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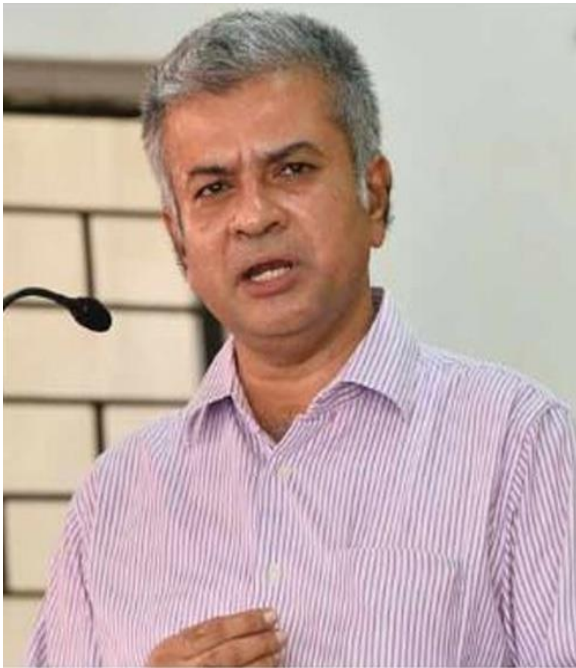
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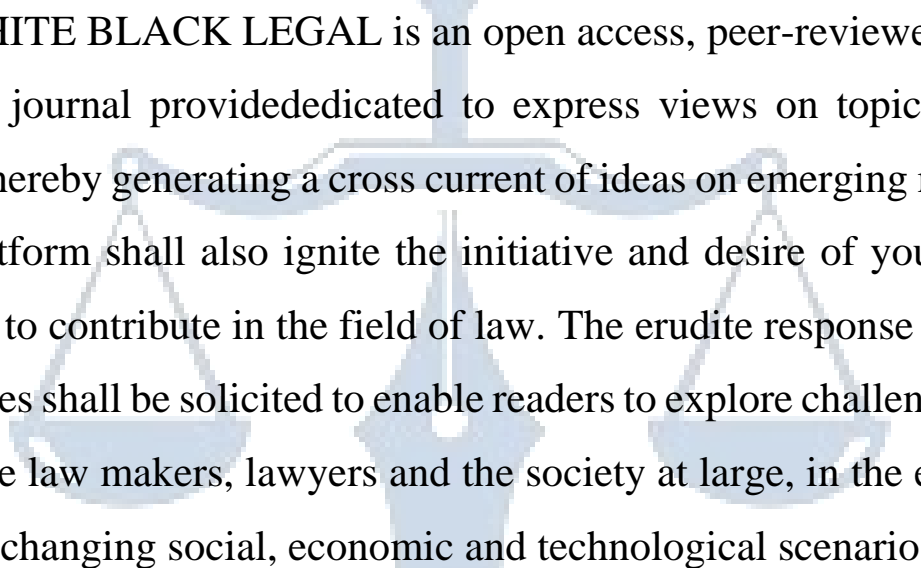


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire 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

W H I T E B L A C K
L E G A L

A STUDY ON THE SIGNIFICANCE OF INTELLECTUAL PROPERTY RIGHTS IN THE 21ST CENTURY FROM AN INDIAN PERSPECTIVE

AUTHORED BY - AKASH DUTTA

CHAPTER – 1

1.1 INTRODUCTION

The twenty-first century will be known as the century of intellectual creations. The countries of the world have realised that a nation's ability to transform intellect into wealth will be extremely important in the twenty first century. Intellectual Property plays a very important role in the development of a nation. All nations of the world which are considered as developed nations or developing nations are recognised so in this age of digitalisation because of their advancement in intellectual property.

Intellectual Property is an intangible asset derived from the human mind. Intellectual Property Rights (IPR) are exclusive rights that are granted to the creators or inventors so that such creators or inventors are able to use their creation, invention or innovation exclusively for a particular period of time.

