierce & Pierre-Yves Gunter eds., Law Business Research Ltd. 2021).

parties, the scope of the arbitration agreement will govern only as it relates to each individual patent. Therefore, those decisions will have no direct effect upon the broader legal status of the patents involved.

ii. Hong Kong and Singapore

Legislation has taken a step to eliminate uncertainty in the jurisdictions of Hong Kong and Singapore. In Hong Kong, for example, the Arbitration (Amendment) Ordinance[58] clearly states that all intellectual property disputes between parties can be arbitrated including issues related to enforceability, validity, infringement and ownership. The amendments further clarify that the ability to arbitrate remains even when prohibited by statute and thus establishes that the ability to arbitrate will never violate public policy. As a result of the amendments, uncertainty is removed surrounding the arbitrability of IP disputes and also confirms the ability to arbitrate in IP disputes when the awards are binding inter partes and cannot bind third parties or affect public registries.

Similarly, in Singapore, the Intellectual Property (Dispute Resolution) Act 2019[59] confirms that all types of IP disputes (i.e., ownership, validity or infringement) are arbitrable, thereby establishing Singapore as a premier choice of seat for IP arbitration.[60]

This model shows a conscious decision to accept arbitration as a viable method to resolve IP disputes even if the dispute has typically been handled by public courts. The arbitral awards are still considered to be only *inter partes*; they are not automatically enforceable and do not change the official record of title of the property, but require judicial enforcement to affect third parties or change any part of the public record of the property. Thus, there is a balance between knowing that the decisions of an arbitrator should be predictable but also having an efficient means to resolve matters privately. It has resulted in making Hong Kong and Singapore attractive locations to host international IP Arbitration.

[58] Arbitration (Amendment) Ordinance 2017, No. 5 of 2017 (H.K.).
[59] Singapore Intellectual Property (Dispute Resolution) Act 2019, § 52B.
[60] *Id.,* § 52A.

iii. Switzerland:

The Swiss legal system has adopted one of the most liberal policies in terms of global competition laws.[61] Under Article 177 of the Private International Law Act (PILA),[62] the Swiss legal framework provides for arbitration of disputes concerning "property" or "economic interests," which Swiss courts have interpreted as being applicable to IP-related issues without limitation under prevailing statute. Accordingly, patent validity and infringements are both examples of substantive law that can be determined through arbitration, where the jurisdiction is typically associated with the courts.

Following arbitrators declaring IP rights enforceable by Swiss courts, the Swiss Federal Institute of Intellectual Property (IFIP) may then recognise arbitral awards as enforceable for purposes of amending the patent register.[63] In this manner, arbitrators possess the capability of rendering awards that have an impact *erga omnes* just as decisions are rendered by national courts. This is a feature unique to Switzerland among the world's jurisdictions, representing an expansion of the role of private arbitration to determine legal issues affecting the public's interest and to influence national public registries.

This model illustrates and embodies Switzerland's strong commitment to the principle of party autonomy and commercial certainty in international transactions and provides a mechanism for integrating the results of arbitration into a nation's IP legislation by means of requiring certification of enforcement.

Cautious or restrictive approaches

Civil law systems tend to be more cautious or take a hybrid approach when considering arbitration for IP disputes. In Germany, while arbitration of IP disputes is permissible based on contract disputes only, patent infringement and patent validity disputes are governed by courts that have specialisation in patent law. In addition to this, Germany has separated its patent litigation process into two distinct stages; litigation on validity and infringement are handled separately. However, courts have begun to show more willingness to allow for arbitration of

[61] David Rosenthal, '*Chapter 5: IP & IT Arbitration in Switzerland'*, in Manuel Arroyo (ed.) at 958 (2018).
[62] Federal Act on Private International Law (PILA) Dec. 18, 1987, as amended, art. 177 (Switz.).
[63] *Id. p.36.*

certain IP causes of action with inter partes effect while core issues of public law continue to be largely within the jurisdiction of courts.[64]

France historically denied broad arbitration of IP disputes, reflecting concerns about preserving public adjudication of core rights.[65] However, subsequent legislative amendments expressly permit arbitration for IP disputes, albeit often maintaining that awards do not have public res judicata effect.

