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Intellectual property rights and consumer protection

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1. Introduction

A strong intellectual property rights regime is a critical precondition for enhancing and stimulating economic growth in the country. It facilitates greater investment in to the research and development as well as provides means to improve the quality of life of people of the country. IPRs not only protects the innovative and creative capacity of competitors and owners of IP rights that supply goods and services but it also concern itself with the interest of the consumers of those goods and services, directly or indirectly. The existence of such rights is necessary for overall development of society.

The areas of intellectual property that are most relevant for consumer protection are trade mark, geographical indication and protection against unfair competition. A trade mark is a sign which is used in the course of trade and distinguish goods or services of one enterprise from those of other enterprises. While, a geographical indication is an indication used to identify goods having special characteristics originating from a definite geographical territory. These IP rights help the consumer in buying quality products and protect them from use of substandard products and protect them from use of substandard products which may cause health and safety hazards. Thus, the proper operation of IP rights and their enforcement is very important for consumer. Further, it is the core of IP system that people of the country must be protected from unfair competition that is from any act of dishonest practice in trade and business.

Is a result of industrial revolution and rapid developments made in the fields of science and technology, and culture, new kind of property apart from the traditional property came in to existence. The concept of property has undergone as sea charge especially after the second war new rights and properties like patent. Copy rights, and industrial designs which came to be known as intellectual property rights received attention due to their unique characteristics and possibility of their violation easily.

The unique and fragile nature of these rights and their possible exploitation the world over made the industrially and scientifically developed and developing countries take note of the necessity to protect these rights by international co-operation treaties and agreements have been passed necessary legislation.

The term "intellectual property" has come to be internationally recognized as covering patents, industrial designs, copyrights, trademarks, knowhow and confidential information. Patents designs and trade mark used to be considered as different kinds of 'industrial property'. but when copy right and confidential information were included the term 'intellectual property' though a little high sounding, is a more appropriate description for this class of property. although the creation of a trade mark has very little to do with intellectual creativity, it cannot be doubted that patents, designs and copyright are the products of intellectual effort and creative activity in the field of applied arts or technology and fine arts.

The scope of intellectual property is expanding very fast and attempts are being made by persons who create new creative ideas to seek protection under the umbrella of pier.

The statute law relating to intellectual property in India is undergoing changes so as to bring them to harmonize with the corresponding laws in the developed countries. This has become necessary after India signing the get and trips and become a member of two.

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1.1 Classification of IPRS, evolution and development.

1.) Introduction

The intellectual property is the product of human mind. Every creation or performance takes its first shape in the mind of a human being and acquires a physical status on the execution of the ideal so conceived. Every mind is not of equal capability or tendency. The differences exist not only in the inherent but also in the acquired qualities. Therefore, the identity of the creator is necessary. This promotes incentive and advances the process of creation in terms of quality as well as quantity. It is in this backdrop that the concept of intellectual property has been developed and has now become popular in the whole world. The term "intellectual" implies that it is specific to the mind or talent. Looking back in human history the world has advanced through continuous creation of objects and processes by the perpetual exercise of intelligence by different people. Since the nature of the human activities is wide and varied, the creations also vary with respect to each activity. In the sphere of law the intellectual property has attained diverse dimensions like: right to reproduce a creation, right to use the creation and the right to make available a product in a particular shape and with a specific label, etc. These rights have come to be known as the copyright, patent, trademark, design etc. The intellectual property law is thus based on the law of Copyrights, Patent, Trademarks and Designs. The importance of these rights in the global market has assumed great significance in recent times particularly after the conclusion of the agreement on trade related intellectual property rights.

Formally, the intellectual property is defined under article 2 of the world property organization, 1967 to include rights relating to: Literary artistic and scientific works.

Performance of performing artists phonograms and broadcasts.

Inventions in all fields of human Endeavour. Scientific discoveries. Industrial design

Trademarks service marks and commercial names and designations. Protection against unfair competition and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

The role of intellectual property being of utmost importance in the economic development of a country, it has become inevitably necessary to protect the same. The industrialized nations were therefore exerting tremendous pressure on various countries to provide a stricter set of norms for the protection of intellectual property rights all over the world. Owing to this reason, TRIPs were formulated by the GATT (general agreement on tariff and trade) under the auspices of WIPO (world intellectual property organization).

