CRITICAL ANALYSIS OF INTELLECTUAL PROPERTY RIGHTS IN INDIA

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Understanding the legal rights of an individual is something we need to understand the subject. So what is meant by intellectual property?

Intellectual property:

Any creation or invention of an individual, or we can say all the intangible assets a person creates on their own in the fields of science, literary and artistic works, symbols, designs, etc., used for their own benefit or business purpose and over which they enjoy possession, is termed intellectual property.

Now, when we know what intellectual property means, let us see what the rights associated with it are.

Intellectual property rights:

1. These are the exclusive rights given to an individual over their creations (intellectual property) to use their creation for a certain period and prohibit its use by any other person or organisation without the permission of the original rights holder.

2. These are also very important to economic development as well as our society.

3. It consists of the main types of intangible assets, including trademarks, patents and copyright.

Development of intellectual property rights in India:

Development of IPR in India started by replacing the Trade and Merchandise Marks Act, 1958, with the Trade Marks Act, 1999, to make sure India was keeping up its commitment to the TRIPS Agreement.

There were a few changes to the development:

1. Service marks were included through registration.

2. Graphical representations, shapes and colours were also included in trademarks.

3. The period of registration was also increased from 7 to 10 years.

4. Both registered and unregistered trademarks can be assigned with or without the goodwill of the business.

On 30 March 2021, the Government of India notified the Copyright Rules, 2021, amending the Copyright Rules, 2013. The text notes that the Copyright Board was being replaced by an Appellate Board.

Amendments have also been made to patent laws. The Patents (Amendment) Rules, 2020, made changes to the filing of a statement of commercial working of a patented invention. Before the revised 2020 rules, patent holders and licensees were required to submit the statement yearly. In India, the financial year runs from 1 April to 31 March, so after the amendment it became easier to file the statement.

Importance of intellectual property rights in India:

The importance of IPR was first recognised in the Paris Convention, 1883, for protecting industrial property, and the Berne Convention, 1886, for the protection of literary and artistic works.

The rights under intellectual property are stated in Article 27 of the Universal Declaration of Human Rights.

Issues in India's IPR framework:

1. Section 3(d) of the Indian Patents Act says that a new form of a known substance is not patentable if it does not result in an enhancement of the known substance’s known efficacy.

2. There is generally a concern among foreign investors regarding compulsory licences and their possible misuse, because a compulsory licence grants permission under law to use, import or sell a patented creation without the patent owner’s consent.

Important terms related to IPR:

Patent: An exclusive right granted over an invention, allowing the owner to use it and prevent others from using it without the owner’s permission.

3. It consists of the main types of intangible assets, including trademarks, patents and copyright.

Copyright:

“Right to copy” gives the owner the legal right to make copies of the original content or creation. No one else, except a person authorised to do so, can use the creation.

Trademark:

A mark, symbol or sign offered by a company or an individual that differentiates a product or service from those of another company. It also indicates that the mark may be used only by its owner, or by another party if it is licensed to them in exchange for payment.

IPR cell:

It is an organisation created to look after the filing of patents, copyright, designs, etc. It gives the owner the right to use their creation for their benefit and also helps them transfer the rights to use it to others. It deals with matters related to intellectual property.

Important landmark judgments:

1. Bajaj Auto Limited v. TVS Motor Company Limited (2009)

2. Yahoo!, Inc. v. Akash Arora & Anr. (1999)

3. Bayer Corporation v. Union of India (2009)

4. Clinique Laboratories LLC and another v. Gufic Limited (2009)

5. Novartis v. Union of India.

1. Bajaj Auto Limited v. TVS Motor Limited (2009)

It was a dispute over the use of Twin Spark Plug Engine Technology. In this case, two companies were in dispute over a patent for the use of Twin Spark Plug Engine Technology. The Supreme Court also observed that IPR cases remain pending for a long time and ordered that intellectual property cases be heard on a day-to-day basis, with final judgment to be given within four months from the date on which the suit was filed.

2. Yahoo!, Inc. v. Akash Arora & Anr. (1999)

It related to cybersquatting, where the names “Yahoo!” and “Yahoo India!” were similar. Users of “Yahoo!” might get confused and interpret “Yahoo India!” as “Yahoo!”.

3. Bayer Corporation v. Union of India (2009)

This case concerned the grant of a compulsory licence. Bayer Corporation held a patent for the drug Sorafenib Tosylate, which was available for the treatment of liver and kidney cancer. An Indian drug company, Natco, approached Bayer for a voluntary licence to produce and sell the drug. However, the application was rejected because the two companies disagreed about the price Bayer asked for each month in exchange for granting the voluntary licence.

The conditions for granting the licence were fulfilled, but the Court also considered whether the drug was available to the public at an affordable price and whether public-health requirements were met. The judgment emphasised that where public interest is at stake, it must be given due importance.

4. Clinique Laboratories LLC and another v. Gufic Limited (2009)

This was a trademark infringement case. Clinique Laboratories had registered the trademark "CLINIQUE", while Gufic Limited had registered the trademark "CLINIQ". The plaintiff filed an application for rectification to cancel the defendant's trademark. The plaintiff also argued that its goods were superior and costlier than those of the defendant. Ultimately, the Court passed a judgment in favour of the plaintiff.

Conclusion:

Intellectual property rights are granted in relation to scientific, literary and artistic works, designs, symbols, etc., created by a person, for a specified period.

They include patents, copyright and trademarks.

We can also see that IPR cells can help people with issues related to intellectual property.

On the other hand, the cases show that public interest, public health and the welfare of people and society may be given preference. The main objective is to protect intellectual property while recognising limitations and exceptions to those rights. These limitations can permit authorised use where the law allows it.

with a strict eye on it to protect it and society from any kind of harm.

Reference:

i. www.wipo.int

ii. www.copyright.gov.in

iii. www.ipindia.gov.in

iv. www.docs.manupatra.in