



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Historical background and Future of IPR law in India

Abhishek Negi^a

^aDelhi Metropolitan Education, Noida, India

Received 19 August 2022; *Accepted* 07 September 2022; *Published* 14 September 2022

IPR has always been there from the beginning of the human race but was not given due importance in the beginning but later was realized and codified by Humans. Through different modes nowadays rights related to Intellectual Properties are being protected. The IPR Laws have evolved from time to time with the development and increase in the kinds of transactions. Through this paper, we will be discussing the concept of IPR in detail and how it got entered into the Legal System along with its scope and future in India. This paper will help the reader in understanding the importance of Knowledge of IP rights from the perspective of a Law as well as a Business.

Keywords: *intellectual property, ipr, business law.*

INTRODUCTION

Intellectual Property Rights are one of the fast growing rights that commercial and industrial developments all around the world strive for. With the development in international trade especially after the 1990s after the liberalization of trade by the Indian Government, IPR Laws are developing at a rapid pace in India and the demand for the protection of Intellectual Property is what a strong economic country strives for. IPR plays an important role in the economic development of a country as it not only protects the company's intellectual rights in the domestic

market but also in the foreign or international market which would help a company run and improve the flow of income from other states to its domestic state. Through this article, we are going to discuss what Intellectual Property Rights are. Its development in India and the future along with some legal provisions and how they impact our legal system. The discussion of IPR in this article will be about the Indian Legal system or Indian domain.

CONCEPT OF IPR?

IPR stands for INTELLECTUAL PROPERTY RIGHTS which are different from PROPERTY RIGHTS. Intellectual Property Rights are those rights that an individual acquires as a result of a work done from 'creation of mind' like logo, song, establishing a trademark, design or creation of a movie, etc. IPR laws protect intangible assets of a company or an individual such as copyright or trademarks while on the other hand PROPERTY LAWS protect the tangible rights which are physical such as capital, lands, infrastructure, machinery, securities, etc.¹ The term Intellectual Property is an outcome of human intellect or we can say the work done by the creativity of a human. It includes an industrial model, product, or work done (which consists of certain properties like novelty and goodwill).²

IPR includes certain terms and rights which are enjoyed by the owner of an Intellectual Property some of them are Copyright, Trademark, Patent, Design, and Geographical Indication. To protect the rights of IP owners' certain laws have been enforced by the states. For example, if the movie made by any production house gets leaked into pirated before its release due to which it is facing any kind of financial loss, then the production house has the right to sue the party under the provisions of the Copyright Act, 1957³. This is how Intellectual Property Rights work. When an individual or a company has Intellectual Property, it gets the Intellectual Property Right to enjoy the use of that property without the owner's right neither it can be used nor any

¹ Poonam Nahar, 'Difference between Intellectual Property and Intellectual Rights' (*iPleaders*) <https://blog.iplayers.in/difference-between-intellectual-property-and-intellectual-rights/#Meaning_of_Intellectual_Property> accessed 13 August 2022

² *Ibid*

³ Copyright Act 1957

other property can be formed which harms the IP rights of the owner.⁴ If he does so he will be liable under IPR laws (can be sued as per the nature of breach).

HISTORICAL BACKGROUND OF IPR LAWS IN INDIA

DID INTELLECTUAL PROPERTY RIGHTS EXIST IN THE ANCIENT PERIOD?

As we all know IPR plays an important role in present times in part of the current commercial world but during the ancient period, the human intellect was mainly used for social purposes instead of commercial purposes. These days songs, music, and every artistic object are copyrighted by the owner so that they cannot be used for commercial purposes by someone else without his prior permission on the other hand various texts, Vedas, and rags can be used by anyone during that time. On the other hand, trades were used to be done by people by using their name or identity as a trust a symbol of trust and representation there was no such thing as a trademark and the inventions done by anyone could be copied by another person there was no such protection which an inventor gets in present time known as patent.⁵ In my opinion, Intellectual Property was formed during the ancient period but the topic of rights related to Intellectual Property was formed in the 14th century and is still developing in the present time through the remedy of common law in India which we will be discussing in detail in further subtopics.

