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The Advent of Intellectual Property Rights in India

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ABSTRACT

Intellectual property rights assist in preserving the original work of the creator, like; song compositions, original writings, sculpture, art, films, etc. In the dynamic as well as developing economy of India it is vital to protect the rights of gifted imaginative minds and their innovations. Overall development of the market can only be expected if the hard work of the inventor gets legal protection. The sellers and the buyers must have a plethora of options to choose from, in case the available options lack quality and uniqueness, the chances of the availability of a good quality product would become even more difficult.

The advent of liberalization demanded the protection of intellectual property rights not only in India but also internationally. It was a challenging task as the legal protection of the production and distribution of the exclusive products had to now be regulated globally. To guarantee this the Government of India made added efforts to seek recognition of the Intellectual Property laws of our country on an international level. India has showcased dedication and commitment toward the World Trade Organisation and has put forward India's bearing and outlook on Intellectual Property Rights under the Trade-Related Intellectual Property Rights Agreement (TRIPS). The replacement of the Trade and Merchandise Marks Act, 1958 with the upgraded Trade Marks Act, 1999 is proof enough of the kind of tenacity India has shown by adhering to the commitments made to the TRIPS agreement.

This paper attempts to analyse the interpretations made by courts during various situations and proposes modifications to strengthen the laws in light of changing circumstances, with a particular focus on the in-depth meaning of Intellectual Property Rights and a clear distinction between the kinds of Intellectual property rights namely; Patents, Copyrights, Trade Secrets and Trademarks.

Keywords: *Intellectual, Property, trade, copyright, trademark, IPR & TRIPS.*

I. INTRODUCTION

The usage of Intellectual Property goes way back in time as it was initiated when the Roman brick-makers used stamps on the bricks that they produced for identification purposes. In the

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ancient Greek city of Sybaris, the leaders agreed on granting a monopoly to a creator for a special dish that he used to prepare. This monopoly lasted for one year. In the current scenario, multiple cross-border transactions are taking place. To sell their goods and services at multiple locations many companies are expanding their businesses in several countries. This major turn has developed the protection of Intellectual property rights in India, various judicial, statutory as well as administrative frameworks safeguard the Intellectual property rights (IPRs) in India. India has adhered to the obligations stated under the TRIPS agreement. It has taken this step by updating the obsolete laws and also by adopting and enacting significant ones. Certain international trademarks were not even registered in India but were still awarded protection by the Indian courts. Software and computer databases were given protection under the copyright laws in India due to which many software companies were able to get rid of piracy with the support of judicial intervention. On the other hand, Trade secrets are not given protection through any statutory law in our country but are still guarded with the help of the common law. With the assistance of the doctrine of breach of confidentiality, trade secrets can also enjoy protection.

II. HISTORICAL BACKGROUND OF INTELLECTUAL PROPERTY LAWS IN INDIA

Intellectual property laws originated in the year 1331. King Edward III of England was the first person to grant King's protection through a letter's patent on July 16th, 1331. The first-ever patent was given to John Kemp a Flemish weaver who made woolen clothes. Not only this but he was also granted the right to teach his weaving expertise to people he deemed worthy. Patents originated from the letter patents which were granted by the monarchs to grant monopoly. After King Edward III, Elizabeth I raised patents to a larger scale and started issuing patents for common products like salt, sugar, etc. These repulsive patents eventually became objectionable and many conflicts arose between the crown and the parliament. This conflict was settled in the year 1601 when the power to grant patents was passed on to the common law courts. Simultaneously, Elizabeth I cancelled many exploitative monopolies. James I became Elizabeth's first successor and he continued using patents to grant monopolies. However, after a public tumult, he was also forced to revoke such monopolies. It finally got incorporated in the statutes of monopolies through which the parliament restricted the powers of the crown so that the letter patents could be brought to use by the inventors for their original inventions for a definite number of years.

In India, the first legislation regarding patents was passed in 1856. It was known as Act VI, 1856. Its sole purpose was to encourage and motivate the creative minds of our country to

invent and share the secret of their inventions too. Eventually, to give exclusive privileges a fresh Act was passed which was called Act XV, 1859. This Act was later renamed in 1872 and was called The Patterns and Design Protection Act. This Act existed for thirty years and got amended only once in 1883. Then came The Indian Patents and Design Act which replaced all the patent-related laws in India. Many new additions like secret patents, patent of addition, and most importantly the term of patents were increased from 14 years to 16 years. Post-Independence many committees were set up to examine the addition and changes in the laws, in support of which a bill was introduced in Lok Sabha which eventually lapsed in the year 1965. In 1967 an amendment bill was introduced and after the committee's final recommendation the Patents Act of 1970 was introduced which is also being currently used in India.

