AN ANALYSIS OF IPR ISSUES AT THE GLOBAL LEVEL

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ABSTRACT

This research paper has outlined many challenges in the field of IPR. Along with providing a basic understanding of what is intellectual property, it marks the evolution of IPR laws, types of intellectual property, challenges in the way of establishing sound international rules and policies, cases and endeavours to foster an interest in the minds of readers, in this field and to search for feasible and practicable solutions for the resolution of those challenges.

Keywords: Intellectual Property, Intellectual Property Rights, Challenges

I. INTRODUCTION –

The word "intellectual" refers to one's ability to use their senses. It refers to a person's mental powers, his ability to reason and think and to generate ideas.

The word "property" refers to anything that is owned or possessed. Property can be categorized into two types: tangible and intangible. Examples of a tangible property include a house, a car or cash which can be seen and touched. Intangible property can't be touched. Examples of intangible property are goodwill, digital currency, intellectual property. Intellectual Property is a precious intangible property. As the name suggests, the term "Intellectual Property" refers to the creations of human mind.[1]

Intellectual Property is as valuable as, and sometimes even more valuable than the tangible property as they help in accumulating wealth. This is the reason behind enterprises spending hefty amount for increasing and protecting their IP.

If anybody will be able to copy other man's ideas and make profit from it then it may deter others from experimenting and creating. Thus, IP needs to be protected. And IP can be protected

[1] Dr. B L Wadehra, Law Relating to Intellectual Property xv (5th ed. 2011)

only by rules and laws. And hence, many int'l organizations work for protection of IP and many agreements & treaties have been signed and thus, int'l laws are administering it.

The terms IP and IPR are often used interchangeably although they have a fine line difference. IP is a type of intangible property which is protected from unauthorized use by the help of IPR guaranteed to private entities.

II. EVOLUTION –

Though Intellectual Property has been first recognized at the global level in the Paris Convention for the Protection of Industrial Property in 1883, it has a long history. Even invention of wheel and discovery of fire by early humans are examples of IP. Even during ancient civilizations traders used to trademark their merchandise by stamping them. For instance, Roman merchants used to stamp pottery and metal items made by them to authenticate goods ensuring quality products or to denote the origin or manufacturer of it.[2]Though now the field of IPR has become more complex with the advent of globalization yet it simply focuses on providing opportunities to the innovator to reap benefits from his innovation.

III. TYPES OF IPR –

There are many types of IPR. The prominent ones are:

Patents –

They protect different types of inventions. They give rights to the patent holder to determine how or whether his invention can be used. Patents are given for a limited period. Even Alexander Graham Bell received his patent from US Patent Office as early as in the year 1876 for his invention of telephone.

Trademarks –

They protect brand elements such as brand name, logo, slogan, jingle almost anything by which consumer can differentiate between products and services of two or more enterprises. Example

[2] Williams IP Law, https://www-txpatentattorney-com.cdn.ampproject.org/v/s/www.txpatentattorney.com/blog/the-history-of-intellectual-property/amp/?amp_gsa=1&amp_js_v=a9&usqp=mq331AQIUAKwASCAAgM%3D#amp_tf=From%20%251%24s&aoh=17253328693095&referrer=https%3A%2F%2Fwww.google.com&ampshare=https%3A%2F%2Fwww.txpatentattorney.com%2Fblog%2Fthe-history-of-intellectual-property%2F (last visited Sept. 2, 2024)

– Logo of Nike (a popular sports wear brand)

Copyrights –

They protect literary, artistic and musical works. They give the right to copyright holder to decide whether his creation can be replicated or disseminated. Example – Harry Potter book series by J.K. Rowling

Trade Secrets –

They are special confidential information of businesses. Those are information which enterprises don't desire to be disclosed to maintain dominance in the market. These trade secrets could be formulas, processes, etc. These are not patented so that the information could not be revealed and ever used by others. Example – Formula for Coca-Cola, Ingredient of Maggi's 'Masala Magic'

Geographical Indication –

These are tags that are given to goods of a specific geographic origin. These goods have specific characteristics which are explicitly imputable to that geographic place of origin. Example – Darjeeling Tea

Industrial Designs –

This IPR protect the design or rather the exquisite quality of a product. It includes features such as shape of a product or colours and patterns used which enhances the product's look and which purpose is to leave a memorable imprint on the minds of people. Example – Iconic glass bottle of Coca-Cola

