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VARIOUS KINDS OF INTELLECTUAL PROPERTY RIGHTS

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INTRODUCTION

Innovations, artistic work, images, literary work, technical, scientific creation, designs and symbols, these all are the creation of individuals' mind and these should be protected at any cost so that there cannot be any infringement of one's creation. Intellectual Property Rights (IPR) helps to protect the innovative work done by the individual.

IPR got its roots from Europe. In the fourteenth century, the trend of granting the patent started. Italy was the nation where the first known copyright appeared. The cradle of the IP system can be considered Venice where most of the legal work and the thinking work were done. In Venice itself all the laws and systems were made for the first time in the whole world and other countries started following that work afterwards.

Patent Act was introduced in the year 1856 in India. This Act was in force for more than half century years, however, later in the year 1911 this Act was revised and was called 'The Indian Patents and Designs Act, 1911.

In the IPR, the right is given to the person for a specific period of time so that the inventor of any invention can utilize his or her legal right of the invention or the creation that they have done. In modern times, IPR plays a very well pivotal role. Innovation and creativity can flourish in the environment by striking a balance between the right of the inventor and use of such innovation. Thus, IPR provides the incentive to the public at large that they can make the use of the other person creativity by ensuring that there cannot be any unfair use of the creation or work.

IPR is a great tool to protect the time, money and efforts made by a person who has invested all of these to do something innovative. Apart from this, IPR also provides the remedy if the work done by the individual gets stolen or is inappropriately used by the other person. The innovator has the right that they can sue the person who has made the unfair use of the work. That stolen work will be stopped, and the innovator will be compensated if any damages are caused.

In the upcoming paragraphs, various kinds of Intellectual property rights will be covered along with the topics likewise, issues related to the various kinds of intellectual property rights such as issues in the area of copyright, trademark and designs will be covered.

VARIOUS KINDS OF INTELLECTUAL PROPERTY RIGHTS

COPYRIGHT

Copyright is granted to the individual who has done the original work likewise, literary work, dramatic work, musical and artistic works, cinematographic work, sound recordings, computer software, drawings maps, charts and TV and broadcasts. The exclusive right is given to the author that he can publish and sell the copies of his original work. This right is given for a specific period of time.

In India, the Copyright Act was introduced in the year 1957 which was later on amended in the year 1999. This Act is amended five times in the year 1983, 1984, 1992, 1999 and the latest amendment was made in the year 2012. The latest amendments in 2012 were brought to make the copyright law compliant with WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty, introduced technological protection measures.

The Copyright Act is divided into 15 chapters with 79 sections. Under this Act, Section 13 provides the protection for the work on literary work, dramatic work, musical work, artistic works, cinematography work and film recording. ¹Section 14 of the act gives the exclusive right to owner for the protection of his original work.

¹ The Copyright Act, 1957, No. 14, Acts of Parliament, 1949 (India).

Issues related to Copyright

Copyright Infringement: When any person without the prior permission of the owner uses his work, such conduct amounts to the Copyright Infringement. Copyright Infringement occurs when someone intentionally or unintentionally copies the work of the other person without giving the credit to that person.

The main elements of copyright infringement are that the work is the original creativity of the author that the person has actually copied the work of the author and it has to essentially prove that the person has infringed the right of the author.

Section 51 of the Copyright Act deals with the Copyright Infringement:

According to Section 51 of the Act, Copyright is deemed to be infringed if:

- A person without obtaining the permission of the copyright holder does any act which only the copyright holder is authorized to do.
- A person permits the place to be used for communication, selling, distribution or exhibition of an infringing work unless he was not aware or has no reason to believe that such permission will result in the violation of copyright.
- A person imports infringing copies of a work.
- A person without obtaining the authority from the copyright holder reproduces his work in any form.”

In *Sajeev Pillai v. Venu Kunnapalli*² and Ors, the Kerala High Court held that an author has a legal right to protect his Intellectual Property even after he has sold his rights to another person.

Facts

Sajeev Pillai, who was the movie director and a screenplay director, made a claim that he has researched the history of a splendid festival called Mamankam and the script was set on the same epic. Sajeev Pillai met Venukunnapalli (second party) and he signed a Memorandum of Understanding (MOU) with the film company called Kavya Film Company that company was in link with the Kunnapalli.

² Sajeev Pillai v. Venu Kunnapalli, 2019 SCC Online Ker 5338.

Initially Sajeev was appointed as a director and when he completed his service he was replaced by the some other person. The shooting of film was done and it was finalized when Sajeev stated the whole script but it was all done by disfiguring, by misleading and by changing the script made by Sajeev.