III. LAWS RELATED TO PATENT, TRADEMARKS, COPYRIGHTS & TRADE SECRETS IN INDIA

Intellectual property is governed by 4 major Acts currently; The Trade Marks Act 1999 replaced the Trade Merchandise Marks Act 1958 after complying with the TRIPS agreement. Computer programs were added as (literary work) after the amendment of the Copyright Act, 1957. The Amendment Acts of 1999, 2002 & 2005 amended the Patent Act of 1970. The Designs Act, of 2000 replaced the Designs Act, of 1911. These changes were much needed for regular updating of the legislations related to Patents, Trademarks, Copyrights, and Trade Secrets in India.

The newly refreshed Intellectual Property laws enacted the following Acts to stay in tune with the evolving economy of India:-

1. The Biological Diversity Act of 2002;
2. The Protection of Plants and Varieties and Farmers Rights Act of 2001;
3. The Semiconductor Integrated Circuits Layout Design Act of 2000; and
4. The Geographical Indications of Goods (Registration and Protection) Act of 1999

IV. TYPES OF INTELLECTUAL PROPERTY RIGHTS

1. Patent- An innovative idea that is original & useful
2. Trademark- Symbol, Logo, Brand name, or Signs that are used for the identification of goods and services.
3. Copyright- Artistic & literary work
4. Designs- Any structure or pattern

5. Geographical Indications- Specialties of different geographical origins
6. Layout Designs for Integrated circuits
7. Trade secrets- Innovative information that must remain undisclosed to preserve its authenticity

Patents

When the owner of the goods or service receives a legal monopoly for a limited period it is termed a patent. A patent is awarded only for an original, new and useful invention. There is a big difference between a discovery and an invention therefore, a patent must be an invention. A patent is a right to create, use and sell an invention for the next 20 years. It is an exclusive right that is enjoyed by an inventor, it could be for a product or a process through which the end consumers can find easier solutions to a problem. To receive a patent, the technical information of the invention needs to be disclosed through a patent application.

Getting a patent helps the owner in shielding his/her invention from all sorts of exploitation. Patent protection provides a right to the owner that without his/her consent the invention cannot be made, sold, commercialized, imported, exported, and used by any other person.

Not every invention gets the tag of a patent, there are certain conditions of patentability that it must fulfil: -

8. Novelty
9. Non-obviousness
10. Industrial Application

Who can apply for a patent?

According to Section 6 of the Patent Act, 1970 and subject to the provisions of section 134, here's a list of persons who are eligible for a patent: -

11. A person who claims to be the first inventor of the invention.
12. An application can be made by any person who acts as the assignee of the real inventor.
13. The legal representative of a deceased person who was eligible to make an application immediately before his death is also entitled to make such an application.

Types of Patent

Patents are of three types:

14. Utility Patents

Any kind of processes, the composition of matters, machines, and manufacturers that are useful and new are covered under the utility patents. This is one of the most common types of patent and it can be used as a source of improvement for the pre-existing processes, machines, manufacturers, and composition of matter. An Indian innovator can apply for utility patents in countries like UAE, Germany, China, Australia, France, and various other countries in the European Union.

15. Design Patents

One needs to apply for this kind of patent when it is impossible to detach the design from the object. It is also known as the surface ornamentation of the object. With the help of a design patent, the appearance of the object can be protected. If the inventor intends to protect the functional or the structural features of the object then he or she can also apply for a utility patent. One object might need more than one or two patents and there is also an option to apply for the same.

16. Plant Patents

Any new species of a distinctive plant can be protected under the plant patents. To apply for a plant patent a plant must not be tuber propagated which is also known as the Irish potato and it should not be uncultivated. If the plant is reproduced by cutting or grafting instead of a seed that is known as asexual reproduction. An asexually reproduced plant can be applied for a plant patent. Plant patents can be applied in countries such as the USA, Australia, and various European Unions and there are no provisions for plant patents in India just like Utility patents.

Note- Patent infringement occurs when an unauthorized use, sale, or production of another person's invention takes place. There are two types of patent infringement (a) Direct Infringement & (b) Indirect Infringement.

When a substantially similar product to the non-obvious invention of the inventor is introduced into the market without his permission or consent it is known as a direct infringement on the other hand when a certain amount of unintentional accidental or deceit infringement happens it is known as indirect infringement.

