

**THEORETICAL ANALYSIS OF INTELLECTUAL PROPERTY
RIGHTS IN INDIA**

- Divya Jangra & Neha Maheshwari¹

Abstract

Talent considers a wide range of factors such as behavior, creativity, performance, special ability, or even potential in many areas of worthwhile human Endeavour. The **aim** of this paper is to theoretically analyze intellectual property rights in India. The topic is then further divided into the types of intellectual property rights along with cases attached for better comprehension. The major **findings** in this study will be about the theory of intellectual property rights and their application along with the objectives and motive behind implementing Intellectual property Rights. It explains how an innovator can deal with their idea and make it completely his own. The **methodology** used in this study is only qualitative as references are taken from books, papers, journals, and articles. IPR is necessary for better recognition, preparation, commercialization, production, and thereby defense of innovation or imagination. However, one possible major obstacle to their being deemed of considerable importance is the lack of knowledge to the public. Therefore, this paper tries to give a brief analysis of the concept of intellectual property rights and how it can be used.

Keywords: intellectual property rights, trademark, patents, trade secret, copyright, innovation, invention, etc.

Introduction

The ones dealing with the ownership of the innovation of the human minds are nothing but Intellectual Property Rights. Intellectual means a high developed rational human being and therefore it is symbolic of certain legal rights weighing the creation of a person. They are not so different from other property rights. Just like them, the user or the innovator, or the owner of the product benefits from it. In property rights, an unauthorized person cannot use the

¹Students at Manipal University, Jaipur

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product without prior permission of the owner. They cannot tamper with the product or deal with them in any way without asking the owner. If it happens, then the owner of the product has the right to sue the person or company who is using them illegally. They are charged with certain compensation, following the damages of the owner.

In this particular case, **Napster**², *“The Recording Industry Association of America (RIAA) sued Napster, a file-sharing website, under one of the web's best-known cases of intellectual property. Established in 1999, Napster allows music files to be shared by users, and thousands of people have begun free downloading songs and not purchasing CDs. Napster, however, was not allowed the music to be uploaded from its servers where the music was eventually stored and shared. The rights of recording artists and studios were owned. The RIAA sued and won Napster, forcing Napster to close its doors – or servers, as appropriate. Napster is now operating as a music-based streaming website and pays the licensing fee for the music it offers.”*

IP comprises mainly 4 areas- Trademark, Copyright, Patents, and Trade secret. The first one to deal with is **trademark**- Trademark can be a symbol, word or words or even logo, color or sounds legally registered or established by use as representing a company or a product. It identifies the identity of a firm concerning its goodwill and also makes a difference between one and another. Trademarks are highly advantageous when it comes to firms and consumers as it ensures a sense of security that no other firm can duplicate it and consumers can identify the product very quickly. With the accessibility of being a brand, it is very obvious that the brand will promote itself speedily and will increase the sales gradually. With every legal right there comes legal compensation or damages when any infringement occurs. Everything has its advantages and disadvantages. The merits have aforesaid come into the light but the demerits also play an effective role in ruling out the possibilities of shortcomings. Building blocks is necessary i.e. beginning of a new firm is equally important to developing an old firm but with the well-known brand name nobody pays heed to the innovation and the beginners. For say, android mobile phones are technically very versatile and much more

²Top 5 intellectual property disputes

<https://www.legalzoom.com/articles/top-5-intellectual-property-disputes>

feasible but as the brand name goes “Apple” I phones are much more popular. Another demerit is mandatory licensing of the trademark whereby increasing the cost of the product to meet their expenses and gradually decreasing the reputation and sales of the product.

“The Coca-Cola Company Vs. Bisleri International Pvt. Ltd Manu/DE/2698/2009³, The high court in Delhi ruled that this Court would have the authority to prosecute if the possibility of a violation occurred. Furthermore, the supply of goods from a nation should be treated as selling in the nation from where products are exported and is in breach of the trademark in the same amount.

