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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

BALANCING THE SCALES: SAFEGUARDING INNOVATOR RIGHTS IN THE CONSUMER- CENTRIC ECONOMY

AUTHORED BY - PRANJAL SRIVASTAV

Introduction

Envision a world in which inventiveness are treasures waiting to be explored and shielded. the realm of Intellectual property Rights (IPR), is responsible for safeguarding these inventions and ensuring that the genius of human intellect is recognized and protected Intellectual Property rights (IPR) include certain legal protections like copyrights, patents, trademarks, and trade secrets, each of which demarcate unauthorised use or reproduction.

In today's world the creation of an individual needs protection in the same manner any tangible object is protected by law. For example - a land owned by a party is safeguarded and protected against unauthorised use by anybody under law. While it remains a comparatively easier thing to enforce law safeguarding a tangible asset of an individual, things become reasonably intricate when the asset is abstract. The subject now falls in the domain of IPR. The legal protections furnished to artistic creations are called intellectual property rights. These rights ensure that individuals or groups enjoy control over the reproductions uses, and distribution of their inventions, and works. They grant people or organisations exclusive rights over their works. Variety of intellectual creations that include inventions, literary and creative works, inventions, designs, symbols, names and images used for commercial gain get protection by intellectual property rights, or IPRs.

HISTORY

Development of India's Intellectual Property Rights spans over a journey of almost a century now. IPR are the mainspring of a nation's commitment to encouraging innovation and safeguarding the products of intellectual ventures. Evolution of ipr in India, is marked by legislative

accomplishments and international collaborations.

1. The 1886 Berne Convention: India pursued international standards for intellectual property protection in 1928 when it endorsed the Berne Convention. This laid the basis for the protection of creative works internationally.
2. Copyright Act, 1914: India passed its first Copyright Act in 1914, marking a significant advancement to safeguarding literary and artistic works. Subsequently, the Copyright Act of 1957 originally got replaced mirroring the evolving landscape of the realm of intellectual property.
3. Trade and Merchandise Marks Act, 1958: the law was concerned with the registration and protection of trademarks. Subsequent amendments in 1999 brought the Act into compliance with global norms, especially the TRIPS agreement.
4. Patents Act, 1970: India redesigned its patent system in the year 1970 by passing the Patents Act as there was the demand for a more homegrown and innovation-friendly framework. The aim of the Act was to promote domestic innovation and prevent patents being granted for goods that had no substantial contribution to technological growth.¹

The legislative steps in the implementation of IPR continued and acts like Copyright (Amendment) Act, 1994, and Information Technology Act, 2000 came into existence India also became a signatory to the TRIPS agreement in 1994. Other important acts like Geographical Indications of Goods (Registration and Protection) Act, 1999 aimed to protect geographical indications and prevent unauthorised use of product PLUS Plant Varieties Protection and Farmers' Rights act protected right of the development of plant variety and then design act of 2000 which as the name suggests concerned itself with the realm of industrial designs its registration and protection .These legislatures show India's commitment to safeguard diverse forms of IPR.

India is also a part of WIPO, an organisation that works to advance global intellectual property rights protection. India is also a signatory to the following international treaties and conventions related to intellectual property rights overseen by WIPO:

¹ "National IPR Policy." Drishti IAS, 31 January 2023, <https://www.drishtiias.com/daily-updates/daily-news-analysis/national-ipr-policy>.

1. The Budapest Treaty on the International Acceptance of Microorganism Deposits for Patent Procedures
2. Industrial Property Protection Convention of Paris
3. The World Intellectual Property Organization Convention
4. Convention of Berne for the Protection of Literary and Artistic Works
5. Treaty on Patent Cooperation

Finally in the year 2016 National IPR Policy was launched in 2016, India launched its first National IPR Policy, emphasising the importance of creating awareness. An institutional framework for execution, oversight, and evaluation is established. The objective is to integrate and modify international best practices to suit the Indian context. To coordinate, direct, and supervise the implementation and future growth of intellectual property rights (IPRs) in India, the Department of Industrial Policy & Promotion (DIPP), Ministry of Commerce, Government of India, has been designated as the nodal department.

India's National IPR Policy: A Comprehensive Overview

The National IPR Policy in India addresses various facets:

Public Awareness: Promotion of IPR benefits.

Innovation Culture: Encouraging an environment that stimulates IPR generation.