Intellectual Property plays a key role in today's age of digitalisation with technological, scientific and medical inventions taking place at a rapid pace. Intellectual Property Rights helps in protecting these technological, scientific and medical inventions and also it allows the inventors to use their inventions exclusively.

Intellectual Property Rights consist of Patents, Trademark, Copyright, Industrial Design and Geographical Indication.

Patent provides protection to new inventions or innovations of the inventor or the patent holder. Patent law grants exclusive right to the inventor or the patent holder and therefore prevents unauthorised use of the invention of the inventor. The exclusive right granted to the inventor or the patent holder is a special right that allows the inventor or patent holder to manufacture, use and market his invention and also receive commercial benefits from the said invention provided

that such invention meets certain conditions prescribed by law. The exclusive right that has been granted to the inventor or the patent holder helps to protect the invention and prevents the invention from being manufactured, used or marketed illegally by another individual or entity without the approval of the inventor or the patent holder.

Trademark is a unique symbol, logo, word or phrase that provides identification to the products and services of a particular entity or organisation and helps in distinguishing the products and services of the said entity or organisation from those of the others that are available in the market. Trademark provides absolute rights to the owner of a particular trademark and makes it certain that no other individual or entity can steal or misrepresent the said trademark.

Copyright law protects the legal rights of the creator or author by protecting the original work or creation of the creator or author which is in tangible form such as music, art, films, novels, computer programme, etc. Therefore, it can be said that it is necessary that a creation or work must be in tangible form for it to be copyrighted. Copyright safeguards the original artistic or literary work of an author or creator from being copied or duplicated.

The fundamental purpose of the law related to designs is to safeguard the designs. The major goal is to prevent innovative and unique designs from being duplicated, resulting in loss to the inventor of the design.

Geographical indication is a status granted to certain products or items of a specific geographical area and these products or items contain certain valuable qualities or reputation of that geographical area. A geographical indication is predominantly given to agricultural products, natural items or manufactured handcrafts that have originated from a particular geographical area or location.

These Intellectual Property Rights mentioned above are extremely important in the 21st century because of the advancement in science and technology that is taking place in India and around the world at a rapid pace. In today's age of digitalisation, intellectual property rights have become increasingly crucial to protect inventions or innovations. The protection of intellectual property rights helps in encouraging and promoting creativity, invention and economic growth.

CHAPTER – 2

2.1 MEANING OF IPR

The term IPR stands for Intellectual Property Rights. It is a legal right given to creators and inventors providing protection to their intellectual creations or inventions. Intellectual Property is an intangible asset which is derived from the human mind. Therefore, Intellectual Property Rights are those legal rights which protect the creations of the human mind. These legal rights prevent misuse or illegal use of intellectual property owned by an individual or organisation. Thus, it can be said that legal rights protecting the ownership of intellectual property and preventing illegal use of intellectual property are known as Intellectual Property Rights. Intellectual Property Rights grants exclusive rights to the owner of the intellectual property to use their creation or invention or innovation exclusively for a certain period of time.

2.2 NEED FOR LEGAL PROTECTION OF IPR

The reasons mentioned below represent a few of the numerous reasons for providing legal protection to intellectual property:

1. Many individuals or entities attempt to replicate the creation of other individuals or entities for their own financial gain. Therefore, it becomes necessary to safeguard such creations or innovations from other individuals or entities to maintain exclusivity and uniqueness.
2. An author or inventor develops a unique product or service through his hard work, intellect and other resources and therefore it is essential to safeguard the said product or service from being commercialised by the competitors in the market while also ensuring that the author or inventor receives the deserved recognition for their creative works.
3. One of the most important tools for giving a corporation its personality is intellectual property. Intellectual property facilitates a company's ability to set itself apart from the competitors that are available in the market, therefore making it easier to reach the target audience and streamlining the entire marketing process.
4. Providing a legislative expression to the creation of inventor supports and promotes fair trade and commerce in the marketplace and also aids in the protection of their economic rights. Intellectual Property Rights can be used for generating revenue by licencing inventions to other individuals or organisations in addition to directly marketing the said creation.

