

## MECHANISM FOR PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

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### ABSTRACT

*Intellectual property, in its broadest sense, refers to the legal rights that arise as a result of intellectual work in the disciplines of industry, science, literature, and the visual arts. There are two primary reasons why countries enact legislation to protect intellectual property. To begin, it is necessary to provide legal expression to the moral and economic rights of creators in their works of art, as well as to the rights of the general public in access to such works of art. Secondly, as a purposeful act of government policy, it is intended to inspire creativity, the distribution and application of its findings, and to promote fair commerce in order to contribute to economic and social progress.*

**KEYWORDS:**Intellectual, Property, Economic, Legal, Right, Protection.

### I. INTRODUCTION

Intellectual Property Rights are legal rights, which result from intellectual work in industrial, scientific, literary & creative domains. These rights Safeguard artists and other producers of intellectual products & services by allowing them certain time-limited rights to restrict their usage. Protected IP rights like other property can be a matter of commerce, which can be owned, sold or bought. These are intangible and nonexhausted consumption. Intellectual property (IP) rights are rights conferred to persons or organizations principally over creative works: Inventions, literary and artistic works, symbols, names, pictures, and designs used in commerce. They offer the inventor a right to prevent others

from making illegal use of their property for a short duration. Intellectual Property is classed as Industrial Property (commercial innovations), and Artistic and Literary Property (culture contributions) (cultural creations). The industrial revolution brought its own set of rules controlling industry and commercial activities as also the governance of post-industrial society. The word 'Intellectual Property Rights' can be defined more explicitly by separating it into two components; Intellectual refers to the mind, more specifically to the efforts of the intellect. This part emancipates the present field of law is concerned with the world of human creations, novelty and inventiveness. Broadly, Intellectual

Property law can be divided into three components; the first part, protection of Industrial Property, comprises Patents for inventions and protection of Confidential Information. Secondly, comes the protection for form and appearance, through Copyright, Design and Moral Rights. Thirdly, the law involves the protection for image and reputation, through the tort of passing off and Trade Mark registration. Therefore, it corresponds to that form of property which a person produces via an application of his thoughts, rather than previous property that someone gets. The word 'property' that describes intellectual property, like other kind of property, consists of bundle of rights in the hands of the owner. It follows that the owner of intellectual property has the same rights as the owner of real property, i.e., that it can be transferred in whole or in part, that it can be exploited for commercial purposes, and that it can be used exclusively for its intended purpose. Intellectual property rights are, in essence, a form of negative property rights protection. As a result, if others are interested in purchasing the product or innovation, it is feasible to add value to that property.

## II. TYPES OF INTELLECTUAL PROPERTY RIGHTS

### 2.1 Patent

Inventions are protected by patents, which are exclusive rights provided to the inventors of those inventions. An innovation is defined as a new product or technique that offers a new way of doing something or a new technical solution to a problem. In exchange for the patent, the inventor receives protection for his or her innovation. The protection is only available for a limited time period, namely 20 years. When an

innovation is protected by a patent, it means that it cannot be commercially manufactured, used, distributed, or sold without the prior approval of the patent owner. An inventor who holds a patent has the authority to determine who may and who may not use his or her patented invention throughout the period in which the invention is protected by the patent. Permission or licenses to utilize the innovation may be granted by the patent owner to third parties under mutually agreed-upon conditions. The patent holder may also sell the right to the invention to another party, who will then become the new owner of the patent if the sale is successful. As soon as a patent expires, the protection provided by the patent ends and the innovation enters the public domain, which means that the owner no longer has exclusive rights to the creation, which is then available for commercial exploitation by others. In exchange for patent protection, all patent owners are required to publicly publish information about their innovation in order to contribute to the global body of technical knowledge. This obligation extends to all countries throughout the world. An ever-growing collection of public information encourages others to be more creative and innovative as a result of its existence. Patents, in this way, give not just protection for the patent holder, but also vital information and inspiration for future generations of researchers and inventors, as well.