HOW THE IPR LAWS EVOLVED ALL AROUND THE WORLD

When we go through history, we can observe that the first attempt for IP Rights was made in Venetian Law, 1474⁶ (also known as English Law). It was done in through the declaration of rights through patents. With the growth in trade and its methods, the need for the establishment of IPR grew over time leading to the Establishment of rights and their protection through laws.⁷ The event named THE WORLD EXPOSITION was held in Vienna, it was one of the first International Events for the exchange of education, knowledge, and culture which created

⁴ *Ibid*

⁵ *Ibid*

⁶ Venetian Law 1474

⁷ *Ibid*

awareness among States regarding the need for IP Rights leading to the PARIS CONVENTION, 1883 which is also known as the Origin of Universal IP Rights.⁸ Berne Convention for Literary and Artistic Rights, 1886⁹ was agreed by States to provide International IP rights and protection to Creators. Before that, the creator's rights were only limited to their states.¹⁰

TRIPS Agreement was signed by the WTO states on 15 April 1994 at Marrakesh, Morocco.¹¹ This agreement gave all the states certain minimum standards to be followed with Intellectual properties. It established domestic procedures and methods of dealing with conflicts of IP rights.¹² "The TRIPS Agreement incorporates, in principle, every form of intellectual property and targets the complementary and firming standards of protection and providing for operative enforcement at national as well as international level. It addresses the applicability of general GATT principles and the provisions in international agreements on IP (Part I)¹³. It also builds standards for scope, usage, readiness (Part II)¹⁴, enforcement (Part III)¹⁵, acquisition, and maintenance (Part IV)¹⁶ of Intellectual Property Rights. Moreover, it addresses related dispute prevention and settlement mechanisms (Part V)¹⁷. Formal provisions are addressed in Part VI¹⁸ and VII¹⁹ of the Agreement, which covers transitional, and institutional arrangements, respectively".²⁰

⁸ Yash Jain, 'IPR Law- History' (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-3581-ipr-law-history.html#:~:text=The%20origin%20of%20international%20IP,property%20and%20inventions%20in%201883.&text=Eventually%2C%20in%201893%2C%20the%20United,of%20Intellectual%20Property%20was%20constituted>> accessed 17 August 2022

⁹ Berne Convention for Literary and Artistic Rights 1886

¹⁰ *Ibid*

¹¹ Agreement on Trade-Related Aspects of Intellectual Property Rights 1995

¹² *Ibid*

¹³ Agreement on Trade-Related Aspects of Intellectual Property Rights 1995, part I

¹⁴ Agreement on Trade-Related Aspects of Intellectual Property Rights 1995, part II

¹⁵ Agreement on Trade-Related Aspects of Intellectual Property Rights 1995, part III

¹⁶ Agreement on Trade-Related Aspects of Intellectual Property Rights 1995, part IV

¹⁷ Agreement on Trade-Related Aspects of Intellectual Property Rights 1995, part V

¹⁸ Agreement on Trade-Related Aspects of Intellectual Property Rights 1995, part VI

¹⁹ Agreement on Trade-Related Aspects of Intellectual Property Rights 1995, part VII

²⁰ Bhargav Chetan Kumar Thakkar, 'All you need to know about IPR laws in India' (*iPleaders*) <<https://blog.ipleaders.in/need-know-ipr-laws->

DEVELOPMENT OF IPR IN INDIA

Development of IPR in India Took place with the enactment of the Trades and Merchandise Act, 1958²¹ which was quite restricted in scope but was widened through Judicial Decisions but later it was repealed by the Trademarks Act, 1999²². Liberalization of the Economy by the Government of India had a greater impact on the IPR Subject because with the increase in International Trades and Increase in Industrial developments the protection of Rights from violation came as an important issue. From time-to-time, certain amendments have also been made to the Copyrights Act, Patents Act, Design Act, and GI Act. Along with the GOI, the Judicial Legal System has also played a vital role in enhancing the scope of every act or important term with the change in time. For example- In the early stage of the Trade and Merchandise Act, 1958 the trademark was only limited to goods and services but with the rise in web-based trades like amazon or yahoo, Court extended the scope of the trademark to Domain Name. Later it acted as guidance and the same was noted down in Trademarks Act, 1999²³(passing off).