IV. INTERNATIONAL ORGANIZATIONS AND AGREEMENTS –

WIPO (or World Intellectual Property Organization) is a UN (United Nations) Agency which promotes protection of IP globally. Its headquarters is at Geneva, Switzerland. WIPO joined the UN in 1974. At present, it has 193 member states. WIPO recognizes Patents, Copyrights, Trademarks, Industrial Design, Geographical Indication and Trade Secrets as Intellectual Property. Its function include: aiding member nations frame laws and policies, providing

platform for dispute resolution, monitoring the performance of int'l treaties all relating to IP and such other related functions.[3]

Even Article 27 of the UDHR (Universal Declaration of Human Rights) states that every person possesses the right to freely enjoy arts and a share in the scientific advancements. Every person possesses the right to protect his interests which are the results of their scientific, literary or artistic works. UDHR was adopted on 10th December in the year 1948 by the UN General Assembly.[4]

TRIPS (or Trade Related Aspects of Intellectual Property Rights) is an int'l agreement. All members of WTO (or World Trade Organization) are parties to it. This WTO agreement was signed in 1994 by 164 countries. Its functions include: aiding WTO members achieve the objectives of their national policies, simultaneously facilitating trade in knowledge and creativity between countries, providing platform for trade dispute resolution relating to IP and such other related functions.[5]

TRIPS has recognized IP into two categories: (i) Industrial Property and (ii) Copyrights & rights related to copyright.

Industrial Property is further categorized into two types with different objectives. First category includes Trademarks and Geographical Indications, which protect distinctive signs, the objectives of which are ensuring fair competition between enterprises in the market and also helping consumers to choose the right product. Second category includes inventions protected by Patents, Industrial Designs, Trade Secrets, the objectives of which are to estimate innovation.

The objective of copyrights and rights related to copyrights is to encourage and reward creative works. Copyrights are rights of authors of original literary, musical and artistic works. Rights related to copyright (neighbouring rights) include rights of those who contributed to disseminate those works to public such as rights of producers or of broadcasting organizations.

[3] WIPO, https://www.wipo.int/about-wipo/en/ (last visited Sept. 10, 2024)
[4] https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=The%20Universal%20Declaration%20of%20Human,to%20it%20in%20their%20preambles (last visited Nov. 10, 2024)
[5] World Trade Organization, https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm

V. CHALLENGES IN DEVELOPING AND IMPLEMENTING IPR LAWS –

Though various International Organizations such as INTA (International Trademark Association), Madrid Protocol, NAFTA (North American Free Trade Agreement), WIPO, TRIPS help monitor the use and protection of intellectual property, there are many challenges to uprooting.

Laws, both domestic and int'l, governing the Intellectual Property have become more complex and hence, it has now become difficult to settle disputes, especially int'l disputes.

The purpose of IPR is to protect original creations and prevent privacy & unauthorized use of those creations. Strangely but realistically in current times this is being done by the help of IPR. Examples of such acts include biopiracy in which some developed nations patent some property of biological matter which is traditionally being used in some other developing or underdeveloped countries. Turmeric war between India and the US is evident that a well-known common fact within one ethnicity can be patented or protected by of others. This will be detrimental to that ethnic group just because they have not patented their traditional heritage. Even this might lead to a situation where such group might have to pay the price fixed by the patentee and the patentee shall reserve the right to determine price and supply of such products. And thus, the very purpose of IP laws is sometimes being defeated.

Many developed countries lose much wealth because of piracy, counterfeiting of goods, and other IP infringements. According to the office of the United States Trade Representative, US industries lose between $200 billion to $250 billion annually because of the above-mentioned reasons.[6]

If a IPR has been recognized in one country, it will protect the right holder's creation in that country only. He will have to apply for its protection in other countries separately which is time consuming and financially not feasible for many. In the meanwhile, his ideas could be copied.

It has become difficult for nations to balance between obliging international treaties and simultaneously achieving their domestic policies.

[6] Deborah E. Bouchoux, Intellectual Property: The Law of Trademarks, Copyrights, Patents and Trade Secrets 11 (4th ed. 2012)

These laws, treaties, etc. have no provisions for the encouragement of creation and innovation apart from their protection.

Another challenge is to maintain a balance between public interest and interests of the right holder. Since time immemorial humans have been involved in experiments, innovations, inventions and creations. If invention of wheel, etc. could be patented at that time, then the world would not be evolved at this level and at this rate as of now. So, it is necessary to encourage the innovator as well as protect the interests of mankind for the world to evolve.

