



A LEGAL ANALYSIS OF INTELLECTUAL PROPERTY AND COPYRIGHT

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ABSTRACT

The Indian government recognizes a special legal protection for creative works called Intellectual Property Right. Simply put, an intellectual property right safeguards the intangible results of human ingenuity. Patents, trademarks, trade dress, trade secrets, industrial designs, layout designs, and copyrights are all included in the scope of intellectual property. Maintaining the quality, safety, and efficacy of the pharmaceutical industry's products and services requires vigilant intellectual property protection. It is the benchmark for labeling and verifying items in international trade. Intellectual property law safeguards the value of people's original ideas. During that time, the author often has complete control over the book's circulation and exploitation. The word "intellectual property" is often used to refer to creative works such as paintings, books, inventions, and scientific discoveries. In order to maintain the high quality and uniform standards of the inventor's work and to safeguard the innovations made by the inventor, this program is essential. This research defines the term Intellectual Property Rights (IPR), discusses the different types of patents (Patents, Trademarks, Copyrights And Related Rights, Geographical Indications, Industrial Designs, Trade Secrets, Layout Design For Integrated Circuits, Protection of New Plant Variety), and explains the requirements for patentability (Novelty (Patentability), Non-Obviousness (Patentability), Utility (Patentability), and Anticipatory Utility (Patentability)).

Keywords: - Property, Legal, Patents, People, Law

I. INTRODUCTION

THE CONCEPT OF PROPERTY

Many of India's societal structures date back to the 17th and 18th centuries. One such institution is property ownership. The three types of property—movable, immovable, and intellectual—are important to Indian society. The institution of property, like all others that presume ties between people, serves to govern interactions between people as well as between people and things. Ownership is a kind of connection between people in which they share rights to utilize property. In this social order, the right to possess anything is tied to the right to use it for whatever reasons you want, for however long you like, and for whatever long you like. The idea behind intellectual property is that no one else should be able to infringe on an individual's control over his or her own ideas or creations.

Once someone has the property right to anything, everyone else has an obligation to respect that person's right to utilize the property.

- **Legal concept of property:-**

What we term "the law of property" is "first and foremost the systematic expression of the degrees and forms of control, use, and enjoyment, that are recognized and protected by law," as stated by jurists. Blackstone listed the freedom to use, enjoy, and sell property as the three fundamental property rights.

However, notwithstanding the importance of the aforementioned rights, the right of exclusion stands out as the most basic to the owner-ship concept. The very definition of property is exclusion. Nonetheless, every other right, no matter how peripheral. A sufficient demonstration that the enumeration of rights is conditional on social and economic circumstances is provided by the fact that the rights that make up the so-called bundle of rights vary from place to place and throughout time. A property right is a defined collection of legal privileges that often comprise the following:

i)The power internally to dispose actually of and exploit the object or Good;

ii) The right to utilize the goods in issue, together with the owner's other assets, as a foundation of credit for his whole company, including all liabilities deriving here from; The right to alienate, pledge, or otherwise by declaration of will to dispose of goods, to contract rights in it of the most diversified character.

iii)Hereditary succession

- **Property as an economic institution:-**

Every piece of real estate has a monetary worth, making property an additional economic institution. Economists agree that owning property confers several benefits on its owner, to the point that one may define ownership as a bundle of rights. A few economists define property as "the individual's ability, in expected terms, to consume the good (or services of the asset) directly or to consume it indirectly through exchange." As another explanation, "an exclusive property right grants its owner a limited authority to make decisions on resource use in order to derive income therefrom" is one way to characterize property rights.

Right to property is a right in real property. The nature and effects of property as a legal and economic institution can only be understood via an appreciation of the real character of property. Many jurists agree that property rights fall under the

- **Intellectual property is not absolute:-**

Like any other type of property, intellectual property may be bought, sold, mortgaged, and traded; however, there are certain limitations on how it can be used. Without government oversight and regulation, no private individual can have a monopoly on an idea or invention. Just as the government may seize and repurpose movable and immovable property for public use under the sovereign theory of eminent domain, so can it do the same with intellectual property?

The government may thus issue forced licenses, award licenses of right, and impose limitations on the grounds of public health and morals, all of which violate the monopoly rights of intellectual property owners.

II. REVIEW OF LITERATURE

Gaikwad, Arun. (2020) What we call "inventions," "literature," and "art," as well as "trademarks," "logos," and "brand names," are all examples of intellectual property. Property rights in intellectual works are analogous to other forms of property. Owners of patents, trademarks, or copyrighted works are able to reap financial rewards from their creations and efforts thanks to these protections. The right to the preservation of moral and material interests deriving from authorship of scientific, literary, or creative achievements is guaranteed by Article 27 of the Universal Declaration of Human Rights. Inventions, works of literature and art, designs, and commercially-used symbols, names, and pictures are all examples of intellectual property (IP). The study also discusses the background, goals, and various forms of intellectual property rights. Ideas, innovations, and creative expressions are accorded the status of property when the public is ready to do so, according to the definition of intellectual property rights (IPR). The purpose of intellectual property rights (IPR) is to ensure that the people responsible for creating anything new have the opportunity to profit from their labor. Various forms of legal protection exist for works of creativity, including patents, copyrights, trademarks, and so on. When an

invention meets the standards of universal originality, non-obviousness, and practical use in industry, it is granted a patent. Proper identification, planning, marketing, rendering, and protection of innovation or creativity all depend on intellectual property rights. IPR policies, management styles, tactics, etc., should develop independently in each sector.

