

# Jurisprudence of Intellectual Property Rights

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**Abstract:** *The Present Article provides the Comprehensive Prudence behind the Intellectual Property Rights.*

*In Indian sub-continent various Laws are enacted which grants Protection to the intellect.*

*Intellectual Property has various domains and its kinds, it can be a Process, Product, Design, Literature, Music, Art, Computer programs or a Brand name.*

*This Article covers the basic principles and the Rationality behind Intellectual Property Rights granted to the Proprietor by the Government.*

**Keywords:** IPR, Indian law, Copyright law, Patent law, Trade mark, Trips Agreement etc.

## 1. INTRODUCTION

UNIVERSAL DECLARATION OF HUMAN RIGHTS<sup>1</sup> Defines, INTELLECTUAL PROPERTY AS, The Right to the Protection of moral and material interests resulting from any Scientific, Literary or Artistic production of which he is the author balanced by the right, to share in scientific advancement and its benefits.

Intellectual Property Rights are the Legal Rights governing the utilization of creation/ intellectual property by the human mind through skill, labour and capital.

In 1856, for the first time the **Patent Legislation** was introduced in India, and Intellectual Property was given the legal recognition, the act was subsequently repealed in 1857 and then in 1859.

In 1911, the Indian Patents and Designs act, 1911 was brought in replacing all the previous Legislations on patents and designs.

With Minor Amendments in 1920 and 1930, a major Amendment in 1945 took place. And after independent Committee constituted to ensure conducive Patent system for the National interest which finally made the patent act 1970 and Patent rules 1972.

**Copyright law** in india has evolved in three phases, the First phase was in 1847 the second phase was in 1914. Number of times the amendments were brought into this act and finally in 1957. The copyright act 1957 was enacted by Independent India by which we are governed till date.

The **Trademark Act 1940** was the first statute in india on Trademark Law,

the said Enactment was Amended in 1943 then in 1946. Then this enactment was replaced by the new legislation the Trade and Merchandise Act 1958. Then in 1999 a new trade mark act came into force. The Trademark Act 1999 is governed by Trademark Rules 2002

**Geographical indications** in india are governed by Geographical indications of goods (registration and protection) act, 1999.

## 2. INTELLECTUAL PROPERTY, JURISTIC ASPECT

Intellectual Property is a generic title for copyrights, patents, trademarks, design rights, trade secrets and so forth.

As economists insist, Knowledge, Information, Ideas, have no Natural Scarcity, they can be shared infinitely. Legal Rights restricting their exploitation create an Artificial scarcity, and that of itself requires some special justification.

Professor James Harris in his Study, finds no difficulty in according the label property, in the first place, the Law confers a trespassory claim against outsiders to prevent them from utilizing the ideas or symbols and this is his first mark of even the most modest property

in the second phase, the rights are treated as capable of assignment, licensing, and similar dealings and that carries them close to our most complete forms of property.

if we talk about **INTERNATIONAL SPHERE**, IN the Berne Convention<sup>2</sup> Protecting the Literary and Artistic works provided basic adequate standards for Copyright Protection. the Paris Convention<sup>3</sup> on industrial property which imposes specific international requirements for designs, patents, trademarks

## 3. TRIPS AGREEMENT<sup>4</sup>

Sets out the minimum standards for the protection of Intellectual Property Rights by the member countries of WIPO. It deals with domestic procedures and remedies for the enforcement of Intellectual Property Rights. Also, the Agreement suggests Amicable Disputes Settlement between the Member Countries.

## 4. PATENTS : JURISTIC ASPECT

TODAY, Patenting is blamed for imposing impossible prices on Developing Countries desperate for anti-aids drugs and other medical supplies which would yield practical expression to the Right to Life and health.. Patent symbolize

<sup>1</sup> On 10 dec 1948

<sup>2</sup> IN 1886, Switzerland

<sup>3</sup> IN 1883, Paris

<sup>4</sup> on 1 january 1995

the selfish and gross- commercialization of basic scientific research, in some instances offending deep ethical and Environmental beliefs.

#### PRINCIPLES UNDERLYING PATENTS

Patent law Signifies Technicality, Innovation and an Inventive Step.