The most important conventions in respect of the intellectual property are the Paris convention and the Berne convention adopted in the year 1883 and 1885 respectively, which was later, revised in 1967. On January 1, 1996, a large number of states viz., 136 became party to the above convention.

2.) Law relating to copyrights

Copyrights subsists in expression and not the ideas. It covers all literary and artistic works in diverse forms viz. writing, texts, scientific and technical, computer programmers, musical works, audio-visuals, fine arts, and photographs, etc. related rights are those which add values in the presentation of literary and artistic works.

The Indian copyrights act was passed in 1847. It was modified in 1911. Later, in 1914, a new copyrights act was enacted. By virtue of the provisions of article 372(1) of the constitution of India it remained applicable even after India attained independence in 1947. The main provisions of the act were as under:

The authors' rights was born immediately when the work was created. Protection was meant for the material which was original and not to ideas. The term of the right extended up to 25 years after the death of the author. With a view to consolidating and amending the old law, the copyright act was re-enacted in 1957. The salient provisions of the new act were as under: Establishment of the copyright board. Enlargement of the definition of copyrights. Rights of the author to re-acquire his right after seven years but before expiry of ten years of assignment. Issue of general or special licenses for public performances. Issue of license to a library to make copy of any book. Regulation of the activities of the performing arts societies including the fees or royalties charged. In August 1983, the act was amended by the copyright (amendment) act, 1983 for the following specific objectives:

Compulsory licensing for translation and reproduction of foreign works required for instructional purpose. To provide adequate protection to the author's right. Removal of administrative drawbacks.

The act was further amended in 1984 with a view to prevent growing piracy. These checks, however, proved ineffective necessitating the formation of a working group in 1987 with a mandate to study and recommend suitable changes, taking in to consideration the advancement in communication technology. The recommendations of the working group were incorporated in the act through the 1994 amendment which¹, inter-alia, included the following :

Protection of performing rights covering any visual or artistic presentation. Constitution of copyright societies for the promotion of collective administration of the rights of the authors, composers and other creative artists.

Assignment of copyright by an author or artist to protect the interests of both assignor and assignee. The duration of copyright was extended to 60 years. The act was further amended in 1999 which empowered the central government to apply the provisions relating to broadcasting organizations and performers in certain other countries as well as to restrict their rights.

3.) The law of patents

Patent indicates a statutory grant of the exclusive right to a person for a limited period in consideration of the disclosure the patent act, 1970, amended in 1999, were outlined by the supreme court of India in Bishwanath Prasad Radhey Shyam vs. Hindustan Metal Industries^[1]

Stating that the object of the patent law is to encourage scientific research, new technology and industrial progress. Grant of exclusive privilege to own, use or sell the method or the product patented for a limited period, stimulates new inventions of commercial value. The patent is granted only for an invention which must be new and useful and industrially applicable. The work must be inventor's own discovery as opposed to mere verification of what was already known before the date of the patent.

The history of patent act can be described as follows. The act was passed in 1859 to grant exclusive privileges to inventors. The aim of the act was to enable English patent

holders to acquire control over the Indian markets. The 1882 saw the enactment of the patent and designs act, 1888. The enactments aimed at protecting the interests of the industrialists, manufacturers and importers. The patents and designs act was passed in 1911 which was the first comprehensive law on the subject. It remained in force until the passing of the patent act of 1970. This act was primarily based on the recommendations of the two committees, viz. justice bakshi teak chant report 1950 and justice rajagopala Ayyangar's Report 1959.

The salient features of the 1970 act are as follows:

The patents are granted to encourage inventions and to secure that the inventions work on a commercial scale. The patents are not granted to enjoy a monopoly for importation. It recognized two kinds of patents-product and process patents. Product patent can be granted to medicines, food item and chemicals except to their manufacturing process.

The patents amendment act, 1999 added a new chapter to the act dealing with the exclusive marketing rights to sell or distribute an article or substance in India.