Remedies for patent infringement are stated under Section 108 of the Patent Act, 1970. The court might also order to seize, forfeit or destroy the production of the infringing goods. Remedy including injunction depends solely upon the discretion of the court.

V. IMPORTANT CASE LAWS RELATED TO PATENTS IN INDIA

1. Dr. Snehlata C. Gupte v. Union of India & Others

In this case, the court held that the patent certification is only granted after the order is passed by the controller. This decision was important to clear the date when the patent is considered granted. Earlier, it was assumed that as soon as the non-rejection decision from the patent granting authority was received people considered the patent as granted. The court clarified and enlightened us with the fact that receiving a certificate was just a formality and on the contrary, the vital step was the passing of an order by the controller.

2. Hoffmann-La Roche Ltd vs Cipla Ltd, Mumbai Central

Post-independence of India this was the first landmark judgment related to patent infringement. The plaintiff requested an interim injunction order as a plea in front of the court. The defendant was allegedly selling a common form of the drug. The court rejected the plaintiff's plea because the plaintiff's patented drug was being sold for the public interest and the greater good. Simultaneously, a case of the counterclaim was ongoing in another court proceeding for the revocation of the patent.

Copyright

Copyright grants protection to the original artistic and literary work of a creator. It includes computer databases, tables, computer programs (they could be in the form of words, codes, or schemes), films, song recordings, musicals, and dramatic and artistic works of creative minds. According to the Indian laws protection of copyright is granted under section 13 of the Copyrights Act of 1957.

The kind of artistic and literary work that was covered under section 15 of the Copyrights Act, 1957 was as follows:

1. Music-related work- songs, bands, choruses, jingles, orchestras, etc
2. Art-related work- drawings, paintings, architecture, advertisements, sculptures, etc
3. Photography-related work- Portrait, fashion or event-related photographs, landscapes, etc.
4. Motion pictures- movies, drama, television broadcasts, video tapes, DVDs, documentaries, etc
5. Computer-related programs- Computer programs, operating systems, software, related databases, etc

Copyright laws flourished in India in three phases. The copyright laws were introduced in the

year 1911 during British rule. The second phase was implemented in the year 1914 and it showed similarity to the British Copyright Act 1911. The highlight of this Act was the criminal sanction for infringement. After constant amendments, the third phase was also brought in during the era of independent India in the year 1957. It includes the provisions of the Berne convention The Indian copyright Act of 1957 is being followed to date. This Act is valid only within the borders of India and to seek protection in foreign countries India became a member of international conventions related to copyrights and signed agreements following the Berne Convention, Universal Copyright Convention, Multilateral Convention for the avoidance of double Taxation of Copyright royalties and Trade-Related Aspects of Intellectual Property Rights.

Process of registration for copyrights

Once the work is created, copyright automatically comes into existence but to enjoy economic benefits a creator or the owner can get the copyright registered. The registration of copyrights is made through the copyright office situated at Kasturba Gandhi Marg, New Delhi. This office falls under the department of education. Whatever entries are made in the register of copyrights are used as evidence in the court of law.

Following chapter VI of the amended Copyright Rules of 1956 the process of registration is given as follows:

1. The registration application has to be made on form IV.
2. Each kind of work must have separate applications.
3. A prescribed fee mentioned in the rules must also be accompanied by the application.
4. The Applicant or Power of Attorney or the Advocate in whose favour the Vakalatnama is made must sign the application. The Power of Attorney signed by the party and once accepted by the Advocate must also be enclosed.
5. The Copyright registration fee falls under the bracket of Rs.400 to Rs. 600.

Trademarks

Trademarks can be specified as words, graphics, symbols, and signs that are used by companies to get an identity that highlights and differentiates them from their competitors. For example, when we see any branded product it becomes easily identifiable from the look of it. It could be because of the brand name, its logo, and also the packaging. This also builds a relationship of trust between the consumer and the producer as the consumers are aware of the quality of the product that they are going to use.

The most commonly used trademarks are words and pictures. Especially after the advent of social media people have relatively shorter attention spans, hence, a good brand name and a catchy picture can form an impression in the customer's minds and there's a higher chance of retention as well. Graphical representation of trademarks is also possible. For instance, Cadbury has patented the colour of its chocolates, getting a single colour patented is also a difficult task. Likewise, the shape of the Coca-Cola bottles is also distinguishable and patented. Many competitors try and infringe the trademark laws by copying, faking, or stealing a brand's identity.