2.3

IMPORTANCE OF IPR IN THE 21st CENTURY

Intellectual Property Rights are extremely important in the 21st century because of advancement in science and technology that is taking place around the world at a rapid pace. In today's age of digitalisation, it has become increasingly crucial to protect intellectual property rights. The protection of intellectual property rights helps in encouraging and promoting creativity, invention and economic growth. In the 21st century the economy of all the countries is driven by the advancement in science and technology and therefore the entire world is recognising intellectual property rights as an extremely valuable asset for their economic growth and scientific advancement.

Intellectual Property Rights encourages and promotes invention or creation by granting exclusive rights to the inventors or creators for their invention, creation, design or works. The legal protections provided by different forms of intellectual property rights motivates individuals and organisations to invest time and resources for the creation of new technologies, products and services, etc.

It can be said that in this era of digitalisation, intellectual property is considered to be an extremely valuable asset for any company or business. Companies or businesses of today heavily depend on different forms of intellectual property rights. Trademarks provides identity and recognition to a company or business. Patent safeguards the technological advancements of companies and businesses.

The laws related to copyright plays a very significant role in safeguarding the rights of the authors, artists, musicians or any other creator. The laws related to copyright ensures that the creators or authors earn profits from their creation by granting rights to another individual or organisation to reproduce, distribute and perform their works or creations. Copyright laws also provides control to authors or creators over how their works or creations are to be used. The protection provided by the laws related to copyright provides confidence to individuals who are creators or authors to pursue their creative endeavours.

The laws related to Intellectual Property Rights facilitates transfer of technology from one entity to another. Therefore, it can be said that intellectual property laws encourage collaboration for transfer of technology between different entities. The collaboration between different entities is usually set up through Licensing agreements and partnerships. These licensing agreements and

partnership between two or more entities allows the said entities to share their creation, invention or innovation with each other while also retaining the ownership right for the said creation, invention or innovation. This form of collaboration set up between two or more entities through licensing agreements or partnerships helps to accelerate the process of developing the product or invention as it allows the entities which are a part of the licensing agreement or partnership to use each other's resources and technologies.

In the pharmaceutical sector and other sectors such as biotechnology, Intellectual Property Laws play a very important role in the protection of public health and safety. Patent encourages pharmaceutical companies to invest time and resources in the research and development of life saving drugs and other medical treatments.

Today's age of digitalisation has created various legal issues in relation to intellectual property. The intellectual property laws are amended from time to time so that these laws are able to solve the legal challenges or issues brought forth by today's digital age while continuing to encourage and promote innovation and creativity.

The trademark laws protect the consumers by prohibiting the unauthorised use or illegal use of brand names, signs, symbols, logos, phrases or words thereby reducing confusion in the minds of the consumers and preventing fraud. Furthermore, competition laws support intellectual property laws by prohibiting anti-competitive practices that can restrict innovation and therefore also cause harm to the consumers.

Intellectual Property laws also plays a very significant role in international trade and business. The harmonization of intellectual property laws with the help of various international agreements such as Trade Related Aspect of Intellectual Property Rights (TRIPS Agreement), encourages fair and transparent trade relations among the countries part of the said international agreement. Therefore, it can be said that intellectual property laws are extremely important in the twenty-first century for promoting innovation and economic growth and also for providing protection to creativity and expression. As the advancement in technology continues to occur and the economy centred around knowledge continues to expand, intellectual property laws will continue to play an important role in impacting the future of innovation, trade and commerce and society.

CHAPTER – 3

3.1 SIGNIFICANCE OF INDIAN IP LEGISLATIONS

TRADEMARK ACT, 1999

A trademark is an easily identified sign, logo, symbol, phrase, design, sound, mark, or any name that is able to legally identify and distinguish a product or service from others in its category. In India, a trademark is protected by the Trade Marks Act, 1999. A trademark is commonly defined as a visual depiction of word, emblem, phrase to give a certain product or class of products a unique meaning.