Decision

In this case, Kerela High Court decided that Section 57(1) of the Copyright Act provides an offer to the author that he can imprison the third party and under sub-section 57(1)(b), the author has right to claim the remedies from the third party in the matter of the any alteration done or any other disfigurement or any other modifications to the work of the author or to take any other action which is injurious to author's respect or the status.

This gave the appellant a supreme advantage that the legal right to claim ownership would not drain for the consignment of his work.

Other issues related to Copyright

Plagiarism: One can use the work or material of the author for some research. But when someone copies and pretends that this work is the original work done by him, such act is called plagiarism. Herein, the permission is granted to the person to refer the work of the author but the individual herein who is using the work of the other author has to give the credit to the original creator of the work or to the copyright holder.

Derivative Works: When someone uses the already existing work of the other is called derivative work. It is the new version of the already existing work. Someone who has not obtained the proper authority for using the work of some other person shall be made liable for committing the copyright infringement.

PATENT

Patent is an exclusive right which is granted to the inventor for his inventions by the government and also the right is given to him to make use and sell that invention. This right is given for the specific period of time. The main aim of giving the right to the inventor is that they can do more progress in their field.

The word “patent” is derived from the Latin word “*patere*” and it means “to lay open”. In other words to make available for public inspection.

In India, patent is covered under the Patents Act, 1970. To comply with the commitments of the Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Patent Act has been amended three times since 1995. TRIPS Agreement is a minimum standards agreement which allows the Members to provide more extensive protection of intellectual property if they wish so.³

First amendment of the Patents Act was made in the year 1999, second amendment in the year 2002, before the third amendment Patents (Amendment) Ordinance was promulgated by the President of India which was later on replaced by the Third Amendment Patents Rule, 2003. It was supporting the former legislation. Indian Patent Office in the year 2014 released a series of guidelines pertaining to issuance of pharmaceutical patents. To establish a uniform standard of patent grant/examination, features of various court decisions are incorporated in these guidelines. There is an expectation of bringing in uniformity with regard to scrutiny of patent applications.⁴

Section 3 and 4 of the Act⁵ defines that what can be patented in India. The most important consideration to be taken here is that whether the invention made by the inventor relates to the patent subject matter. Section 3 and 4 of the Act lists out the non-patentable subject matters and if any invention does not come under any provision of the Section 3 and 4 of the Act that will not be considered as a subject matter for a patent.

Issues related to the Patent

Patent Infringement: Patent infringement is done when the unauthorized use of the inventor’s work, production or sale of work which comes under the subject matter of the patent is done by the other person. The basic idea behind the patent infringement is that there should not be an unauthorized use of the patent holder work without his permission.

³ World Trade Organization, <https://www.wto.org> (last visited May. 16, 2022).

⁴ The Economic Times, <https://economictimes.indiatimes.com/small-biz/legal/recent-developments-in-intellectual-property-laws-in-india-part-2/articleshow/47780087.cms> (last visited May. 16, 2022).

⁵ The Patent Act, 1970, No. 39, Acts of Parliament, 1949 (India).

Section 48 of the Patent Act gives the right to the patent holder that patent holder can exclude the third party who makes, uses, offers or sell the patent work which comes under the subject matter of the act during the valid period of the time. This creates the monopoly over the work of the patented invention and patented product. Any activity made by any person which violates the monopoly will be considered as patent infringement.

In the case of *Bayer Corporation vs. Union of India*⁶, the Bayer Corporation in the year 2008 was granted the patent right by the Indian Patent Office for the drug named ‘Sorafenib Tosylate’ for the treatment of liver and kidney cancer. Later on, in the year 2021 Natco Pharma was granted with the first ever license to produce a generic version of this drug by the Drug Controller of India which is defendants in this case. Plaintiff during the course was selling the drug for Rs2, 80,000 per month and defendant herein promised to make the drug available at the rate of 80,000. Plaintiff then was aggrieved with the fact that the license which is granted to the Natco was invalid, illegal and unsustainable and they moved to IPAB asking for stay on the license. However, IPAB herein rejected the appeal made by the plaintiff by stating that the license granted in the public interest because of the lower price allowed the public to access it. Later on, plaintiff challenged this order in the Bombay High Court.

In this case, the issue was made that whether the license which is granted by the DGCI was accordance to the provisions of the Patent Act. The High Court in this case dismissed the petition made by the plaintiff by upholding that the public interest is always prioritized. The court held that as per the Section 90 of the Patents Act, DGCI can allow the commercialization of the genetic drugs as they are patented in the public interest. Furthermore, court held that the acceptance of the generic drugs does not amount to the patent infringement.