The defendant sold and allocated MAAZA, which included freedom of speech, know-how, intellectual property rights, goodwill, etc. only for India in the present case, through a master contract. A drink is known as MAAZA for mango fruit. A proposal for the registration of the MAAZA trademark in Turkey has been made by the defendant in 2008 and begins exporting fruit beverages under the MAAZA trademark. To enter this case, the defendant submitted a notice denouncing the arrangement between the plaintiff and the defendant. The defendant, the Coca Cola Corporation, also sought permanent injunctions and damages for trademark infringement. The tribunal held that it was enough to grant the court authority over the subject to make the intent to use the trademark as well as to use the trademark directly or indirectly. Finally, a preliminary order against Bisleri, who was held to become a trademark violation, was issued by the court for the use of the MAAZA trademark in India as well as for export markets.”

The second main genre is **copyright**. As the name says, the company gets the right of the ownership of the product in terms of no duplication proceeded by any other firm. A copyright holder can prevent others from using the product in any way possible without the consent of the actual owner. Copyrights can be performed for anything and everything, except for intangible assets that are not noted or recorded in any manner. Something which is visual unrecorded or something which is a piece of common known knowledge cannot be under copyrights. Pros of copyright are- right to produce, reproduce, and authorize i.e. permitting franchise. Just like a trademark, copyright also establishes the right of ownership. There is

³⁵ Important judgments on Intellectual Property Rights cases

<https://www.vakilno1.com/slider/5-important-judgments-intellectual-property-rights-cases.html>

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always a chance of stealing the original work and duplicating it illegally. For say, in the case of Rogers v. Koons, a photograph was shot of a couple holding several puppies, and later on, another artist stole the original work and made statues of it and huge profit by selling the statues. The original photographer sued him and he had to pay monetary damages. The exclusive rights are not absolute but limited by limiting the boundaries of exception to copyright law including just and fair use.

In this case, Bratz Dolls vs. Barbie⁴ *“In 2008, Barbie was at the end named the champion in a long-running struggle between the producers of Barbie dolls and Bratz dolls, Mattel, Inc., and the manager of MGA Entertainment Inc. Mattel sued MGA for stolen the idea and the name of the Bratz pound. Their names were taken away by MGA.*

Carter Bryant, the Bratz doll designer, was Mattel's staff and was also an MGA consultant in creating the doll. A few years after Bratz started to be sold by MGA, Mattel prosecuted Bryant and MGA for the claim of copyright. The name and design of Bratz are considered trade secrets since Bryant was on Mattel's wages when he designed the doll,. The courts agreed with Mattel and forced MGA to compensate for \$100 million.”

A **patent** is another form of intellectual property that gives the legal right to the owner of limiting others from duplication of an original invention or idea. Like other property rights, a patent can also be licensed, sold, transferred, or renounced. There are very few but significant merits and demerits of patents. One of the merits is that by receiving a patent, the inventor of the product can cease the production and sales of another identical product, therefore, ruling out the capability of competition from the market. Another merit is that patented products provide the owner with some exclusive profits by licensing the patented product. The shortcomings are monetary cost and leakage of security. Due to the exposure of the innovation, there is a fear of infringement that can happen upon. As to check whether the idea is original or not the cost increasing to several more lakhs. For example, the patent infringement case of Domino's is still pending.

⁴⁵ **Important judgments on Intellectual Property Rights cases**

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For instance, in this case "*Bayer Corporation v. Union of India*, 2014 SCC Online SC 1709, In a very important development, the Delhi High Court held that the export for experimental purposes of the "patented invention" is also protected by Section 107A of the Patents Act 1970, and thus does not constitute a patent violation. It allowed Natco to export to the Chinese for production, clinical trials, and developmental studies the patented drug 'Sorafenib Tosylate' (for which it was given an obligatory license during 2012). But a Bench Division stayed the order two months later, which requested Natco to apply for a separate approval for the exportation of the drug for experimental purposes, adding that only a small amount of the drug would be allowed to export."⁵

Last but not least form of intellectual property is a **trade secret**. It deals with the procedure of the trade. It is a secret therefore it is confidential and not to be known to people so that no other competitor can acquire the same advantage as theirs. The only best advantage of a trade secret is that there is no fixed period which is fixed under the rest three forms whereas the disadvantages are that like others there is no certain procedure and it is just the sole responsibility of the owner to take steps to protect the trade secret and secondly, once the process is known then it would not be illegal to make an identical product.

There was no dishonored contract in *Escorts Construction Equipment Ltd Vs Action Construction Equipment P. Ltd (1998)*⁶; "In this case, an interim order for breach of confidence was given by the Delhi High Court because the defendants, who were former employees of the plaintiff, had attempted to falsify the designs of their former employer. After years of service in the business of the plaintiff, the defendant quit the firm to set up his own company, which produced the products as identical to its predecessor."