One of the most recent and emerging challenge is posed by the burgeoning AI (Artificial Intelligence). AI raises various IP issues, example – Who owns AI generated works? Who owns the data from which AI receives information? Who shall be liable in case, creations and innovations generated by AI infringe upon others' rights or legal provisions or causes any harm? AI itself cannot own the rights to artistic, literary works or inventions it is said to have created. The most vulnerable group adversely affected by AI in the field of IP includes inventors and creators which may be used by AI without their permission. Since AI is in itself a new concept there are no specific and strict laws governing it as well as no definite provisions for the difficulty it poses to the field of Intellectual Property governance. Rie Kudan, a Japanese author was felicitated by an award for writing the book "The Tokyo Tower of Sympathy". She used AI which generated word-to-word about 5% of the novel.[7] Though AI helped her win the award, it is no doubt that it hinders human creativity and exercising the human brain.

Plausible solutions can be imposition of criminal liability upon AI entities for committing IP offences. Another of the solutions for dealing with difficulties posed at global level may be to create a single body which will oversee all matters relating to providing intellectual property rights to persons or entities and check whether such creation or innovation is not existing anywhere and check any case of biopiracy, creation of a single dispute resolution platform with different divisions, establishment of specific commissions or tribunals at national and regional levels for ease, and an appellate body. Also, countries (especially underdeveloped and developing countries) should apply for Geographical Indications, patents, etc. to prevent any

[7] https://www.indiatoday.in/technology/news/story/award-winning-japanese-author-reveals-she-used-chatgpt-to-write-her-novel-2493835-2024-01-26#amp_tf=From%20%251%24s&aoh=17313285461723&referrer=https%3A%2F%2Fwww.google.com&amp share=https%3A%2F%2Fwww.indiatoday.in%2Ftechnology%2Fnews%2Fstory%2Faward-winning-japanese-author-reveals-she-used-chatgpt-to-write-her-novel-2493835-2024-01-26

other in the world to steal their traditional knowledge and their ethnic intellectual property. Because of biopiracy traditional heritage of resources, products and knowledge are at a risk. This can be protected only through statutory protection.

VI. LEGAL CHALLENGES -

1. Basmati Rice War –

Indian farmers have since many years cultivated Basmati rice which is known for its aromatic, long and premium grains. An American company named RiceTec produced rice grains derived from rice cultivated in India but not grown in India and hence, not of the same quality. It branded it as Basmati. It trademarked its rice under the name 'Texmati – American style basmati rice' and 'Kasmati – Indian style Basmati rice'. It got patented from the US Patent office in 1997.[8] This led to the violation of concept of Geographical Indications. Since India is a major exporter of Basmati rice, it was likely to affect its trade. So, India opposed the patent in the US Patent Office which subsequently cancelled it in 2001.

Note – India is still fighting Basmati wars and working for securing GI tags against many other countries.

2. Novartis A G v India[9] (2013) –

Novartis A G is a multinational company headquartered in Switzerland. It manufactured a drug named 'Glivec' used to treat leukemia and other types of cancer. It applied for a patent in India. The Indian Patent Office rejected its application. The company filed an appeal in the Supreme Court of India. The company argued that their drug provided enhanced efficacy. It was found that the drug was a modification of a known drug named 'imatnib'. Further, it was found that the drug did not provide any therapeutic efficacy that is there was no proof of increased effectiveness in medication. Supreme Court ruled that merely discovering new form of an already known substance or a new property of the known substance which is already being utilized is no innovation. Therefore, the decision of the Patent Office was upheld by the Supreme Court.

[8] The New York Times, https://www.nytimes.com/2001/08/25/business/india-us-fight-on-basmati-rice-is-mostly-settled.html (last visited Sept. 3, 2024)
[9] Novartis A G v. Union of India & Ors., AIR 2013 SC 1311

3. **Microsoft Corporation v Lindows.com, Inc.[10](2004) –**

In this case Microsoft sued Lindows because of the name which was allegedly similar to 'Windows' and which may confuse users. Microsoft Corporation is a MNC headquartered in Washington, America whereas Lindows is a company headquartered in San Diego, California. Microsoft Windows is an operating system whereas Linspire is an operating system based on Linux. The decision came in favour of Microsoft. Lindows later changed its name to Linspire.

