

Vol 7 Issue 2 Nov 2017

ISSN No : 2249-894X

*Monthly Multidisciplinary
Research Journal*

*Review Of
Research Journal*

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Welcome to Review Of Research

RNI MAHMUL/2011/38595

ISSN No.2249-894X

Review Of Research Journal is a multidisciplinary research journal, published monthly in English, Hindi & Marathi Language. All research papers submitted to the journal will be double - blind peer reviewed referred by members of the editorial Board readers will include investigator in universities, research institutes government and industry with research interest in the general subjects.

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LAW RELATING TO INTELLECTUAL PROPERTY RIGHTS AND HUMAN RIGHTS PERSPECTIVES: AN ANALYTICAL STUDY



ABSTRACT:-

Intellectual property has increasingly assumed a vital role with the rapid pace of technological, scientific and medical innovation that we are witnessing today. Moreover, changes in the global economic environment have influenced the development of business models where intellectual property is a central element establishing value and potential growth. In India several new international obligations under the WTO agreement on trade related issues of intellectual property rights (TRIPS).

KEYWORDS: pace of technological, scientific and medical innovation.

INTRODUCTION:

Intellectual property has therefore, growth into one of the world's biggest and fastest growing fields of law thereby necessitating the demand for IP professionals well versed in this area to deal with (IPs) across the national and international borders.¹

MEANING OF PROPERTY:

The term property possesses a singular variety of different applications having different degrees of generality. In its widest sense, property includes all a

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person's legal rights, of whatever descriptions. A man's property is all that is his in law, in a second and narrower sense, property includes not all a person's rights, but only his proprietary as opposed to his personal rights.

All property is either corporeal or incorporeal, corporeal property is the right of ownership in material things; incorporeal property is any other property right in rem. Incorporeal property itself is of two kinds, namely jura in rem aliena or encumbrances such as leases, mortgages and servitudes, and jura in repropria over immaterial things such as patents, copyrights, trademarks, etc. This second category of incorporeal property is popularly described as the intellectual property rights.²

CONCEPT OF INTELLECTUAL PROPERTY:

What is Intellectual Property: This term includes, in the broadest sense, all rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

In comparison, intellectual property law centers property rights on intangibles. Intellectual property has been characterized as:

"Information which can be incorporated in tangible objects of the same time in an unlimited number of copies at different locations anywhere in the world. The property is not in those copies but in the information reflected in those copies."³

The concept of intellectual property: In general, the most important feature of property is that the proprietor or owner may use his property as he

wishes and that nobody else can lawfully use his property without his authorization of course, there are certain recognized limits for the exercise of that rights. For example, the owner of a piece of land is not always free to construct a building of whatever dimensions he wishes, but must respect the applicable legal requirements and administrative decisive.⁴

i) Generally speaking, there are three kinds of property: Property consisting of moveable things, such as a wrist watch or a car. No one except the owner of the wristwatch or the car may use those objects. This is a legal situation which is called an exclusive right, namely, the exclusive right, belonging to the owner to use the thing which is his property.

ii) Immovable property, namely, land and things permanently fixed on it, such as houses, we have already seen an example of the limitations of such property, namely the requirement to be respected when a building.

iii) Intellectual property: The object of intellectual property is the creations of the human mind, the human intellect. This is way this kind of property is called "Intellectual" property in a somewhat simplified way. One can state that intellectual property relates to pieces of information which can be incorporated in tangible objects of the same time in an unlimited member of copies at different locations anywhere in the world.

Intellectual property is usually divided into two branches namely "industrial property" and copyright.

The convention establishing the world intellectual property organization (WIPO), concluded in stockholder on July 14, 1967, provides that "Intellectual property" shall include rights relating to:

- a) Literary, artistic and scientific works;
- b) Performance of performing artistic, phonograms, and broadcasts;
- c) Inventions in all fields of human endeavour;
- d) Scientific discoveries;
- e) Industrial designs;
- f) Trademark, service marks and commercial names and designations;
- g) Protection against unfair competition;

and all other rights resulting from intellectual activities in the industrial scientific, literary or artistic fields".⁵

What are the legislations covering intellectual property rights in India?

Patents: The patents Act, 1970 as amended in 1999, 2002 and 2005.

Design: The Designs Act, 2000.

Trademark: The Trademark Act, 1999.

Copyright: The copyright Act, 1957 as amended in 1983, 1984 and 1992, 1994, 1999.

Layout design of integrated circuits: The semiconductor integrated circuits layout design Act, 2000.

Protection of undisclosed information: No exclusive legislator exists but the matter would be generally covered under the contract Act, 1972.

Geographical indications: The geographical indications of goods (Registration and protection) Act, 1949.

Plant varieties: The protection of plant variety and farmers rights, Act, 2001.

