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DEMYSTIFYING INTELLECTUAL PROPERTY RIGHTS

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***Abstract*-- Intellectual Property refers to a bundle of legal doctrines that regulate the uses of different sorts of ideas. The law of copyright protects original forms of expression, for example, novels, movies, musical compositions, computer software programs. Patent law protects inventions and Trademark law protects words and symbols that identify for consumers the goods manufactured and services provided. Trade secrets are protected commercially and valuable formulas, ingredients, methods, like soft drink formulas, are concealed from the competitors, e.g., Coca Cola and KFC. The economic and cultural importance of the intellectual property laws is increasing rapidly in the current era and the fortunes of many businesses depend on intellectual property. This paper demystifies and simplifies the concept of Intellectual Property so that its easily comprehended. The emphasis is on India.**
Keywords: Intellectual Property, Theories, Copyright, Patent, Trademark

INTRODUCTION

The rising importance of the intellectual property rights in the current era has led to many theories being propounded as to the reason of the emergence of the rights and the related Legislations on intellectual property.[1] Some of the popular theories floating around are as follows:

The Theory of Utilitarianism: This theory follows the principle of utilitarianism, which basically is that there should be a maximum pleasure to maximum people and conversely minimum pain. The lawmakers strike an optimal balance between the exclusive rights of the creator and the public enjoyment of these creations.

The Theory of Giving the Fruits of Labour: This theory is all about giving the fruits of labour to the creator as an intellectual property and it says that it is the duty of the state to respect the natural rights of the creator, thus specifying intellect as natural right.

The Theory of Fundamental Satisfaction: This theory follows the premise that the private property rights are crucial for the fundamental satisfaction and fundamental needs of the creator, thus treating intellectual property rights at par with the private property rights.

The Theory of Fostering Achievement: The fostering of achievement, the culture of encouragement for the intellectual property rights in particular should help in shaping an attractive culture and a viable economic satisfaction.

The juxtaposition of these theories simply brings to the fore the major postulate that the intellectual property laws basically provide incentives, protection and encouragement to the creators.

TYPES OF INTELLECTUAL PROPERTY

Intellectual Property is a cluster of legal doctrines regulating different sorts of ideas protected by various Intellectual Property Laws. These Laws confer on the originators of these ideas

[1] William Fisher, "Theories of Intellectual Property" in Stephen Munzer, ed., New Essays in the Legal and Political Theory of Property (Cambridge University Press, 2001), Section III.A. (harvard.edu)

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some exclusive rights and are universally known as Intellectual Property Rights (IPR). The IP Laws provide protection to the Intellectual Property (IP) as well as the rights of the creators of IP. Copyright, Patents & Trademarks are the popular IPs and the legislations according protection to these IP rights, in India, respectively are: The Copyright Act, 1957, The Patents Act, 1970 and The Trade Marks Act, 1999.

DEMYSTIFYING COPYRIGHT

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered are books, music, paintings, sculpture, films, computer programs, databases, advertisements, maps and technical drawings. The copyright law provides encouragement to the original works, ownership, protection to the originator, protection to the intellectual property and the creative endeavor of the owner. Some famous examples of such protection:

- Amit Masurkar's movie *Newton*, because of its shared premise with Babak Payami's Iranian Film *Secret Ballot*. Newton was accorded a clean chit by Payami.
- Kishore Kumar starrer *Begunah*,[2] which was adjudged a rip-off of the 1954 Hollywood caper, Knock on Wood, which starred the legendary Danny Kaye.The case was filed on the behest of Kaye, and the injunction ordered the movie off theatres with immediate effect and all master prints and negatives were destroyed. Later, because of prints that remained in circulation in Hyderabad for more than two years, more penalties were levied, and the producers, Rup Kamal Chitra, reeling under fines and losses, were left destitute.[3]
- The much-publicized Indian Copyright Act was passed in 1957, and the Begunah verdict was likely a shining example of its new ironclad provisions.

Under section 13 of Copyright Act, 1957, copyright can subsist only in "original" literary, dramatic, musical and artistic works. The act does not define "original" or "originality" and what these concepts entail has been the subject-matter of judicial interpretations in India and various other jurisdictions. As copyright law protects only the expression of an idea, and not the idea itself, the "work" must originate from the author and the idea need not necessarily be new. There are divergent views with respect to two important doctrines pertaining to how originality accrues in any copyrighted work:

The Doctrine of The Sweat of the Brow: This doctrine was first adopted in the UK in 1900 in the case of *Walter v. Lane*,[4] where an oral speech was reproduced verbatim in a newspaper report and the question was whether such verbatim reproduction would give rise to copyright in the work. Court held that the work has copyright protection. According to this doctrine, an author gains rights through simple diligence during the creation of a work. The "sweat of the brow" doctrine relies entirely on the skill and labour of the author, rendering the requirement of "creativity" in a work nearly redundant.