Patent issue related in the field of Biotechnology

With the inventions and developments in the area of pharmaceutical science and the environment sector bio-technology plays a very important role in the economy of the country. As patent applies to all the fields of technology so does it apply to the bio-technology as well. The new challenges have opened up in the case of bio-technology when we talk about the

⁶ Bayer Corporation vs. Union of India, 2014, (60) PTC 277(Bom).

criteria of the patentability which includes the novelty, the utility and the non-obviousness. It is a tough task to identify the characteristic of novelty in the living beings. The reason of this is that the living being exist naturally thus it becomes practically difficult not possible for them to be novel.

Other great concern is getting the patent of human genome. The main issue here is that what kind of patent it will be because human genes are the ones that occurs naturally they are only discovered but not invented.

Various Unique features of the new innovations leads to the difficult questions related to interpretation and understanding the patent law. In modern technology the difference between the invention and discovery is getting blurred.

The current framework of the patent fails to provide the sufficient protection to the field of bio-technology. The main reason behind this is that the engineered inventions are very complex and they are precisely and accurately described thus this makes the hard to decide that whether such invention is following under the criteria of patentability or not.

Moreover, there is also a possibility in providing the benefit to the undeserving patentee in the case of bio-technology under patent law. This may happen because it happens that intricacies involved in making the inventions likewise of gene fragments, genetic tests and proteins in the fields where the real work in not known in such kind of inventions it is possible to grant the patent.

Issues of patents in Public Health

Talking about improving the public health that main aim remains with the authorities is that to ensure a balance between the right of the inventor for creating a product or the process of improving the health sector and finding ways of implementing those for providing the help and to meet the requirement of the general public. Negotiation is done in the developing nations with the patent holders that nation that the drugs will be provided to them at a lower cost. This happens because certain companies herein agreed to help the poorer nations with the medicines so that they can fight with the fatal and severe diseases. To attain the public health both the sectors public and private have to involve each other and understanding the

importance of the joint ventures and legalizing innovations.

Doha Declaration under the paragraph 5(2) says that “freedom to determine the grounds upon which such licenses are granted” and it also highlights the idea of the compulsory licensing. Thus, the Doha Declaration puts the time that when the rights of the inventor can be exclusive and when it can be abridged so that large public interest can be achieved.

TRADEMARK

Trademark is a distinctive sign or a symbol which is used by the business organization, individuals or any established legal entity. This sign or symbol is used to differentiate the product and service of one entity from the others. Trademarks serves as a badge for any brand in order to communicate with the consumers and so that customers can remember the brand name by its unique sign or symbol.

Trademark has gained the remarkable importance in the intellectual property. Owners and manufacturers are fully aware about the importance of trademark and rights and advantages that comes along with the registered trademark. In India, there are several number of trademarks are there under which the owner of trademark can register and seek the legal rights and protection.

In India, trademarks are regulated under the Trademark Act, 1999. According to the Section 2(zb) of the Trademark Act, 1999 trademark means “a mark of graphical representation and which is capable of distinguishing good and services owned by one person from those of the others in the market and includes the shape of goods, the combination of colors and their packaging”

The main function of trademark is that to make the one brand stand out that belongs to the same class of other goods and services and make one brand distinctive from the other brands.

Trademark Infringement

Trademark infringement is done when a person who is not the registered proprietor or the person who has created the same mark or the mark which is identical to the already registered mark. In this case when the infringement is done, owner of the respective trademark can go for the civil proceedings against the person who has infringed the registered trademark. In

other words, trademark infringement means the unapproved use of the trademark which is related to any product.

In India, Trademark Act, 1999 is the legislation that protects and guarantees the rights to the owner of the trademark. This act lays down the provisions which are related to the registration, protection and the penalties that are available when the infringement is committed. Trademark can be infringed by direct or indirect way. To bring Indian trademarks law in line with international practices and to ensure implementation of India's commitments under the TRIPS Agreement, India replaced the Trade and Merchandise Marks Act, 1958, with the Trade Marks Act, 1999.⁷ Several changes were incorporated, like “trademark” now includes graphic representations, shapes, packaging and combinations of colors. This has widened the scope IPR protection. The period of renewal and resignation has also been increased from seven to ten years.

To give the protection beyond the use of identical similar marks for the goods in relation for which they are registered, the definition of trademark infringement has been broadened.

Case law on infringement

In the case of *Hearst Company vs Dalal Avenue Verbal Exchange Ltd.*, the court in this case held that trademark is infringed when a character which is in the course of the trademark the use of a mark which is similar to the other trademark which is in respect of the same goods or services and that trademark is registered.