Other civil law jurisdictions vary: Belgium and Switzerland have embraced broad arbitrability, while countries like Spain and Japan (absent express statutes) leave determination to evolving case law, and South Africa **prohibits arbitration of certain IP disputes,** particularly patent disputes.[66]

Judicially evolving regimes

In common law systems, even where arbitration laws do not expressly address IP, courts have often interpreted arbitration agreements broadly to encompass IP disputes: **United Kingdom (UK)**, for example, recognise arbitration of trademark and copyright disputes and have extended arbitrability to patent validity with **inter partes effects,**[67] based on judicial interpretation of general arbitration statutes and case law affirming freedom of contract and pro-arbitration policies.[68] In **Australia**, courts generally allow arbitration of patent disputes arising from contracts, reflecting a pragmatic alignment with commercial practice and a broad procedural view that contractual rights to arbitration should be upheld where not contrary to public policy.[69]

[64] Finnuala Meaden-Torbitt, *The Arbitrability of IP Disputes: A Concern of the Past?,* KLUWER ARBITRATION BLOG (Jan. 14, 2026, 10:00 P.M.), https://legalblogs.wolterskluwer.com/arbitration-blog/the-arbitrability-of-ip-disputes-a-concern-of-the-past/.
[65] Court of Appeal of Paris, *Ganz v. Societe Nationale es Chemins de Fer Tunisiens (SNCFT),* 29 March 1991, Rev. Arb 1991, p. 478.
[66] The Patents Act 57 of 1978, § 18(1) (S. Afr.).
[67] Supra note 30, at 10.
[68] supra note 32, at 11.
[69] supra note 8, at 3.

Enforcement and Dynamics of New York Convention[70]

Arbitral awards are recognised and enforced globally by virtue of the New York Convention, as the enforceability of arbitral awards may be a legal issue because the foreign jurisdiction's law must have been arbitrated about the award prior to enforcing its terms Article V(2)(a).[71]

The second paragraph outlines a global perspective on the divergence among judicial systems regarding both party autonomy, commercial efficiency and the protection of the public interest regarding IP rights. India's limited experience with arbitrability issues and related concerns presents a unique disadvantage relative to jurisdictions that provide a clear statutory framework (e.g., the U.S., Hong Kong and Switzerland). By assessing the rapid growth of arbitration globally, India may consider legislative clarification through legislative activity or judicial consolidation through the courts of appeal as a viable option. A balanced approach that recognises and maintains the public interest while promoting private arbitration could provide a more effective and predictable method of enforcing IP rights and increase global competitiveness regarding IP enforcement systems.

The Jan Vishwas (Amendment Of Provisions) Act, 2023[72] And IP Enforcement

India recently passed the Jan Vishwas (Amendment of Provisions) Act in August 2023. This represents a major change in how IP laws are enforced and therefore how the entire regulatory landscape of India operates. It will come into effect from August 1, 2024 and aims to support both "Ease of Doing Business" and "Ease of Living" by decriminalising many minor or merely procedural violations of different Central Acts including many of India's prime IP legislation: Patents Act 1970, Trade Marks Act 1999, Copyright Act 1957 and Geographical Indications of Goods (Registration and Protection) Act 1999. The act shows that there is an increasing emphasis on using proportionality in regulation, by promoting civil and administrative penalties rather than criminal penalties for minor or technical non-compliance.

[70] United Nations Commission on International Trade Law, '*Status: Convention on the Recognition and Enforcement of Foreign Arbitral Awards'*, https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards/status2 (accessed Jan. 2026).
[71] UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), pdf available at: https://newyorkconvention1958.org/pdf/guide/2016_Guide_on_the_NY_Convention.pdf#page=239.
[72] The Jan Vishwas (Amendment of Provisions) Act, 2023, No. 18 of 2023, (11 Aug. 2023) (India).