A mark includes a label, heading, name, device, letter, shape marks, numbers, colour combinations, packaging, etc. Anything can be called a mark if it can be represented graphically in one, or two, or three dimensions.¹

There are numerous kinds of trademarks that can be registered such as word marks, logos, symbols, collective marks, shape marks, colour marks, smell marks, device marks, sound marks, service marks, certification marks, product marks, pattern marks, and well-known trademarks.

To get statutory protection under the trademarks act in India it is essential and important to file an application for registration of trademark. The applicant has to comply with all the requirements and the eligibility criteria for registration which is mentioned in the Trademarks Act, 1999.²

There are two grounds for refusing the trademark application, one is the absolute grounds which is mentioned in section 9 and the second one is the relative grounds stated in section 11 of the trademarks act.

A trademark registration offers a prima facie proof of ownership and legal protection under the trademarks act in India. It also discourages unauthorised use of the trademark and permits the filing of infringement lawsuits. The owner of a registered trademark is granted a number of important rights and privileges upon registration. These rights are valid for a period of ten years and may be prolonged further.³ The legal rights are right to assign, right to make correction in the registered trademark, right to exclusive use of the mark, right to change, right to get

¹ Section 2 (m) of Trademarks Act, 1999.

² Section 9 and Section 11 of Trademarks Act, 1999.

³ Section 25 of Trademarks Act, 1999.

statutory remedy against the infringement. On the other hand, the owners of the unregistered trademarks also have legal rights, that is the right to prevent an outsider from using the trademark and if it is used by any third party, then the owner may bring an action against the said person for passing off.

COPYRIGHT ACT, 1957

Copyright is a bundle of rights that protects the literary work of an author, theatrical, musical and other creative works. It also includes a number of rights such as the ability to reproduce, communicate with the public, alter and translate the work. The sole factor to determine if someone qualifies for copyright protection is the originality of expression.

The laws of Copyright in India are governed by the Copyright Act, 1957. The main objective of the copyright law is to protect the creative works of different creators like artists, authors, musicians, designers and other creative people.

The copyright act in India does not define the term “copyright”. The broad meaning of the concept of copyright relates to the right to copy that is solely available to the inventors, creators or authors. As a result, any subsequent copying of the original work would constitute infringement under the Act. Authors rights over their works or any sort of creations are guaranteed minimum protection by Copyright. Promoting creativity is essential for development because creativity helps in economic and social progress.

According to the Copyright Act, 1957 the following types of works are protected such as any work of literature which also includes software programmes for computers, compilations, any dramatic work, any musical work, any artistic or creative work, cinematographic movies, and any audio or sound recording.⁴

PATENTS ACT, 1970

Patents in India are governed by the Patents Act, 1970, sometimes known as the “Patents Act”. The purpose of patent law is to provide protection to the inventors for their inventions. The patent law grants the inventor exclusive rights to monetize their creation and protects them from illegal usage by third parties. The patents also offer the inventors exclusive rights to create, use, license, or sell their invention for a certain time period (In India, it is for 20 years).

⁴ Section 13 of Copyright Act, 1957.

After 20 years, that is when the patent expires, the innovation can be used by anybody in the public domain.

Accelerating the nation's economic and technological development is the primary goal of the patent law. The objectives of the Patents Act are:

1. To encourage scientific research, advancement in technology and industrial development,
2. To promote useful inventions that has commercial utility and
3. To grant exclusive privilege to the inventors to sell, own and use their patented products for a limited duration.

According to the Patents act, not every innovation qualifies as an invention. Invention refers to a novel product or a process with an inventive step and that can be applied or used in the industry. Thus, the concept of invention now explicitly includes the conventional qualities of novelty, non-obviousness and utility.⁵

According to the act, there are two categories of patents that can be registered in India: product patents and process patents. Product patent protects the product. It provides the creator increased protection for his/her idea by reducing the level of competition available for the same product. On the other hand, a process patent protects only the technique used to manufacture a particular product and does not protect the end product. A process patent is frequently considered to guarantee minimum protection.