Ode, Sonal; Mahato, Tapan; Ojha, Sunil; Singh, Vishwakarma; 2022) Intellectual property rights are the exclusive rights provided to people by the nation to utilize the products of their brains for a certain length of time. Patents, Copyright, Trademark, Industrial Designs, and Geographical Indications are all examples of Intellectual Property. In return for full disclosure of the innovation, the government grants the creator a patent on the invention. A patent grants the applicant and any assignee the exclusive legal right to make commercial use of the patented invention for a period of 20 years from the application's filing date. For the length of the granted patent's term, the inventor has the exclusive right to economically exploit and use his or her invention, and the right to sue anybody who violates this right. Although there are several advantages to patenting an invention, Indian scientists often choose to publish their findings in academic journals instead of filing patents. The purpose of this essay was to investigate possible causes of this phenomenon. The research uncovered a plethora of factors, such as the need for an entirely online application process, lengthy wait times, application and other fees, timely responses, fluency in English, drafting skill, etc. However, less time, money, and effort is required to produce publications. Although there are numerous issues with patenting, an inventor who has created something really original and useful should pursue a patent in order to make money off of it. The researcher stands to gain as much as the nation from commercializing their findings. Every scientist has a responsibility to contribute to the progress of their nation.

NarasimhuluEpe; Hindustan Abdul Ahad; Sai D; HaranathChinthaginjala; and Manoj Kumar (2019)The owner of an intangible intellectual property right (IPR) has the right to use their invention in any way they see fit. These rights encourage original thought and study, earning the inventor prestige and financial rewards in a globally competitive market. The fundamental issue with emerging nations like India is the lack of awareness regarding IPR. Since they do not understand our intellectual property rights (IPR), outsiders steal our ideas and resources, allowing biopiracy to flourish. This article explains why and how to get different intellectual property rights (IPRs), including patents, trademarks, and geographical indications, industrial designs, copyrights, trade secrets, layout designs, protection of novel plant varieties, and more.

Kumari, Archana (2018) Most people think of property as a costly, physical possession, whether it be one that can be moved or not. Intellectual property, however, may be considered as property generated by the mind such as ideas, inventions, literary or creative productions, etc., that are intangible yet can be transformed into physical objects.

We are all aware that owners of physical property, whether mobile or immovable, have legal rights over their possessions, and that every nation has laws in place to safeguard its people'

property rights. It's unfortunate that until recently, mental works and intellectual inventions weren't treated the same as physical property, therefore no laws were in place to adequately safeguard them.

Perhaps this was the case since there was no commercial value attached to the ideas.

III. THE CONCEPT OF INTELLECTUAL PROPERTY:-

The idea of intellectual property is both ancient and all-encompassing. The contemporary India's legislature enacts distinct laws on diverse to different subject topics of intellectual property rights; hence the scope of intellectual property rights is quite broad.

Intellectual property rights include the following:.

Literary, artistic and scientific works:

1. Performances of performing artists, phonograms, and broadcasts:
2. Inventions in all fields of human endeavour:
3. Scientific discoveries:
4. Industrial designs:
5. Trademarks, service marks and commercial names and designations:
6. Protection against unfair competition;

As well as any other rights that may be derived from intellectual labour in the commercial, academic, literary, or creative spheres.

IV. INDUSTRIAL PROPERTY

There is a common misunderstanding that this phrase refers to any tangible or intangible asset employed in industrial production, including but not limited to machinery, equipment, etc. But intellectual property, which includes industrial property, pertains to what humans have conceived and brought into the world. Intellectual and industrial property refers to everything developed by the human mind that is worthy of legal protection and commercial monopolization. This includes things like patents, trademarks, and copyrights.

V. COPYRIGHT

Literary, scientific, and creative works, whether published or unpublished, in any tangible form (that is, one that can be seen, heard, and touched), are entitled to copyright protection. When

discussing works of literature or the arts, the term "copyright" refers to the primary act that may be done only with the author's permission. This is the process of producing an identical replica of a creative work, such as a book, painting, sculpture, photograph, or film.

The ideas themselves are not always protected, but the writers' ability to articulate them is. Ideas are the most valuable asset in intellectual property law, although they are not covered by copyright. A person who has publicly shared his ideas, such as in a presentation, has little legal recourse against those who steal his work unless he gets patent protection. Ideas may be protected only if they have been expressed in a physical form, such as a written work, a play, an artwork, or a musical composition.

Ideas presented in the work need not be novel, but the medium in which they are represented must be. Both the content and the presentation are affected. However, with regards to the latter (the mode of expression), the original character might sometimes cause difficulties. For example, the exhibition or sale of the original work is crucial to the enforcement of copyright for creative works (mostly paintings and sculptures). He shouldn't have to forego future earnings just because the creator let him be cut loose from the original. Therefore, many governments throughout the globe provide the author the right to a portion of the profits made from the sale of his work once it is transferred to a new owner. This is where the notion of "droit de suite" comes in handy.

VI. CONCLUSION

The international community's impression of India would improve as a result of the government's efforts to develop the National IPR policy, the IP Appellate Tribunal, e-governance, and the pledge to comply with the TRIPS agreement of the WTO in law and spirit. The National Intellectual Property Rights (IPR) Policy, 2016 came into effect in India in May, 2016, and it represents a very positive step forward for intellectual property in the country. India's intellectual property rights (IPR) system complies with the World Trade Organization's (WTO) Trade-Related Aspects of Intellectual Property Rights (TRIPS) accord. The exploitation and abuse of one's intellectual property is a major problem in the modern world, thus protecting such property is crucial. The rise of the internet and its ubiquitous use throughout the globe has coincided with a rise in intellectual property crimes. The IP is a very new concept. They probably got started in the late 19th century. Whether its current level of popularity can be traced back to the 1970s or whether it has been steadily rising since then.

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