It eliminates imprisonment as a penalty for many IP violations and instead severely raises the monetary fines imposed on the violators. The act follows the logic that minor technical violations or errors should not cause the constant fear of severe punishment on entrepreneurs and start-ups. Many offences have been removed from the list of criminal acts under the Patents Act 1970. For example, Section 120, previously punishable by imprisonment or fine, will now only attract fines which range from ₹ 1 lakh to ₹ 10 lakhs per offence plus a daily penalty of ₹ 1,000 for each day the offence continues. Similar changes have been made to Section 123 which previously prohibited non-registered agents from representing themselves as agents for registered patent applicants, now increases the fine to ₹5 lakhs with no possibility of imprisonment. The penalties for failure to report information required by Section 127 have been increased by ₹ 100,000, reduced from ₹ 1 million reflecting a greater flexibility in dealing with procedural defaults.[73]

Many offences contained in the Trade Marks Act, 1999 have been decriminalised and replaced with monetary penalties based on 0.50% of turnover or ₹ 5 lakhs as fixed fines, e.g. sections 106, 108 and 109 of the Trade Marks Act are omitted. Similar provisions, i.e. section 68, criminalising false information to authorities have been removed from the Copyright Act, 1957 due to the inclusion of similar provisions in the new mainstream criminal law (Bhartiya Nyaya Sanhita, 2023).[74]

Amendments made by this act to how the process of enforcement is implemented through the JVP act include establishing an administrative internal adjudication process that enables an assigned adjudicator to carry out investigations and impose penalties. Administrative adjudication under Section 124A and 124B of the Patents Act and Section 112A and 112B of the Trademarks Act allows the Controller of Patents and Trademarks (i.e. the Intellectual Property Office) to administer its own enforcement rather than traditional criminal courts.[75]

The JV Act supports the principle of proportionality in the enforcement of criminal law, which means that it only enforces the most serious laws in the areas where actual criminal activity has occurred. By doing this, the act reduces the number of frivolous prosecutions and legal uncertainty that have historically created barriers to confidence in business. The administrative

[73] AARNA LAW, *Decriminalization of IP – Jan Vishwas Act, 2023*, https://www.aarnalaw.com/insights/decriminalization-of-ip-jan-vishwas-act-2023 (accessed Jan. 14, 2026).
[74] Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023 (India).
[75] Somya Singh, *Jan Vishwas Act, 2023 & IP Law: A Shift from Punishment to Proportion*, LIVE LAW (Jan. 14, 2026, 4:00 P.M.), https://www.livelaw.in/articles/jan-vishwas-act-2023-ip-law-a-shift-from-punishment-to-proportion-293447#_ftnref3.

adjudication processes that are included in the act are also likely to speed up the resolution process and help eliminate the backlogs in the courts, allowing them more time to focus on those cases that are substantive and serious violations or abuses of the law. There is little doubt that the mechanisms will produce faster outcomes than the courts have been able to provide; however, the effectiveness of the mechanisms is contingent upon the independence and competence of the members of the adjudication panel as well as the robustness of the appeals process.[76]

A major component of the opposition to the act's IP reforms is the loss of criminal penalties. Some academics argue that without the threat of a criminal sanction, individuals or companies who commit patent infringement, counterfeiting and other forms of deliberate piracy cannot be deterred merely by the threat of civil penalties. There are also concerns that large companies will view civil penalties as a mere cost of doing business when weighed against the potential risk of being prosecuted for a crime. This is particularly true in the realm of patent law. The removal of punitive measures for non-compliance related to patent working may increase the likelihood of parties strategically choosing not to disclose their patents or purposely hoarding patents in order to jeopardise transparency, as expressed in IP Reporting Norms.