In India, the Trademarks Act of 1999 governs all the trade mark related laws like registration, protection & remedy in case of any kind of trademark infringement, etc. A trademark's general validity extends up to 10 years which can be increased indefinitely by paying an additional fee. Getting a trademark registered is highly beneficial for the proprietor. In case any counterfeit manufacturer tries to copy the identity of an already registered trademark then proper legal actions can be taken against such infringement and the protection will be enforced via court orders.

There are different kinds of trademarks like Device marks, word marks, service marks, figurative marks, unconventional trademarks(colour trademarks, shape marks, smell marks & sound marks), collective marks, certification marks, and well-known marks.

The registration process of trademarks-

1. Once a trademark application is filed the registry issues an official receipt that contains the application number and the filing date.
2. The application is sent to the Indian Trademarks Office and they further examine it to make sure whether or not it can be registered under the Trademarks Act.
3. In case of any objection the registry will issue an examination report to the applicant.
4. After the third step the applicant must send a written report and evidence to support the distinctiveness.
5. Thereafter a hearing with the examiner is posted, if the registrar thinks that the trademark can be allowed then the letter of acceptance is issued to the applicant post which the trademark is published in the trademark journal. The opposition gets 4 months to raise an objection, if no objection has been raised then the certificate will be issued and if an objection is raised then both parties will get equal opportunities to be heard.
6. Trademarks without any objection take 18 to 24 months to get registered.

7. If the renewal fee is paid every 10 years then the registration can also be renewed every ten years.

VI. LATEST PROGRESSION IN THE INTELLECTUAL PROPERTY LAWS IN INDIA

1. The Intellectual Property Appellate Board was abolished by the Tribunal Reform Act of 2021-

After the President gave assent to the Tribunal Reforms Act, 2021 the IPAB was put to rest. The fresh and pending powers of IPAB regarding the patents, geographical identification, trademarks, etc were transferred to the High Courts and on the other hand, the cases related to copyrights were transferred to Commercial courts. During its existence, it was known for all the wrong reasons from illegal appointments to lack of appointments and independence. It also lacked the resources to function effectively. After the IPAB got abolished a new intellectual property division was created in the High Court following the directions of the Delhi High Court.

2. The Patents Amendment Rules 2021

In September 2021 the patents amendment rules were introduced by the department for the promotion of Industry and Internal Trade which falls under the Ministry of Commerce and Industry. Educational institutions got an amended definition under Rule 2(ca) of these rules. This definition stood out to be more inclusive as it included the universities that got established under central, state & provincial Acts. Any educational institution that was recognized by the central or state government was now a part of the definition given under Rule 2(ca). Patent fees of such educational institutions were also significantly reduced.

3. Olympic medallists and their personality rights

After the 2021 Tokyo Olympics, the exceptional players and athletes of India were approached with a huge number of brand sponsorships. Simultaneously, many brands misused the pictures of these famous personalities without going through the usual process of sponsorship. This infringed the personality rights of these players. Eventually, P.V. Sindhu's management team sent out notices to the brands that used her photos for promotional activities without following the correct procedure.

4. Joint Committee Report

A joint parliamentary committee report was introduced on the Personal data Bill of 2019 and was presented in the parliament on 16th December 2021. The bill explicitly mentions that companies established in India and abroad dealing with personal data of people in India must

be firstly processed by the government of India.

5. Intellectual property offices and courts amidst Covid 19

The IP offices as well as the courts up their game by working online and too quite efficiently. The hearing of the cases was done through video conferencing and the online portals of IP, Trademark, Patent & Copyright offices worked tremendously well. The Intellectual property owners were able to file applications and upload documents too. Many opportunistic manufacturers of face masks, hand wash, and sanitizers took advantage of the pandemic and started selling identically named products in the market. The Intellectual property offices and the courts dealt with these issues together and passed injunction orders against such masterminds. The courts also ensured awarding of damages and the court commissioners seized such counterfeit goods too.

VII. CONCLUSION

With the changing time, patent laws have evolved in India. Intellectual property is created by creative minds; they could be symbols, logos, jingles, machines, or any kind of artistic or literary work. Protecting the rights of the inventors of such precious inventions can be very helpful in boosting the economy as well. The concept of Intellectual property exists since time immemorial and many industries weigh it as one of the most important rights. Innovations must be encouraged in all countries and when the government guarantees protection of the rights attached to such inventions, the creators also find the courage and work tenaciously towards transforming their ideas into reality. This has also turned out to be beneficial for the end consumers as they get reassurance on the safety, quality, genuineness and the durability of the product.