Legal Framework: Mending outdated laws for a balanced approach.

Human Capital Development: Investment in education, research, and skill-building.

Administration Enhancement: Modernising IPR administration.

IPR Monetization: Encouraging creators to realise economic benefit from ideas.

Enforcement Strengthening: measures against IPR infringements.²

The National IPR Policy encompasses a comprehensive strategy with the overarching goals of promoting invention, safeguarding rights, and establishing India as a prominent player on the global innovation stage. Evident progress has been made in the implementation of these objectives, particularly in the realms of outreach, IPR awareness, and its promotion. By collaborating with

² “National IPR policy (Advantages and Concerns) - UPSC Notes (GS III).” BYJU'S, <https://byjus.com/free-ias-prep/national-ipr-policy-upsc-notes/>.

industry associations, the Office of CGPDTM conducts more than 100 awareness programs every year. In the domain of IPR generation, the policy has introduced easier online processes for IP application filing and processing. incentives, including reduced charges to encourage active participation from Start-ups and SMEs in the domain of patents and trademarks. The Scheme to facilitate Start-ups Intellectual Property Protection (SIPP) is an initiative, providing financial support to aspiring entrepreneurs. Certain categories, like Start-ups, get preferential treatment in the examination and process of granting, speeding up the process and thus guaranteeing a quick turnaround. These initiatives highlight the National IPR Policy's dedication to encouraging an environment favourable for the generation. The National IPR Policy has implemented mechanisms that make trademark registration processes easier, introducing faster procedures for faster and more efficient registration therefore reducing delays and profiting applicants. An important initiative under the policy involves the establishment of Technology and Innovation Support Centers (TISC) plus IP facilitation centres in universities. These centres play a significant role in providing necessary support to applicants. By creating a network of support through TISC and IP facilitation centres there is an enhancement in accessibility and guidance for persons and entities navigating intellectual property rights. This multifaceted way tells us the policy's commitment to leveraging technology and institutions to strengthen the landscape of intellectual property in the country. The Legislative Framework of India's IPR has been simplified, including the advent of Copyright and Semiconductor Integrated Circuit Layout Designs Acts under DPIIT.

Amending Patents Rules, 2003, introducing the New Trade Marks Rules, 2017, and amendments proposed to streamline patents working statements for MSMEs denote a user-friendly approach for Administration and Management, there is a concern on uniform practices and online procedures for Designs, Patents, Copyright. and Trademarks, The 2016 Finance Act's Patent Box concept (Section 115BBF) gives tax deductions on patent royalties, facilitating IPR commercialization. CIPAM dedicatedly works to raise awareness of commercialization of IPR. It emphasises raising awareness and prevention of counterfeiting in its enforcement efforts, with help from WIPO workshops and capacity-building initiatives. Human capital development is given priority, and IPR training is also provided by CGPDTM and RGNIIPM. IPR outreach across organisations, sectors, and agencies gets support from CGPDTM. The proposal also suggests investigating alternative dispute resolution mechanisms, conducting regular workshops, offering multidisciplinary courses

in the particular domain, and setting up specialised commercial courts to effectively resolve IPR disputes. India's IPR landscape is thus intended to be improved by the actions listed.

THE RIGHTS GRANTED TO A PATENTEE IN INDIA

THE PATENT ACT of 1970, encompass various realms:

- Right to Exclusivity: The patentee has exclusive rights, during the 20-year term from filing, to make, use, sell, and distribute the product or to exercise the patented process. These rights exist as long as the renewal fees are paid.
- Right to Licence: Section 70 of the act provides the patentee the authority to grant licences to other entities in exchange for consideration. In case of co-ownership, all patent owners must collectively agree to give licences
- Right to Assign: The Patents Act gives the right upon a patentee to assign the patent to others either in its entirety or partially.
- Right to Surrender: Section 63 of the act allows a patentee to surrender a patent at any given time. The application for such is made before the Controller, then published in the official gazette, and can even be opposed by interested parties.
- Right to Sue: Infringement which constitutes a violation of any right to use, sell, or distribute the original invention, empowers the patentee, assignee, licensee or agent to file a civil suit for infringement in a court (not lower than the District Court).
- Right to be issued a Duplicate Patent: Section 154 of the act grants the patentee the right to apply for a duplicate patent in case the original is lost, destroyed, or if non-production is satisfactorily elaborated to the Controller.
- Right to make a Convention Application: Each Indian patentee has the right to make a Convention Application for safeguarding the patent in Convention Countries. The right is based on the principles of reciprocity and national treatment in international law.
- Right to make a Patent of Addition: Sections 54 to 56 of the act introduce provisions for a Patent of Addition, that allows modifications to the invention in existence. He/She gains rights similar to those of the original patent as soon as the notification of acceptance is issued.