The act takes the opportunity to decriminalise the majority of offences associated with IP. However, a very few of the most serious offences of piracy will remain criminal under both the Copyright and Trade Marks Acts in accordance with Article 61 of the TRIPS Agreement[77] as it mandates that countries impose criminal recourse and penalties for deliberate trademark and copyright piracy for the purpose of pursuing a commercial enterprise. This signifies that India is seeking to facilitate its efforts to provide an easy and efficient process of finding success in business activities while continuing to abide by its obligations under international treaties. Conversely, the doctrine that distinguishes between civil and criminal law could cause potential interpretational differences in borderline cases where the intent and scale of the infringement are not clear. Although there is nothing within the JV Act addressing the concept of arbitrability directly, it has a strong socialising component. Therefore, the potential for the JV Act to potentially alter the way rights holders and alleged infringers view their respective legal claims

[76] Pranav Aggarwal, *Decriminalisation of Intellectual Property Laws: The Effects and Defects of the Jan Vishwas Act, 2023*, SSC TIMES (Jan. 14, 2026, 6:00 P.M.), https://www.scconline.com/blog/post/2025/08/29/decriminalisation-of-intellectual-property-laws-the-effects-and-defects-of-the-jan-vishwas-act-2023/#fnref52.
[77] Agreement on Trade-Related Aspects of Intellectual Property Rights, Art. 61, (1994), available at: https://www.wto.org/english/res_e/publications_e/ai17_e/trips_art61_jur.pdf.

may lead to a greater willingness to pursue alternatives to conventional civil or criminal litigation such as ADR processes in accordance with section 89 of the Civil Procedure Code[78]. The change supports a direction for regulations in which businesses use voluntary approaches instead of adversarial criminal processes to settle disagreements. This direction follows the same path as the worldwide practices for businesses. The modifications indicate a growing awareness that strong systems protecting IP must be built not just on punishment, but also on an equitable enforcement structure that both fosters adherence to IP rights and protects them extensively.

Conclusion

The landscape of IP enforcement in India is evolving as demonstrated through the dichotomy between rights *in rem* and *in personam*, and the growing reliance on tort law and arbitration for providing effective remedies. Traditionally, IP rights (e.g., patents, trademarks, copyright) are classified as rights in rem; however, courts have provided injunctive relief, damages and equitable orders to aid in protecting these statutory monopolies. Statutory laws can be supplemented by tort claims such as passing off, when the claimant does not have a registration of their intellectual property right or when the statutory remedy is insufficient to protect their interests.

The growing popularity of arbitration indicates a growing awareness within the courts that a significant amount of IP disputes particularly those involving licensing, the commercial use of rights and breaches of contract are inherently personal and therefore should be decided through mutually agreed upon means. The various tests established by the SC in Booz Allen and Vidya Drolia illustrate that the determination of whether any dispute may be resolved by arbitration will depend on whether the outcome of such arbitration will only impact the parties to the dispute or whether it will have broader, *erga omnes* implications. The comparative examination indicates that countries like the USA, HK, Singapore and Switzerland have established broad arbitrable rights with adequate protections while other jurisdictions maintain a more restrictive approach.

The Jan Vishwas (Amendment of Provisions) Act 2023 revamps enforcement policies by decriminalising certain minor procedural offences and replacing them with fines and a

[78] *Id.* at 15.

streamlined form of administrative adjudication. While the reduced risk of criminal prosecution of an individual for a minor offence assimilates India into global elements of IP enforcement which favour proportional penalties for infractions and easy compliance, it may also inadvertently enhance the suitability of civil and consensual methods for resolving disputes. However, there still exists some doubt regarding whether the absence of prosecution on minor offences may actually lessen the severity of the deterrent effect of prosecution on an infringer and whether administrative adjudicators are able to consistently provide similar enforcement results.

To enforce effectively the dual nature of IP rights, it is necessary to develop a unique method of enforcement that acknowledges the public or statutory aspect of these rights while permitting for the resolution of private contractually created disputes. There is an urgent requirement for improved clarity regarding the relationship between criminal, civil, and administrative enforcement through both legislation and court decisions. The development of clear guidelines concerning the conduct of administrative and judicial authorities in terms of arbitrability and the eventual effectiveness of administrative adjudication will help to eliminate uncertainty. Overall, the evolution of this framework indicates that Indian IP enforcement is evolving towards a comprehensive approach that strikes a proper balance between the interests of public law and private dispute resolution, thereby increasing the predictability and sustainability of India's IP framework.