TYPES UNDER IP

There are five types of rights under IP²⁴:

- **Trademark**

Trademark is one of the most important IP rights of a company. It is a Logo or a Name of a product or a service of a company that represents itself in front of consumers or clients. Trademarks play an eminent role in the identification of a product or service. For example, if a company like amazon sells products of third-party sellers or brands directly to consumers (amazon provides service) and has established goodwill and trust in the market. If a company

[india/#:~:text=The%20Copyright%20Act%2C%201957%20is,sound%20recordings%20and%20cinematograph%20films>](#) accessed 17 August 2022

²¹ Trades and Merchandise Act 1958

²² Trade Marks Act 1999

²³ *Ibid*

²⁴ IPTSE, 'Types of Intellectual Property Rights' (IPTSE) <<https://iptse.com/types-of-intellectual-property-rights/>> accessed 14 August 2022

wants to provide the same service with a similar name like Amazon or Amazonia it cannot do so as it will come under Trademark Infringement. Trademark prevents misrepresentation and misuse of trust or goodwill established by the first owner.²⁵ In India, Trademarks are protected through The Trademark Act, 1999. The main reason behind its enactment was the better protection of trademarks and fraudulent representation of goods and services. With further development in time, the scope of the trademark has been extended through judicial decisions which now cover the domain name. Unlike Trade and Merchandise Act, 1958 this act protects the rights of unregistered trademarks also through the remedies of passing off.

- **Copyright**

Copyright is a type of IP Protection granted to creators of original authorship for their original work such as literary works, dramatics, musical and artistic works, cinematographic films, and sound recordings. As per the Copyrights Act, 1957²⁶ the protection of copyright applies to these subjects only. While certain rights can be enjoyed either by the owner or someone who has been duly licensed by the owner like- the right of reproduction, publication, adaptation, or publication as per Section 14 of the Copyrights Act 1957. "Indian copyright law is at parity with the international standards as contained in TRIPS. The (Indian) Copyright Act, 1957, according to the amendments in 1999, 2002, and 2012, fully reflects the Berne Convention for Protection of Literary and Artistic Works, 1886, and the Universal Copyrights Convention, to which India is a party. India is also a party to the Geneva Convention for the Protection of Rights of Producers of Phonograms and is an active member of the World Intellectual Property Organization (WIPO) and United Nations Educational, Scientific, and Cultural Organization (UNESCO)".²⁷

²⁵ *Ibid*

²⁶ Copyrights Act 1957

²⁷ Vijay Pal Dalmia, 'Copyright Law in India- You must know' (*Mondaq*, 14 December 2017)

<<https://www.mondaq.com/india/copyright/655852/copyright-law-in-india-everything-you-must-know>>
accessed 15 August 2022

- **Patent**²⁸

What are patents? Patents are some exclusive rights that are granted by the Government only to the inventor to exclude others from using, making, or selling the same for a specific period. Just like how trademark laws protect the trademark of a company (representation of a company in the market) or copyright laws protect the authorship of the original owner, Patent laws protect the invention of the inventor by preventing its use or creation, or sale by the other individual without his permission or license. The motive behind Patent Laws is to protect the rights of inventors and to encourage inventors by awarding them exclusive rights which would push others for innovation.²⁹ The Patents Act, of 1970³⁰ is the legislation that to date governs patents in India. It first came into force in 1972. The Patents Act has been repeatedly amended in 1999, 2002, 2005, and 2006 respectively. These amendments were required to make the Patents Act TRIPS compliant. TRIPS stands for Trade-Related Aspects of Intellectual Property Rights.³¹

- **Industrial Design**³²

Industrial Designs are also a part of Intellectual Property which constitutes the ornamental or aesthetic aspect of an article. Industrial Design comprises colours or lines which provide a three-dimensional look to an article.³³ As per Design Act,³⁴ no third party has the right to sell any article with a similar or copy of the design or import any design similar to the original one without prior permission of the owner. Copies of any design in any form are not allowed because the design of a product or display of a product is a fundamental asset to the business violation which would result in detrimental consequences for a company. For example- A GUCCI wallet comprises the logo of the brand along with the green horizontal stripes covering red stripes towards the lower side of the wallet if any other company or an individual starts

²⁸ BYJU'S, 'Indian Patent Act' (BYJU'S) <<https://byjus.com/free-ias-prep/indian-patents-act/>> accessed 17 August 2022

²⁹ *Ibid*

³⁰ Patents Act 1970

³¹ *Ibid*

³² Upcounsel, 'Industrial Design Intellectual Property' (Upcounsel) <<https://www.upcounsel.com/industrial-design-intellectual-property>> accessed 17 August 2022

³³ *Ibid*

³⁴ Design Act 2000

selling the wallet with a logo similar to the logo of GUCCI along with vertical stripes of the same color then he will be liable for the violation of THE DESIGNS ACT, 2000.³⁵