After the grant of patent, the patentee and his/her agent or assignee gets exclusive rights for 20 years.⁶ The rights include: the right to use the patent, surrender the patent, right to grant license, right to transfer the patent and right to sue for infringement if any person manufactures or sells the invention without authorization.

DESIGNS ACT, 2000

In India, designs and industrial designs are safeguarded under the Designs Act, 2000 which is often known as Designs Act. The Designs act sets requirements for protecting industrial designs in compliance with the TRIPS agreement.

⁵ Section 2 (1) of Patents Act, 1970.

⁶ Section 53 of Patents Act, 1970.

The fundamental purpose of the designs act is to safeguard the designs. The act of 2000 consolidates and amends the law in regard to protecting the designs. The major goal is to prevent innovative and unique designs from being duplicated, resulting in loss to the inventor of the design. Design registration ensures that the inventor of the design prevents others from reproducing it and also that they are compensated by others who plagiarise it. Industrial designs attract customers and increases the product's commercial value. As a result, it contributes to the market's expansion. Some competitors use unfair tactics to restrict competition among different organisations by abusing designs. Thus, laws are required to protect the financial interest of the inventor of the designs. For the purpose of achieving this goal, the designs act was enacted.

GEOGRAPHICAL INDICATION OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999

Geographical Indication of goods in India, is registered and protected under the Geographical Indications of Goods (Registration and Protection) Act, 1999, which came into force in September 2003. The act is in compliance with the TRIPS agreement.

Geographical Indication which is also known as G.I. are a type of intellectual property rights that identify a product or good that is originated from a specific place or locality, area or region. The reputation of the product, the quality, or the other additional characteristics of a product are mainly connected to its geographical origin.

The G.I. carries out three functions and they are as follows:

1. The geographical indication identifies the commodities according to their origin to a specific location or region.
2. They indicate to the consumers that a product's quality, goodwill or reputation and other attributes are linked to geographical origin.
3. They promote and support the local producers of a specific region. The commodities are associated with a specific place or area implying that their goodwill, quality and other characteristics are unique to that particular area.

Indian G.I. examples include Basmati rice, Tea from Darjeeling and many more. Any reference to a location will always remind one of the specific things developed there, and vice versa, because GI has helped in establishing the relationship between the place and the commodities.

Many people and organisation are often perplexed about whether it is desirable to receive protection under G.I. or not. Some of the advantages of getting products registered under the

G.I. act is to enhance the economic growth, to expand business, promote exports, to enjoy the right to sue for infringement and to provide legal protection to the respective goods worldwide.



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CHAPTER – 4

4.1 TRENDS OF IPR IN INDIA

After the Independence of India, Intellectual Property laws which were mainly emphasized in India were related to Patents, Trademark, Designs and Copyright. The laws related to geographical indication came into force much later in the year 2003. In India, Intellectual property rights has become one of the fastest growing fields of law. The number of intellectualproperty applications filed in the last five years (till the year 2022-23) and the revenue generated by different forms of intellectual property in the last three years (till the year 2022- 23) helps to show why intellectual property rights is considered to be one of the fastest growingfields of law in India. The data related to intellectual property applications filed in the last fiveyears (till the year 2022- 23) and the revenue generated by various intellectual property in the last three years (till the year 2022-23) is given below in Table 1 and Table 2 respectively. Thisdata also shows the significance of Intellectual property rights in India in the 21st century.