- Patents are granted for Inventions and Innovativeness in already known Technological improvements. They may relate to Machines, Substances and Production Processes. the point for which Patent is granted is that Idea , when the Discovery ends and Invention begins and when that idea has UTILITY OR INDUSTRIAL APPLICATION.
- Patents are granted for a period of 20 years from application, it has to be renewed every year.
- the Inventor or Enterprise that secures Patent has the Exclusive Right against others on the condition that the Inventor must disclose the Invention to the Industry.
- Patents earmarks significant Legal Right for a time period, it secures Economic Monopoly, Commercial gain to the Patentee.
- there must be no close substitutes of a Invention for an valid Patent system to get its fruits
- there must have been a strong demand for the Invention which fulfills the Economic motivation behind the system. it is this opportunity which induces investment in Research and then Development in Industry.
- the Main Objectives of Modern Patent System are Unquestionably Economic, it deals with wider Productivity of New Technologies Effectively.
- the Patent must have some Value, it must produce some equivalent Product which results as an admirable Invention.

#### 5. COPYRIGHTS: JURISTIC ASPECT

This is the Empire of Literary, Musical and Artistic creation. It is the Widest of all Terrains- for what judge would dare to say that Tracy Emin's rumpled bed was not art when it goes into the tate? the Right i shall therefore be concerned with is Copyright.

Copyrights grants Exclusive Rights to the Creators of Original, Literary, Dramatic and Artistic works. Copyright only prevents copying not Independent Derivation. Copyright Protection begins with the Creation of the work and lasts with the life of the Creator in addition to 50 years after his life.

Copyright prevents Unauthorized reproduction, public performance, recording, broadcasting, adaptation and translation of the creation except with the licence granted by creator

it allows Collection of Royalties for Authorized use

Copyright also protects computer programmes, as software source and code have been defines as a literary expression.

#### PRINCIPLES UNDERLYING COPYRIGHTS

- ❑ Copyright protects the form in which the Idea is Expressed not the Idea itself, so Copyright protects the Expression of Ideas and not the Ideas as such which ,be used by others.
- ❑ Copyright subsists in, following works- Original, Literary, Dramatic, Musical and Artistic works, Cinematographic films, and Sound Recording.
- ❑ In every Aspect the Author of the work shall be the first Owner of the Copyright except otherwise in the Contract of Service or Apprenticeship done under the Employment by the Author
- ❑ the Author of the Copyright may Assign his work to any other person for the use of his work either wholly or partially. the Author of the work may relinquish all or any of the rights subsisted in the Copyright in the work by giving notice in the prescribed form to the Registrar of Copyrights.

#### 6. TRADEMARKS: JURISTIC ASPECT

With the Advancement in Economy and Development in Industries and Production, the Traders began to Identify their Goods with Certain names, marks symbols and devices. also the Traders started advertising their Goods with certain Trademarks on them. these Trademarks resulted in acquiring Goodwill and Reputation of the Trader among the Consumer of Goods.

so to Safeguard the Traders from Deceptively Similar Marks the nations adopted the Trademark Law, At International Level, the Paris Convention for the Protection of Industrial Property was Adopted in 1883 as the 1st Multilateral Convention.

#### PRINCIPLES UNDERLYING TRADEMARKS

- ❖ Main Operations of a Trademark are, Identification, Quality, Source, and Advertising of the Trade
- ❖ the Trademark Law has proved beneficial for the traders by Protecting them from Deception and Confusion from Similar Production by Identification, also, it Protects the Goodwill and Reputation of the Owner of Trade-mark.

#### CASE LAW

#### IN CADBURY INDIA LTD V NEERAJ FOOD PRODUCTS<sup>5</sup>

the Delhi High Court observed that, the spirit, intendment ,and purpose of trademark legislation is to protect the trader and consumer against dishonest adoption of one's trademark by another with the intention of capitalizing on the attached reputation and goodwill.

<sup>5</sup> 2007 35 PTC 95 Del), p 126

- ❖ Well known trademarks has given broader protection as they visualize a Reputation of pre-eminent excellence and quality.
- ❖ the trade mark must indicate a connection between goods or services and the trader in the course of trade.
- ❖ the trademarks must embodies the trait of Distinctiveness, higher up is its distinctiveness, the more protection it receives under Indian law.