The objective of Intellectual Property Rights-

Intellectual Property Rights is now a well-established right and it is compulsory to be acknowledged by it. Without these rights, one cannot say that he holds the ownership of a particular article or brand even if he was the one with the innovative idea. Including this, there are many objectives of these rights. They are the following:

⁵De-Coding Indian Intellectual Property Law

<https://spicyip.com/indias-top-10-ip-judgments-orders-of-2017-jurisprudence-legal-lucidity>

⁶Trade Secret Protection in India: An Analysis

<https://lexlife.in/2020/08/24/trade-secret-protection-in-india-an-analysis/>

1. The main objectives of these rights are to motivate idea-holders for the creation of a wide variety of individual goods and services for consumers. With a much wider variety of goods and services, customers will be able to compare the quality, cost, and efficiency of the products. It will also contribute to generating employment and therefore, gradually increasing the national income of the country.
2. The other purpose of these rights is to let the makers of the particular article get the benefit of his idea. If he makes a certain article and invests in it then the government provides him with Financial Incentive so that he can gain from what he made. This way he will be able to generate profit from his invention and will automatically increase the production of his goods and services.
3. Nonetheless, nothing should affect the sanctity of the right. The most important motive is the contribution to economic growth.

Commissioner Of Income Tax-Iv vs Hero Honda Motors Limited dated on 3 February 2015⁷

It was held that:-

"The learned advocatemade it clear that, in 2001-02 the appointment year, there was no pressure on the assessee on the 263 appeals before Hon'ble Delhi Supreme Court, and the High Court of Honor passed an order to allow the matter to be investigated in other years. In Our opinion, there was no mistake in passing the original appraisal order in the opinion adopted by the evaluation officer allowing for the model fee and TGF expenses to be correctly interpreted. Thus, in the appraisal year 2002-03, 263 acts are abolished. Since the order passed by CIT of 263 has been revoked, thereafter is a procedure. There are also quashed AO's and CIT (A)' consequential orders.."

"Reading the above rationale, the Tribunal found that Honda's payments were income-expenditure rather than capital. On the merit of this finding, the Tribunal noted that in the order of the assessing officer there was no mistake. The Commissioner may invoke the power referred to in Section 263 only when the order handed over by the evaluators is wrong and not otherwise. In these cases, in the appeal for the appraisal year 2001/2002, no particular power issue was raised under Section 263 of the Act.

⁷Commissioner of income tax-Iv v. hero honda motors limited on 3 February 2015

<https://indiankanoon.org/doc/165552188/>

The above-mentioned discussion would lead to the answers for the interlocutors and against the appellant's Revenue to substantial questions of law. Therefore, the cases are settled. No order of costs will be given.”

Overview

Intellectual property rights can be registered or unregistered. If it is unregistered then it would be very easy to go down with it but if it is registered then it takes too many legal drafts works to go through which makes the process much more difficult.

Trademarks, patents, copyright, and trade secrets are not so much different from one another but every genre is unique in its way and without any of them, the process of carrying out a business legally and self-owned is incomplete. Intellectual property rights are nothing but rights to prevent the product from being misused or duplicated. These rights save the identity and intellectuality of a human mind a creation.

Conclusion

IPR is very important to radical social developments in a knowledge-based economy. The IPR is a fundamental requirement for sustainable local and world trade, as developing a creative environment is not feasible without the dissemination of IPR information and application. Incorporating IPR into the basic education system and promoting IPR registration by promoting innovators and developers is important to policymakers. Indian resources are available in terms of raw materials, low-cost labor, innovative, and creative workforce. Different types of IPR call on people with different domain expertise such as science, technology, drugs, law, finance, commercialization, and economics to treat, treat, prepare and engage with different strategies and to work together. Depending on your field of expertise, every industry must establish its IP policy, management style, strategies, etc. No doubt that India and other developing countries will harness its proportionate share in global trade by exploration in Intellectual Property Rights⁸.

⁸ **An Introduction to Intellectual Property Rights and their Importance in Indian Context**
<http://docs.manupatra.in/newsline/articles/Upload/41C26FED-7AFE-40EA-8736-4E6C516917AE.pdf>

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