UNDERSTANDING THE DYNAMICS

In the complex web of innovation, a symbiotic relationship opens out connecting the innovator, the service provider, and the consumer. The consumer rights have rightfully claimed the spotlight, the innovator, a vital initiator in this dynamic chain, droops in relative oblivion. This argument contends that despite their significant roles, innovators receive disproportionately lesser attention, making a compelling case for redirecting the attention towards safeguarding their rights.³

Innovator's Crucial Role: The innovator initiates the dynamic chain, investing time, intellect, and capital to birth ideas that propel progress. Various data have shown a direct relationship between a country's economic growth and innovation.

Service Provider as Facilitator: The service provider acts as the connecting medium between the innovator and the consumer, leveraging the innovation to deliver benefits.

Consumer as the Beneficiary: The consumer, in turn, pays for the services offered by service providers and, not just financially but with the expectation of receiving valuable benefit and necessities

Parallel Economies: Consumer vs. Innovator

Consumer Transaction:

- A consumer pays for services, expecting a seamless experience and benefits derived from the innovation.

Innovator's Transaction:

- Conversely, the innovator grants rights to the service provider, exchanging their intellectual property for financial compensation.

Why does Innovator attention matter more?

Consumer Dissatisfaction vs. Innovator Risks:

Consumer grievances often involve dissatisfaction with expected benefits which is a very transient and reversible setback.

³ Sage Journals

<https://journals.sagepub.com/doi/full/10.1177/00194662211063562>.

Innovator's Life Efforts at Stake:

In contrast, innovators wager their life efforts, capital, and time on their creations. Any grievance, be it patent infringement or unauthorised use, imperils not just their financial investment but their very livelihood. Notably, the capital at stake in this case is usually higher and in one context and one context alone the innovator can be seen as a consumer who enjoys fair financial benefits provided by service provider just like any consumer enjoys services from a service provider however the former exchanges his innovative creation and the latter pays for the services monetarily Henceforth, an exemplar of societal perfection will be to not just safeguard the adequacy of benefits enjoyed by a consumer in exchange of money but also value the creative efforts of an innovator whose innovation itself is the part of the transaction. Innovators directly contribute for the benefits of consumers by giving them various options but if their rights are dealt with inadequately it will be a big slip up. Therefore any machinery concerned with consumers and their rights shall be solicitous about innovators as well. Creativity inadequately rewarded results in inadequate creativity to reward to ,therefore fair compensation and protection of innovators' rights is of utmost significance. No big company that intends to act as the service provider shall be allowed to unfairly compensate the innovator by finding loopholes in grey. To summarise, one must understand that the three agents in discussion here:

1. The Innovator
2. The Service Provider
3. The Consumer

Service providers are usually companies who have the resources to acquire any patent licence or the patent right itself and then to manufacture products on a big scale. Therefore as an entity there risk-assessment before doing anything is attested with a very sophisticated mechanism and therefore when they decide to deal with patentee for example, the companies' vulnerability of manufacturing the products and entering into market is measured beforehand and they typically have the assets to deal with circumstances.

Theoretically speaking, the consumers bear the least risk in the whole chain given that in case of their grievance the machinery safeguards their rights properly. The reason being that they are beneficiaries of an innovation that's manufactured on a large scale, they have the luxury of rejecting a purchase, perhaps availing a new option because they are paying for it. In case of any

issue with their purchase the loss that they incur is usually reversible.

However an innovator puts his time, goes through a lot of failures before the final work emanates. Thereafter if he wishes to pitch this product to a service provider he also faces rejections time and again. Conceivably the rationalisation here is that a customer indubitably knows the specific amount of money to pay in order to enjoy any service. Similarly, a service provider decides to pay a particular sum to the innovator (one-time or periodically) but the innovator ordinarily does not have the mechanism to determine the right monetary assessment of his work and therefore his risks seem acute because on the whole the other two entities directly come into play.