### 2.2 Trademarks:

Trademarks are distinguishing signs that distinguish particular goods or services as having been created or provided by a specific person or company from those produced or given by others. It may consist of a single word,

a series of letters, or a combination of letters and numbers. Drawings, symbols, three-dimensional indications such as the shape and packaging of objects, auditory signs such as music or vocal sounds, smells, or colors that are employed as identifying characteristics may all be included in this category. It protects the owner of the mark by ensuring that only he or she has the exclusive right to use it to identify products or services, or to provide permission to someone to use the mark in exchange for a payment. It assists consumers in identifying and purchasing a product or service because the nature and quality of the product or service, as represented by its distinctive trademark, satisfies their requirements. The registration of a trademark serves as prima facie evidence of the owner's ownership, granting the proprietor statutory rights. Trademark rights can be kept in eternity if they are properly protected. It is possible to renew your registration for a period of up to 10 years after it has been initially granted to you.

### **2.3 Copyrights and related rights:**

Copyright is a legal term that refers to the rights that are granted to authors and artists for their literary and aesthetic works. Literary works such as novels, poems, plays, reference works, newspapers, and computer programmers; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs, and sculpture; architecture; and advertisements, maps, and technical drawings are all examples of works protected by copyright. Copyright exists in a work simply by virtue of its creation; as a result, it is not necessary to register it. The registration of a copyright, on the other hand, gives evidence that the copyright exists in the work and that the creator is the owner of the work. In exchange for

cash, creators frequently sell the rights to their works to persons or businesses who are best positioned to market the works. These payments are frequently provided in accordance with the actual use of the work, and are referred to as royalties in this context. These commercial rights have a time limit, which (with the exception of pictures) is for the lifetime of the author plus sixty years after the death of the inventor.

### **III. PROTECTION OF INTELLECTUAL PROPERTY RIGHTS: INTERNATIONAL DEVELOPMENTS**

The Paris Convention for the Protection of Industrial Property, which was signed in 1883, and the Berne Convention, which was signed in 1886, marked the beginning of the modern intellectual property system. This time has been defined by an endeavor to harmonize the intellectual property laws that exist in different nations, with significant participation from developing countries, which desire intellectual property protection that is appropriate for their stage of economic development. Both the Paris and Berne Conventions have undergone numerous revisions since their conclusion in 1883 and 1886, respectively, and are currently under revision. The Paris Convention has been updated six times since it was first adopted. The Berne Convention has also been revised six times and once, in 1979, it was changed by the United Nations General Assembly. Both the Berne and Paris Conventions have their own treaty regimes with their respective Unions, which can be found here. They are referred to as the Paris Union and the Berne Union, and they are both based in Geneva, Switzerland. The United International Bureaux for the Protection

of Intellectual Property (UIBPIP) is the name given to the modest offices of these two Conventions that administer them (known by its French acronym BIRPI). It was then transformed into the World Intellectual Property Organization, which is a United Nations-affiliated special administrative unit dedicated to intellectual property rights. The World Intellectual Property Organization is currently responsible for a variety of treaty regimes relating to Intellectual Property Rights. In order to ensure the international protection of intellectual property rights, a number of international treaties and conventions have been established.

### **3.1 The World Intellectual Property Organization (WIPO)**

After being signed in 1967, the Convention creating the World Intellectual Property Organization (WIPO) came into effect the following year. World Intellectual Property Organization (WIPO) was an intergovernmental organization until 1974, when it was transformed into a specialized agency of the United Nations (UN). There are a number of treaties administered by the World Intellectual Property Organization that deal with different areas of Intellectual Property Rights. Besides the Paris and Berne Conventions, which contain the substantive requirements, all other treaties, such as the Trademark Law Treaty, the Patent Law Treaty, the Patent Cooperation Treaty, the World Intellectual Property Organization Copyright Treaty, and the World Intellectual Property Organization Performances and Phonograms Treaty, have become operational in the last few years. Examining the number of nations that have ratified these accords can provide insight into the level of harmonization

of procedural requirements in a given area of law. To bring any of these treaties into effect, 10 countries must formally accept the pact in order for it to become effective.