Comparison of IP applications filed in India in the last five years

Table 1 Comparison of Intellectual Property applications filed in India in the last five years:⁷

Application	2018-19	2019-20	2020-21	2021-22	2022-23
Patent	50659	56267	58503	66440	82811
Designs	12585	14290	14241	22699	22698
Trademark	323798	334805	431213	447805	466580
Geographical Indication	32	42	58	116	211
Copyright	18250	21905	24451	30988	29466
Semiconductor Integrated Layout	0	0	5	1	23

⁷ Intellectual Property India, Annual Report (2022-2023) p 4

Designs (SCILD)					
Total	405324	427309	528471	568049	601789

Table 1 shows the trends in intellectual property applications filed in the last five years (till the year 2022-23). The table clearly shows that trademark has the highest number of applications filed every year in the last five years whereas SCILD has the lowest number of applications filed every year in the last five years.

The total number of intellectual property applications filed in the year 2018-19 was 4,05,324 which slightly increased to 4,27,309 in the year 2019-20. The number of intellectual property applications filed significantly increased to 5,28,471 in the year 2020-21. The number of intellectual property applications filed for the year 2021-22 was 5,68,049 which slightly increased to 6,01,789 for the year 2022-23. The total number of intellectual property applications filed in India in the last five years and the increase in the number of applications filed every year shows the impact different forms of intellectual property has made in India and also shows that with every year passing more individuals and entities want to secure their creation, invention or innovation through different forms of intellectual property.

Revenue generated by IPR in India in the last three years

Table 2 Comparison of revenue generated in the last 3 years (till 2022-23)⁸

	2020-21 (Lakh Rs.)	2021-22 (Lakh Rs.)	2022-23 (Lakh Rs.)
Patents	62384.00	66749.31	72910.76
Designs	655.00	769.12	852.80
Trademarks	39671.00	41776.58	44465.09
Copyrights	248.81	323.85	241.07
GIR	5.00	8.35	13.68

⁸ Intellectual Property India, Annual Report (2022-2023) p 9-10

PIS/RGNIIPM	12.35	20.48	20.66
Total	102727.00	109323.84	118504.05

Different forms of intellectual property play a very important role in generating revenue in India. Table 2 shows the revenue generated by different forms of intellectual property in the last three years in India. Patents have contributed significantly to the total revenue generated by intellectual property as it has generated the highest revenue whereas Geographical Indication Registry (GIR) has generated the lowest revenue.

The total revenue generated by various forms of intellectual property was 1,02,727 lakh rupees in the year 2020-21 which increased to 1,09,323.84 lakh rupees in the year 2021-22. Finally, the total revenue generated by various forms of intellectual property for the year 2022-23 increased to 1,18,504.05 lakh rupees. The revenue generated by different forms of intellectual property helps to show how Intellectual Property Rights has become one of the fastest growing fields of law in India in the 21st century.



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CONCLUSION

Intellectual Property Rights is a legal right given to creators and inventors providing protection to their intellectual creations. Intellectual Property is an intangible asset which is derived from the human mind. Therefore, Intellectual Property Rights are those legal rights which protect the creations of the human mind. The twenty-first century will be known as the century of intellectual creations. The countries of the world have realised that the nation's ability to transform intellect into wealth will be extremely important in the twenty first century. In India, Intellectual Property has played a very significant role in promoting and encouraging intellectual creations of creators or inventors in the 21st century.

This paper states the reasons why intellectual property should be legally protected. One of the reasons why intellectual property should be protected is because many individuals or entities attempt to replicate the creations or innovations of other individuals or entities for their own financial gain. Therefore, it becomes necessary to safeguard such creations or innovations from other individuals or entities to maintain exclusivity and uniqueness.

This paper also emphasizes on the significance of different intellectual property legislations in India. This paper also presents the trends of Intellectual property in India through the number of intellectual property applications filed in the last five years (till the year 2022-23) and the revenue generated by different forms of intellectual property during the last three years (till the year 2022-23) which shows the significance of intellectual property in India in the 21st century.

Therefore, it can be said that Intellectual Property Rights not only provides protection to creations or inventions or innovations of creators or inventors but also plays a very significant role in the overall development and growth of India in the 21st century.