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INTELLECTUAL PROPERTY RIGHTS IN INDIA

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ABSTRACT

Intellectual Property Rights (IPR) can be considered as one of the most important legal means in India protecting the brainpower of the people and at the same time providing the creator with a moral and material ownership as the letter of Article 27 Universal Declaration of Human Rights (UDHR). This manuscript explores the statutory setup instrument of the industrial property branches including copyright trademark industrial design and patent in the Indian legal system. It gives an analysis of the copyright legislation in India including its scope, duration and enforcement. Besides, it examines also the trademark law, the legislation on geographical indications, plant varieties and farmers' rights and patent law. It focuses attention on how the Indian legal system through these laws ensures a healthy trade-off between monopoly rights of inventors/creators and public interest in social and economic development and consumer protection in the Indian market.

INTRODUCTION

For any person in India who has invented or created any original work, Intellectual Property Rights are legal protection given to the creation and the creator. These rights give the creator ownership over their work, preventing other people from using the work without the permission of the original owner. The concept of intellectual property also has its essence from Article 27 of the Universal Declaration of Human Rights (UDHR),¹ which gives the person the protection of the morals and material interests of the products resulting

from the technology, literary work, or any kind of scientific invention. Intellectual Property Rights act as a shield, safeguarding the creativity of the person in their original work.

¹ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 27 (Dec. 10, 1948)

TYPES OF INTELLECTUAL PROPERTY IN INDIA

1. COPYRIGHT

The term "copyright" is one of the types of intellectual property rights; it protects the rights of the creator in the literary work. It includes the exclusive protection given to the creators of their original work. The creators of the literary work also benefit financially, as they hold sole ownership of the creation and prevent others from using or infringing on it without the owner's consent. The copyright includes different works.

- Artistic work such as paintings, drawings
- Literary work books, software
- Musical work, including graphical notation
- Dramatic work includes plays, theatre, and dance forms.

The copyright is protected in India under the Copyright Protection Act of 1957.² This act gives the exclusive rights to the creators of the original creation as the sole owner and also prevents others from infringing on or using their work without their consent. In India, the owner of the copyright gets rights for their whole lifetime and, in addition to this, 60 years of protection after the creator's death. In copyright, if the owner's rights are infringed, He or she is offered both civil remedies and criminal penalties.

2. TRADEMARK

A trademark is the characteristics or combinations of characteristics that are capable of distinguishing the goods of one enterprise from the goods of another. The concept of trademark is being protected in India. To understand the term "trademark," we should first understand the meaning of the word "mark." It means any letter, numerical word, signature, heading, or label that helps to distinguish between the goods of different enterprises. The trademark also includes combinations of colours, the different packaging, or any type of combination that leads to the concept of the trademark.

In India, the trademark is being registered under the Trademark Act of 1999.³ Under trademark law, the person or enterprise becomes the sole owner of the trademark once it is registered with the registrar of trademarks. Thus, if some other enterprises use the trademark unauthorizedly

² The Copyright Act, 1957, No. 14 of 1957, § 13, India Code

³ The Trade Marks Act, 1999, No. 47 of 1999, § 2, India Code

for their goods, it leads to confusion among consumers and infringement of the trademark. Thus, the registered owner has the right to get the remedies for the said infringement. The trademark registration in India is valid for 10 years from the date of application. It gives an exclusive right to the registered user so that they can enjoy their trademark without the infringement of any other person, and can also be renewed after ten years for the next ten years.

3. GEOGRAPHICAL INDICATION

The geographical indication includes the agricultural goods, natural goods or manufactured goods in the territory, region, or locality of a country. The geographical indication protects and safeguards the local producers of a particular territory or country. For the goods that have originated particularly in that area due to its natural factors, such as soils which have been present in that particular area, itself and which enhance its quality, the product is also linked to the reputation of that particular area or territory.

The Geographical Indication has been protected in Indian laws under the Geographical Indications of Goods (Registration and Protection) Act, 1999.⁴ Under this act, the producers of a particular territory where the product originates have been given the exclusive rights. And it's been protected so that no other person can use, infringe, these rights except the producers of that particular product. Thus, even then, if any other person uses it without the consent of the producers and leads to confusion in the consumers' minds or damages the reputation of that product, it will lead to the infringement of that particular right, which has been given to the producers. The producers have the right to get the remedies for the same. The producer has been given the exclusive right to use their products for a period of 10 years, and it is renewable after that.

4. PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS

In India, the protection of plant varieties and farmers has been given under the act named the Protection of Plant Varieties and Farmers' Rights Act 2001.⁵ In this act, protection has been given to the different types of novel plant varieties created by the breeders; this helps to encourage the breeders to invest in research and new innovations to innovate a better quality of seeds. This act also gives rights to the farmers, as the farmers are not just the growers. They are more than that, and they protect the traditional varieties. By this act, we have access to

⁴ The Geographical Indications of Goods (Registration and Protection) Act, 1999, No. 48 of 1999

⁵ The Protection of Plant Varieties and Farmers' Rights Act, 2001, No. 53 of 2001

high-quality seeds, contributing to improved agricultural productivity, and it also helps to promote and improve the food security and agricultural progress in India.

In India, we have a legal process that gives the rights to the breeders/farmers for their innovative research. The protection under this Act is given for 18 years for the trees and vines. Apart from this, 15 years of protection have been given to the other crops. The authority handles the registration and protects the rights of the farmers. This encourages the development of new varieties in a protected environment.

5. PATENT

The concept of a patent simply includes that the person has invested in the invention of a product that has not been in use or available in society before. The patent must be new and innovative. It must be used for an industrial application, which gives the exclusive right to the inventor to use, make, sell, or import the patented product. The person who invented the invention has the exclusive right, and no other person can use the right of the owner of the patented products without their consent. If someone does the same, it leads to infringement, and the owner of the patented product will get remedies for the same. The patent comes under the concept of intellectual property rights and has been protected in India under the act called the Patent Act 1970,⁶ which then underwent significant amendments in 2005. This act gives the inventor the exclusive rights for 20 years to use their products. From the date of filing the patent with the patent office.

⁶ The Patents Act, 1970, No. 39 of 1970, § 53, India Code