### **IV. INDIAN INTELLECTUAL PROPERTY LAWS: POST TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS AGREEMENT (1995)**

As of the day the Agreement on Trade-Related Aspects of Intellectual Property Rights (Trade-Related Aspects of Intellectual Property Rights) entered into force, India has in place the Patents Act, 1970, the Trade-Marks Act, 1958, and the Copyright Act, 1957. These were considered to be the most important aspects of intellectual property protection. The Designs Act of 1911 was also in effect at the time. Trade Related Aspects of Intellectual Property Rights Agreement, on the other hand, had a broader reach and included several new topics such as Geographical Indications (GIs) and Lay-Design of Integrated Circuits. The Agreement on Trade-Related Aspects of Intellectual Property Rights also defined the term "undisclosed information" and the scope of protection it afforded. In these sectors, there was no legislation or regulation in India. As previously stated, Article 1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights said that "Members should give effect to the provisions of this Agreement." Nevertheless, members of the WTO were not bound to "implement in their domestic law more broad protection than is needed by this Agreement provided that such protection does not conflict with the requirements of this Agreement." According to Article 1, the Members were "...free to adopt the most appropriate means of implementing the

contents of this Agreement within the framework of their legal systems and practices.” For starters, it should be noted that several parts of the Indian Patent Law appeared to be at odds with the Agreement on Trade-Related Aspects of Intellectual Property Rights, despite the fact that India had ten years to implement or alter these provisions. Generally speaking, the Copyright and Trade Marks Laws were in accordance with the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPAR). At the time, India lacked a comprehensive intellectual property protection system for geographical indications and layout designs of integrated circuits. It was also necessary to enact new legislation to safeguard plant types. From 1995 onwards, the year the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) came into force, India has plenty of opportunity to amend or adopt new intellectual property legislation.

In accordance with the Agreement on Trade-Related Aspects of Intellectual Property Rights, the Indian Patent Law was updated three times (in 1999, 2002, and 2005), and each time the Indian Parliament passed the law with certain modifications. Third Patent (Amendment) Bill, passed in 2005, had as its principal goal the introduction of product patent system in the fields of chemicals and pharmaceuticals by repealing Section 5 of the 1970 Patent Act. The inclusion of clauses relating to "compulsory licensing" for essentially life-saving drugs, the definition of "new entities" (with regard to chemicals) in order to prevent "ever greening" of patent applications for any new use for existing products, and the inclusion of clauses relating to "comprehensive licensing" for essentially life-saving drugs. Pre-grant and post-grant oppositions have been established in order to

prevent undesirable and unnecessary patent applications from being granted at the application stage, as well as to allow those who are working or researching in the field to question the 'innovation' at the application stage.

## V. INDIA'S ENDEAVOURS TOWARDS THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

When tracing the international trends in intellectual property rights, it is important to note that the idea of rewarding expressions that are both unique and commercially viable acquired traction in the twentieth century. The previous chapter, on the other hand, made no mention of the changes that have occurred in the Indian context with respect to the country's intellectual property policy. The Indian prolegomena, as well as judicial interpretations of Intellectual Property Rights. Furthermore, an attempt has been made to remove the constitutional basis for intellectual property rights protection from the Constitution. It has been traced from the Indian perspective in the light of the developments that have occurred since the inception of the World Trade Organization accord. TRIPs is a mandatory component of the WTO agreement, and India signed the accord as a result. However, in order to meet their TRIPs responsibilities, all poor nations were given a 10-year grace period. The protection of intellectual property in India has been governed by a number of different pieces of legislation. When colonial rule was instituted in India, these statutes were enacted. In the year 1856, George Alfred De Penning is said to have filed the first application for a patent in India, according to legend. <sup>1</sup> Following independence, it was decided to draught new intellectual



property legislation or update current legislation. The Indian Patents Act was passed by the Indian Parliament in 1970, and it went into effect in the following year. In a similar vein, the Copyright Act of 1957 and the Trade and Merchandise Act of 1958, which was later superseded by the Trademarks Act of 1999, were both drafted and adopted in 1957 and 1958, respectively. Patents, trademarks, and copyrights were, and continue to be, the primary means of intellectual property protection in India. All of this changed as a result of the founding of the World Trade Organization in 1995. (WTO). The Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which dealt with intellectual property rights, was a component of the World Trade Organization's (WTO) agreements. The World Trade Organization (WTO) Agreement was signed and ratified by India. It should be emphasized that the World Trade Organization (WTO) Agreement imposed certain requirements on the member countries, and that its timely implementation was also guaranteed. A binding dispute settlement mechanism could be used by member countries of the World Trade Organization in the absence of full execution of the accords. As a result, India revised its existing intellectual property regulations and enacted several new intellectual property statutes. The TRIPs Agreement itself stipulated a transition period of ten years after the signing of the agreement. The present chapter examines the Indian government's efforts to defend intellectual property rights prior to and following the signing of the TRIPs agreement in the context of the country's constitutional foundation. Furthermore, the law as stated in terms of the enforcement mechanism has been supported by judicial interpretations of the subject matter.