Geographical Indications³⁶

Geographical Indications refer to certain goods represented by their Geographical origin from where they were derived. The originating territory provides a sense of reputation and good quality to the consumers. For example, Darjeeling Tea is popular for its benefits of boosting immunity, strengthening bones, and promoting healthy skin. The registration of geographical indications confers certain rights on the registered proprietor and the authorized user and they can institute suit for infringements of geographical indications. The protection of the use of the geographical name with the products originating in it preserves the quality and ability of the product made in a traditional manner which would prevent the adulteration by foreign manufacturers taking place in the name of GI products. 'The Geographical Indications of Goods (Registration & Protection) Act, 1999'³⁷ (GI Act), and the 'Geographical Indications of Goods (Registration and Protection) Rules, 2002'³⁸ (GI Rules) govern the Geographical Indication cases in India. While TRIPS provides International Protection to GI. It comprises two types of protection First protection is provided to all general GI under article 22³⁹ and the Second type of protection is provided to wines and spirits under article 23⁴⁰.

FUTURE OF IPR LAWS IN INDIA

As we all know that the technology and IT sector is booming all around the world and with its rapid development all around the world it is logical to conclude that it will play a much more important role in each sector. With the increasing impact of technology over the lives of individuals (natural as well as artificial like companies etc.) there will always be a need for

³⁵ *Ibid*

³⁶ Aakarsh Kamra, 'Global Indiation - Intellectual Property' (*Legal Service India*) <<https://www.legalserviceindia.com/articles/geoind.htm>> accessed 18 August 2022

³⁷ Geographical Indications of Goods (Registration & Protection) Act 1999

³⁸ Geographical Indications of Goods (Registration and Protection) Rules 2002

³⁹ Agreement on Trade-Related Aspects of Intellectual Property Rights 1995, art 22

⁴⁰ Agreement on Trade-Related Aspects of Intellectual Property Rights 1995, art 23

protection of the rights and regulation concerning Intellectual Properties which would play a vital role which would play dominant role in the representation of rights of a company or an individual through Technological mode. IPR laws are bound to arise with time. For example, after independence, there were various IP-related laws but with the time and development of ways in trades and rights IPR laws have been repealed from time to time from the Trade and Merchandise Act, 1957 to The Trademarks Act, 1999 or Copyright was amended for the first time in 1983 and now the copyrights act, 2012 is the most substantial. Various amendments or the formation of new laws for the protection of rights are bound to take place in the future.

SCOPE IN IPR LAW FOR LAW STUDENTS AND PROFESSIONALS.

IPR is a growing field that is gaining importance from the 1990s till today. Unlike other fields of law like a criminal, and civil the awareness related to IP rights is increasing among individuals and companies which was not there before. IP-related rights and violations and disputes are getting popular and increasing day by day with the rise in IP rights and as a result of the same various IP firms and Lawyers are now specializing in IPR laws. Various IPR firms are now established in all the states and more will come. IPR law is in the growing stage and this field demands more growth in the future if we see the view role of Trade and Commerce in the economy. When I see the past, current, and future of the IPR field I can say that it is a lucrative field and it is the right time for a lawyer or a student to grasp more knowledge of IPR Laws if they want to keep their career upgraded with the time as in the future as per my view, IPR deals and conflicts are bound to arise and it will have much more impact on our legal system than today.

WHY KNOWLEDGE OF IPR IS IMPORTANT FOR COMPANIES AND BUSINESSMEN.

An ideal company must know about its products but if they are performing the same on a larger scale it is much more important to have knowledge of their rights and laws concerning the products they sell. A company can save their business and improve their financial performance by suing the infringers who are diverting their funds or flow of income by using the distinctive mark or their image in front of the consumers or clients. These days if the companies find any

other company's product or act deceiving their rights then they sue other parties as per the Patents Act, the Trademark Act, the Copyrights Act, or any other actions depending upon the case.

CONCLUSION

IPR is a very interesting field and its scope is widening day by day. It is one of the fastest-growing Legal fields. Every Industrial or Commercial company uses IPR before their Trademark Registration. An inventor before inventing must be aware of earlier patented inventions related to his invention. A designer must confirm his design before sending the same to his or any company. An artist can save his financial gains and rights through Copyright. A Vendor of a particular State selling any product can save himself from infringers through GI. From the above statement, we can conclude that IPR is a lucrative field and its future in India is positive.