In the case of *Amritdhara Pharmacy vs. Satya Deo Gupta*⁸, the Supreme Court determined the connection between the two words which create confusion and are related to the infringement action. Two tests were laid down for determination of infringement. That there must be the goods that are to be utilized. That there must be a consideration of nature and customer who will be buying the goods. After considering all the circumstances, the Court came to the conclusion that there will be confusion that not significantly of one man will get injured and then the other man is going to gain the illegal benefit. Then there is going to be a confusion in the minds of the public regarding the goods and there will be the refusal regarding the registration of the trademark.

⁷ *Id* at 4.

⁸ *Amritdhara Pharmacy vs. Satya Deo Gupta*, 1963 AIR 449.

GEOGRAPHICAL INDICATION

The Geographical Indications are also known as a Geographical Indication Tag. Geographical Indication is given to the certain commodity or the product which is differentiated on the basis of the different geographical location that includes the place of the origin, town or the country. For instance, Darjeeling Tea is granted the geographical indication and it is the first product to be granted geographical indication tag. The tag is given to the specific product according to the criteria that this specific product is produced following the traditional methods and it also certifies certain qualities and which is produced in a particular region.

Geographical indication regulates to the use of the indication that the right to use the indication is given to the specific region and geographical indication regulated the third party from taking any undue advantage of the product.

A geographical indication is regulated under the Intellectual Property Rights. The protection and right is given over any particular sign and that sign depicts the specific indication. Geographical indication is also covered under the Paris convention for the Protection of Industrial Property. From the international prospective geographical indication are governed by the **World Trade Organisation (WTO)**. It is an agreement related to the trade aspect which is **TRIPS**. In India, Geographical Indication of Goods (Registration and Protection) Act, 1999 is there to regulate the aspects related to the geographical indications.

Issues related to the Geographical Indication

Infringement of Geographical Indication: The registered Geographical Indication is infringed when the other person who is a registered owner under the Geographical Indication Act that person uses the sign of the goods that is originated in the another geographic area, which creates a confusion in the other people's mind that the goods belong to that particular place.

A geographical indication is also infringed when an unauthorized user or the person who is not registered owner under the Act uses another geographical indication for the goods, which is true to its area and locality where they are emerge from. Doing the misrepresentation of the goods originated in another region used by the unauthorized person is infringement of the geographical indication.

Article 22(4) of the TRIPS Agreement emphasizes about preserving the geographical indication of the trademark stating that it should be enforced even if the Geographical Indication “literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.”⁹

In the case of *Banglar Rasogolla vs. Odisha Rasagola*, in this case in the 2017, the “West Bengal State Food Processing and Horticulture Development Corporation Limited” was registered as Geographical Indication as Ras Banglar Rasogola. It was witnessed that state which would win the battle would win the famous dessert and Bengal won the dormant between Odisha and Bengal. This legal battle for the geographical indication registration started when the objections regarding the geographical indications was lodged and it was claimed that the famous dessert was originated at Jagannath temple in Puri, Odisha. In the February 2018 an application was filed to remove the registration of the geographical indication.

Meanwhile, in July 2017 the Geographical Indication registry notified that Odisha is registered under Geographical Indication as “Odisha Rasgola”. After this various reports were released. It was noticeable here that registry did not register the word all Rasogola/Rasgola. Rasogola/Rasgola is a general term which can be used by any person in their trade. So, as a result two of the states Odisha and Bengal neither got the monopoly over the word of Rasogola/rasgola. Therefore, the word rasgulla/rasgola can be used in any trade or business because it is free to sell the sweets to anyone in the trade. The words “Odisha rasgola” and “Benglar rasogola” were prohibited to use by any other unauthorized and authorized users under the law.

CONCLUSION

It can be concluded that the change in awareness of intellectual property rights has emerged in the recent times. Alongside, the rights have been conferred in the area of patents, copyright, trademark and geographical indications. Intellectual Property Right is a legal right which is given to the creator so that he can protect its work from any unauthorized use for a certain

⁹ World Trade Organisation, https://www.wto.org/english/docs_e/legal_e/27-trips_04b_e.htm (last visited May 16, 2022).

period of time. IPR is a great tool to secure the time invested by the creator in his creativity.

Patent helps the inventor to create in monopoly over the inventions and developments. It gives the benefit to the inventor to enjoy the monopoly. Copyright is there to provide protection to the rights of the creator and to create some benefits for the economy. If any person infringes the copyright then that person will be held liable for both civil and criminal liabilities.

The tag under the geographical indication is important as it is the essential component and helps to create and maintain the originality of the product or the region where the product was originally created.

Under the trademark law one can register any unique sign or symbol to differentiate one brand product from the others. Remedies are also available when the trademark is infringed by any person and they try to ruin the reputation of the recognized brand. Trademark acts a shield to protect the one brand identity from its other competitors.