### **5.1 Constitutional Dimensions of the Protection of Intellectual Property Rights**

The Right to Freedom of Expression and Access to Information is protected by the Universal Declaration of Human Rights, the European Convention on Human Rights, the Indian Constitution, and other international human rights organizations. The essential value of a democratic system can be found in the freedom of expression and speech. For a variety of reasons, having the freedom to express oneself freely is crucial to everyone. First and foremost, self-expression is an important tool for achieving freedom of conscience and self-fulfillment. Second, it provides an opportunity for people to participate in discussions about social and moral principles. Third, freedom of expression is important because it enables for the political conversation that is vital in any government that aspires to democratic principles. Fourth, freedom of expression makes it possible to pursue any artistic or scholarly effort of any kind. Indians have noticed the restrictions on their right to freedom of expression and have made it a point to fight for this fundamental right. A reasonable balance between societal stability and social change can be achieved through the use of freedom of expression. It is the ultimate goal of every democratic state to ensure that "no idea should go unnoticed." Although every concept expressed as the correct expression is beautiful, the beauty of freedom of speech is that it can uncover the myth in any idea spoken so that the truth is ultimately discovered. This right, strictly speaking, is a true manifestation of all democratic freedoms, including the rights to freedom of expression, assembly, association, mobility, residency and settlement, and the right to pursue a profession, trade, or business.

## **VI. PROVISIONAL REMEDIES OUTLINED IN THE INTELLECTUAL PROPERTY STATUTES**

A number of international human rights organizations, including the Universal Declaration of Human Rights, the European Convention on Human Rights, the Indian Constitution and other international human rights organizations, defend the freedoms of expression and information access. A democratic system's most important value can be found in the freedom of expression and speech that it grants its citizens. Freedom to express oneself freely is important for a multitude of reasons, and it is essential for everyone to have this freedom. The ability to express one's self is, first and foremost, a necessary instrument for achieving freedom of conscience and personal fulfilment. People will have the opportunity to join in discussions concerning social and moral ideas as a result of this, too. Third, freedom of expression is crucial because it allows for the political debate that is necessary in any administration that strives to democratic principles. Freedom of expression is important because it allows for the expression of ideas that are contrary to the interests of the government. For the fourth time, the freedom of expression allows anybody to engage in any artistic or scholarly endeavor of any type. People in India are becoming increasingly aware of the constraints placed on their right to freedom of expression, and they are making it a point to fight for this fundamental right. The use of freedom of expression can help to create a reasonable balance between societal stability and social change in a democratic society. Every democratic state strives to ensure that "no thought should go unrecognized," which is the

ultimate goal of all of its citizens. Aside from the fact that every notion presented in the perfect language is beautiful, the beauty of freedom of speech is that it has the ability to expose the myth in every idea spoken, allowing the truth to be uncovered in the end. To put it simply, this right is a true manifestation of all democratic liberties, including the rights to freedom of expression and assembly; freedom of association; freedom of movement; freedom of residence and settlement; and the right to engage in a profession, trade, or business.

- The preservation of infringing items, papers, or other evidence that is relevant to the subject matter of the complaint; and the finding of documents
- Preventing the defendant from disposing of or dealing with his assets in a manner that could jeopardize the plaintiff's capacity to obtain damages, costs, or other pecuniary remedies that may be given to the plaintiff in a final settlement or judgment.

## **VII. CONCLUSION**

As a public policy tool in the context of social, economic, and political factors, the concept of Intellectual Property Rights (IPR) was shaped by a specific technological innovation, the printing press. It has been made a reality in a number of international documents. In contrast, property does not re-exist as an apparatus of government (or the state), waiting to be recognized legally; rather, legal recognition of property constitutes the existence of property in a form that can be recognized as such. Only the law has prescribed the rights that 'owners' can assert: possession, in the legal sense, is not property, particularly when it comes to information or knowledge, and

hence cannot be claimed. When it comes to owning property, the most important legal right that a person can have is the ability to "regulate the activities of others in relation to the objects of property."

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