Generally an impression is carried out that the patent is granted for the safeguard of the patentee. It is however not so. The patent is basically for the benefit of the public. The patents are granted to encourage inventions and to secure that the inventions are worked on commercial scale and not to merely enjoy a monopoly for the importation of the patented article. The Indian patents act, 1970 also does not provide the right of importation of patented product to the patentee.

Being a signatory to the TRIPs agreement, India is required to provide products patents to all inventions. In the case of process, the patent is granted to the process and not to the end product.

Under the TRIPs agreement the patentee has the following exclusive rights in respect of a patent:

To prevent the third parties not having the consent of the patentee from making, using, offering for sale, selling or importing that product.

To prevent third parties not having the consent of the patentee, where the patent is a process patent from using offering for sale selling or importing at least the product obtained directly by that process.

The remedy against infringement of patent law lies under civil law, in the form of injunctions, damages and accounts, delivery of infringing goods or material. The right to seek injunction has been expressly provided under the copyright, trade mark, designs and patents law as per the procedure laid down in the civil procedure code 1908 and specific relief act 1963. Chapter xvii of the patent act deals with suits for claiming injunction against the infringement of patent and relief.

To comply with the TRIPs agreement and to protect the indigenous products such as rice, turmeric and neem from adverse impact by false labeling of such commodities by foreign companies the geographical indications of goods (registration and protection) act 1999 was passed.

In the year 2002 the patents act, 1970 was again amended by the patent amendment act, 2002 pursuant to international obligations due to India's signing of the World Trade Organization Agreement. The act taking in to account concerns of public interest, national security, traditional knowledge and public health incorporates certain safeguards as recommended by the joint parliamentary committee. The

government is empowered to terminate the exclusive rights of patentees and acquire the patent if the occasion so warrants. The government can prevent misuse and mischief by multinationals in the event of emergencies and other exigencies such as health, national security and public interest. Proper action can be taken from maintaining affordable prices of medicine. In this respect, measure, like, compulsory entrusting of essential drugs to third party and acquiring rights to produce medicines and importing of them from countries where they may be available at a lesser cost can be adopted.

**4.) The law of trademarks and designs
The Trade and Merchandise Marks Act**

Trademarks are important tool in business activities. It identifies a product and enables the owner to build goodwill of his products and reputation. Trade mark is defined as a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of Colours.

The trade and merchandise marks act, 1958 provided for the registration of existing and the future trademarks. In place of this act, the parliament has enacted the trade marks act, 1999 which has yet to be notified. It not only amended and Consolidated the 1958 act. To keep pace with the changing trends of investment flow and technology transfer at international level, a comprehensive law was required; therefore the trade mark act was passed in 1999.

5.) Geographical indication and its origin

According to article 2 of Lisbon agreement for protection of appellation of origin and their international registration as revised at Stockholm in 1967, Appellation or origin means the geographical name of country, region locality which serves to designate a product originating therein, the quality and characteristics of which are exclusively and essentially to the geographical environment including natural and human factors. "Certain goods, whether, naturally found, agriculturally cultivated or manufactured in a particular territory of a country or a region or locality have specific characteristics with regard to taste, aroma, or quality. These goods are marketed on the basis of their appellation of origin or geographical indication. Paris perfume, Scotch whisky, Russian vodka, French champagne, Basmati rice, Darjeeling tea, Swiss chocolates, Nagpur orange, Kashmir apple, Banaras silk, are some of the illustrations where goods have acquired a special importance on account of their association with indication of source.

6.) Industrial design

In India, the first law on designs enacted during British regime was patents and designs act, 1872. Later the inventions and designs act 1888. Was enacted to protect invention and designs. Thereafter, following the British patent and design act, 1907 the Indian patent and designs act 1911 was enacted. When a separate patent act was enacted in 1970 the provisions relating to patents were repealed from patent and designs act, 1911 and the act was renamed as designed act, 1911. This act continued to deal with designs till new design act was enacted in the year 2000.

According to section 2(d) "designs" means only the feature of shape, configuration, pattern, ornament or composition of lines or colour applied to any article, whether in two

dimensional or three dimensional or both forms by any industrial process or means, whether manual, mechanical or chemical separate or combined which in the finished article appeals to and judged solely by eye.

IPRS and consumer protection

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