Therefore IPR awareness among more and more people is the need of the hour. It shall repudiate the perception of being an unconventional subject and become a part of discussion in general, analogous to Consumer rights.

Solutions for Raising Awareness about Innovator Rights:

Innovator Rights Education Campaigns:

- Mechanism: Launching campaigns leveraging social media, workshops, and collaborating with educational institutions to educate the public about the challenges and significance of innovator rights. There are different organisations, ed-tech companies and institutes that are already doing the same by having courses on IPR for students and professionals. The need however is also at schools where students are already being made aware about consumer rights in subjects like General Knowledge and Civics, the curriculum shall be incorporated with an inseparable reality of society today- IPR.

Innovator-Consumer Dialogues:

- Facilitating open forums and discussions where innovators can directly engage with consumers to share their stories, emphasising the human aspect of innovation. Developing a user-friendly online platform showcasing innovators' stories, struggles, and successes to create a connection between innovators and the public. There can be a list of guidelines or some authorities maybe by involving some private entities where the government decides a framework that helps determine the monetary value of a particular kind of innovation.

This can be done keeping in mind that every case is different and the government therefore provides a legal pillar for innovators so that they are adequately rewarded. The nature of such a framework is a risky gamble but at least the idea, although ambiguous, can be considered in one or the other form. The authority shall act as an advisory body and indigenous innovators can get assistance. This can benefit innovators from rural region who might not assess their innovation in monetary terms but if they decide to voluntarily give the right of patent or licence then there should be a trustworthy entity that assess the potential of the innovation so that the innovator can have an idea.

Judicial Relief : Recent judgements have shown optimism regarding the rights of a creator. Examples include⁴ -

1. Allergan Inc. v The Controller of Patents, C.A.(COMM.IPD-PAT) 22/2021⁵

Amendment of claims in a patent application which merely adjusts the nature of the patent is not barred under Section 59 of the Patents Act

The Delhi High Court allowed modifications from "method of treatment" to "composition" claims, therefore broadening the scope of allowable claim amendments under the Act. The respondent claimed that the amendments were in violation of Section 59(1) of the Patents Act; however, the court was confident that the Controller's interpretation was erroneous. The court stressed that as long as the core of an invention remains unaltered, modifications changing the invention's nature are permissible.

2. Indian Performing Right Society Limited vs. Rajasthan Patrika Private Limited & Indian Performing Right Society Limited vs. Music Broadcast Limited, 2023:BHC-OS:3623⁶

Authors of underlying works are entitled to claim royalty rights arising out of broadcasting of sound recording through radio

The right of writers of songs and books demanding royalties for sound recordings played for the public through radio broadcasting was maintained by the Bombay High Court. The court discussed the results of the Copyright Act's 2012 amendment, which added provisions to Sections 17, 18,

⁴ Article by Gaurav Bhalla and Parag Singhal at Bar and Bench <https://www.barandbench.com/law-firms/view-point/key-intellectual-property-ip-developments-in-india-2023-compilation>.

⁵ <https://indiankanoon.org/doc/159355253/>

⁶ <https://indiankanoon.org/doc/193563360/>

and 19. In rejecting the previous case's interpretation (IPRS vs. Eastern Indian Motion Pictures Association), the court made it obvious that authors maintain their rights even when their works get included in cinematograph films. The ruling upheld authors' rights to royalties for each instance in which their works are disseminated to the general public through radio broadcasts, going beyond movie theatres as stipulated by the revised Section 18(1) proviso.

Conclusion

In a country's economic growth the role of unique creations is a very effective fuel, it boosts the overall growth. At the forefront of this phenomenon are the innovators who dedicate their lives in creating unique works. While protection of consumer rights to create a trustworthy marketplace is of immense importance the rights of innovators and moreover the recognition of these rights is a paramount necessity that fosters a secure environment for creators as well as the consumers. The State has limited the types of objects that can be patented. This has been done to benefit the counterpart and encourage healthy competition without keeping the larger public devoid of necessary and beneficial inventions. Certain provisions that allow the government to legally grant licence of a patent to a third party if certain conditions are fulfilled clearly show the intent of these laws is public welfare by and large.

Healthy competition however is possible only when the competitors feel a sense of security who after all deserve fair compensation for expanding the array of choices available to consumers.

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