Intellectual property rights to human rights.⁶

INTELLECTUAL PROPERTY AND HUMAN RIGHT PERSPECTIVES:

Twenty years ago, the relationship between intellectual property law and human rights law largely an obscure topic of discussion amongst academics. Today, there seem to be few parts of intellectual property that do not need to be considered in terms of whether they effectively indicate, are consistent with, or unduly restrict, human right and fundamental freedoms. Locally, one major impetus was the human rights 1998 (HRA) requiring the English courts to take into account the jurisprudence of the European court of human rights in Strabourg. The Strabourg Court has, in a series of decision, applied the right to property under 9th protocol of the European convention to intellectual property, essentially aiming to safeguard intellectual property rights against under state interference more recently, the court has also scrutinized intellectual property enforcement measures as to their compliance with other human rights, such as a freedom of expression.⁷

There have been extraordinary changes in intellectual property, commonly referred to as intellectual property, law and policy over the last 20 years many as the result of their intersection with international trade and the numerous international trade agreements brought into force during this period. The increase in cross broader exchanges of goods, services, capital and knowledge is one reason for this shift; structural changes in all economics with knowledge emerging as society's most important tradable economic asset are another. Underlying this activities are changes to intellectual property rights and policy.

The intellectual property rights will, remain a part of international trade agreements in the future, but that global activity in this area will likely be characterized by varying standards and improved enforcement, reflecting evolution in social, cultural and political attitudes, and a deeper understanding of the relationships among innovation, creation and the wider, more efficient distribution of intellectual property.⁸

International law that includes human rights recognized in the Universal Declaration of Human Rights (1948). The Intellectual Covenant on Civil and Political Rights (1966) and the International Covenant Economic, Social and Cultural Rights (1966). The Universal Declaration of Human Rights 1948 and 27(2) and the International Covenant on Economic, Social and Cultural Rights, Art 15 (1) recognize. Creators rights by grating everyone 'the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the another, such as the right to education (UDHR, Art. 26; ICESCR, Art. 13). In right to health constitution of the world health organization (1946); ICESCR, Art 12, Freedom from discrimination (UDHR, Art 2) the right to engage in work (UDHR, Art 23; ICESCR, Art 6) and freedom of expression (UDHR, Art. 19; ICCPR Art. 19). The plurality of human rights, consideration relating to intellectual property invites the development of techniques to 'harmoniously' interpret intellectual property through human rights, human rights through intellectual property, and to resolve, where necessary, conflicts between those regimes, examples of such interactions can be seen in attempts of WTO members to ensure that patent protection for pharmaceuticals does not interfere with their right to protect public health (Doha Declaration on TRIPS and Public Health, 2001); and recent challenged, based on the right to property logic that underlines notions of protecting intellectual property as an investment, to legislation requiring that tobacco products be sold in plain packaging.⁹

Intellectual property regimes seek to balance the moral and economic rights of creators and inventors with the wider interests and needs of the society. A major justification for patents and copyrights is that incentives and rewards to inventors result in benefits for the society. The United States Constitution written in 1787, for example vests the congress with the power "To promote the progress of science and useful arts, by securing for limited times of authors and investors the exclusive right to their respectful writing and discoveries: two hundred years later, the world intellectual property organization (WIPO) links the existence of an equitable and modernized patent system to incentives for inventiveness and innovative activity a willingness to invest in industrial applications and a favourable climate to the transfer of technology.

A human rights approach to intellectual property takes why is often an implicit balance between the rights of inventors and creators and the interests of the wider society within intellectual property paradigms and makes it for more explicit and exacting. The international covenant on economic, social and cultural rights (the ICESCR) is the major international human rights instrument addressing these issues. Article 15 specifies that state parties, that is the countries that have ratified or acceded to this instrument, recognize the right of everyone both to enjoy the benefits of scientific progress and its applications and to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic producing of which he is the author."

To achieve these goals, the covenant mandates that states parties undertake a series of steps. They include "those necessary for the conservation, the development and for diffusion of science and culture", more specifically states parties "undertake to respect for freedom dispensable for science research and creative activity."¹⁰

Human rights approach to intellectual property takes what is often an implicit balance between the rights of inventors and creators and the interests of the wider society within intellectual property paradigm and makes it for more explicit and exacting. To be consistent with the norms in the ICBCSR a human rights approach

requires that the type of level of protection afforded under any intellectual property regime directly facilitate and promote scientific progress and its applications and do so in a manner that will broadly benefit members of society on an individual corporate and international level. It also implies a right of access to the benefit of science, again on both an individual and collective level. Additional components are a right of protection from potential harmful effects of scientific and technological development and a right of choice in determining priorities and making major decisions.¹¹

Genetic patenting and database, protections underscore the additional difficulties imposed by the dynamics of economic globalization on respecting and fulfilling these principles. In both cases, the traditional goal and regional of intellectual property regime to provide incentives and rewards to inventors, researchers, and others have been replaced by a new emphasis on the protection of investment. Simultaneously, commercialization and privatization accelerated by globalization are affecting the very conduct and nature of science. These trends have negative implications for the promotion of scientific progress and access to its benefits.

ENDNOTES:

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