4. **Yahoo! Inc. v Akash Arora & Anr [11](1999)–**

This is a case of cybersquatting. Cybersquatting is "the practice of registering names of well-known companies or brand names, as internet domains, in the hope of reselling them at a profit". In this case the Yahoo! Inc. filed an application to get trademark for its name. The application for it was pending. Meanwhile the defendant used the name 'Yahoo India' to provide services to users similar to those provided by the plaintiff. The plaintiff requested the Court to pass an order of permanent injunction against the defendant so that the defendant do not use that name for providing its services. The court subsequently granted the request and passed the order of permanent injunction against the defendant.

5. **The Coca - Cola Co. v Bisleri Int'l Pvt. Ltd. & Ors.[12](2009) –**

Bisleri is an Indian Company which sold intellectual property rights of MAAZA (a Bisleri product and a mango-based drink) to Coca – cola, headquartered in Atlanta, US. Coca – cola filed an application to register trademark for MAAZA in Turkey. Bisleri Pvt. Ltd. sent a legal notice to the plaintiff to prevent this. Delhi High Court passed an order of interim injunction in favour of Coca-Cola Co.

6. **Kirtsaeng v John Wiley & Sons, Inc.[13](2013) –**

Supap Kirtsaeng was a student in the U.S.A. who imported textbooks from another country and resold those textbooks. The copyright holder, i.e., the publisher sued Kirtsaeng for copyright

[10] Microsoft Corporation v Lindows.com, Inc., 319 F. Supp.2d 1219
[11] Yahoo!, Inc. v. Akash Arora & Anr., 78 (1999) DLT 285
[12] The Coca - Cola Co. v Bisleri Int'l Pvt. Ltd. & Ors., (2009) 164 DLT 59
[13] Kirtsaeng v John Wiley & Sons, Inc., 568 U.S. 519 (2013)

infringement. The court focus on the first sale doctrine stating that "owner of a copyrighted work has right to resell it without the permission of the copyright holder".

7. Emonster K.K. v Apple Inc. [14] [15](2017) –

Apple, a US based tech company, declared to launch Animoji feature in its phones. This feature allows users to animate their faces into what looks like emojis. Emonster K.K., owns an iOS application named "Animoji". The firm has also trademarked it in the US. It has filed a lawsuit against Apple for using the same name.

8. Amul v Amuleti[16] (2024) –

Amul is the largest dairy brand of India and ranks 8th at the global level. Amuleti is an Italian brand. Amul had used its trademark since 1958 whereas the defendant company has used its mark since 2020. The defendant's company's elements so well resemble with Amul that is very likely to cause confusions. So, an injunction was ordered by the Delhi High Court in 2024 in favour of Amul.

9. Turmeric War[17] –

The University of Missisipi Medical Centre, Missisipi was granted the patent for the fact that turmeric is used to treat wounds in the year 1993. Turmeric is traditionally used in India since time immemorial for the said purpose. Since, this was no new invention the Indian Government fought against it and the patent was cancelled. This fight was led by Dr. Raghunath Mashelkar.

VII. CONCLUSION –

In spite of having such a long history there are many emerging concepts and challenges which make this field novel. As discoveries never stop and the fact that there is no limit to inventions

[14] https://www.thenewsminute.com/atom/japanese-firm-sues-apple-over-animoji-feature-iphone-x-70318
[15] https://www.thehindu.com/sci-tech/technology/gadgets/apple-hit-with-trademark-lawsuit-over-iphone-x-animoji-feature/article19895735.ece#amp_tf=From%20%251%24s&aoh=17233712466981&referrer=https%3A%2F%2Fwww.google.com&ampshare=https%3A%2F%2Fwww.thehindu.com%2Fsci-tech%2Ftechnology%2Fgadgets%2Fapple-hit-with-trademark-lawsuit-over-iphone-x-animoji-feature%2Farticle19895735.ece
[16] https://www.scconline.com/blog/post/2024/09/16/dhc-grants-interim-relief-to-gujarat-co-operative-restrains-terre-primitive-from-using-marks-logos-similar-to-amul/
[17] https://www.npr.org/2023/09/01/1197321273/turmeric-india-biopiracy-patent-tkdl (last visited Nov. 10, 2024)

and innovations, field of IP is unlikely to fade away in the distant future. This opens vast opportunities to individuals to provide input in different ways.