The Doctrine of the Modicum of Creativity: USA has the oldest and the most developed Copyright laws in the world. The courts have given importance to both the creative and

[2] *https://www.thehindu.com/entertainment/movies/lessons-not-learnt/article19852464.ece*
[3] https://www.thehindu.com/news/national/other-states/recovery-of-lost-kishore-kumar-film-has-buffs-agog/article30736858.ece
[4] ([1900] AC 539)

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subjective contribution of the authors since the late 17th century. In *Feist Publications, Inc. v. Rural telephone Service Co.*[5]case, the US Supreme Court totally negated this doctrine and held that in order to be original a work must not only have been the product of independent creation, but it must also exhibit a "modicum of creativity". This doctrine stipulates that originality subsists in a work where a sufficient amount of intellectual creativity and judgment has gone into the creation of that work. The standard of creativity need not be high but a minimum level of creativity should be there for copyright protection. The major question of law was whether a compilation like that of a telephone directory is protected under the Copyright law? The court held that the facts like names, addresses etc. are not copyrightable, but compilations of facts are copyrightable. This is majorly owing to the unique way of expression by way of arrangement and if it possesses at least some minimal degree of creativity, it will be copyrightable. The Court held that Rural's directory displayed a lack of requisite standards for copyright protection as it was just a compilation of data without any minimum creativity, which was a requirement for copyright protection. Hence, Rural's case was dismissed.

Doctrine of Merger in India: India strongly followed the doctrine of 'sweat of the brow' for a considerably long time. However, the standard of 'originality' followed in India is not as low as the standard followed in England. In *Eastern Book Company v. D.B. Modak*[6]where the Supreme Court discarded the 'Sweat of the Brow' doctrine and shifted to a 'Modicum of creativity' approach as followed in the US. The dispute is relating to copyrightability of judgements. The notion of "flavour of minimum requirement of creativity" was introduced in this case. The Court granted copyright protection to the additions and contributions made by the editors of SCC. At the same the Court also held that the orders and judgments of the Courts are in public domain and everybody has a right to use and publish them and therefore no copyright can be claimed on the same.

The various doctrines mentioned above show that there is no single, unified concept of originality. Different jurisdictions of different countries have different criteria for originality. There is a conflict concerning originality in copyright law, on the one hand there is using a word of which the common understanding is of 'new creation from nothing', but on the other hand, the law defines the word as meaning originating from the author and involving work, skill and judgment. It can be safely said that the doctrine of merger, which deals with scenarios where the expression is considered to be inextricably merged with the idea, has barred copyright protection to those works or particular ideas which can be expressed intelligibly only in one or a limited number of ways or in a very restrictive manner. This has not only helped preventing the authors from gaining monopoly over such kind of works, it has also made such works easily accessible to users and readers. The merger doctrine also prevents facts from being the subject- matter of copyright protection. The SC classified Literary Works into two categories in case of *Eastern Book Company v. D.B. Modak*[7]*:Primary or Prior works*, these are the literary works not based on existing subject matter and therefore would be called primary or prior works. *Secondary or Derivative works*, these are literary works based on

[5] 499 U.S. 340 (1991)

[6] (2008) 1 SCC 1

[7] (2008) 1 SCC 1

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existing subject matter. Since such works are based on existing subject matter, they are called daily derivative works or secondary works.

DEMYSTIFYING PATENT

Patent is a monopoly right over an invention. It is a type of intellectual property that gives its owner the legal right to exclude others from making, using, or selling an invention for a limited period of years. It is an exclusive right granted for an invention, and it provides the patent owner with the right to decide how, or whether, the invention can be used by others. In exchange for this right, the patent owner makes technical information about the invention publicly available in the published patent document. In *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries,*[8]the Supreme Court said: The subject of Patent Law is to encourage scientific research, new technology and industrial progress. Grant of exclusive privilege to own, use or sell the method or the product patented for limited period, stimulates new inventions of commercial utility. The price of the grant of monopoly is the disclosure of the invention at the Patent Office, which after the expiry of the fixed period of the monopoly passes into the public domain. Patent registrations confers on the rightful owner a right capable of protection under the Act i.e. the right to exclude others from using the invention for a limited period of time. The monopoly over patented right can be exercised by the owner for a period of 20 years after which it is open to exploitation by others. Patent confers the right to manufacture, use, offer for sale, sell or import the invention for the prescribed period.

The basic criteria for patentability of an invention in India is:

- *Absolute novelty:* The invention should be new and not disclosed to the public anywhere in the world in any form or through any medium.
- *Inventive step/non-obviousness*: The invention should not be obvious to a person skilled in the art in the relevant area of technology and should involve an inventive feature which is distinctive in nature from the previous inventions made in the same field.
- *Industrial application*: The new product or process should be capable of being made or used in an industry and it should have economic significance.
- *Usefulness*: The invention must be useful.
- *Exceptions*: The invention must not fall within any categories of subject matter specifically excluded or made subject to exception.

"The Inventive step should be more than a mere workshop improvement. It has to be new and useful."[9]

DEMYSTIFYING TRADEMARK

A trade mark, popularly known as brand name in a layman's language, is a visual symbol which may be: a word to indicate the source of the goods, a signature, name, device, label, numerals, or combination of colours used, or services, or other articles of commerce to distinguish it from other similar goods or services originating from another. It is a distinctive sign which identifies certain goods or services as those produced or provided by a specific person or enterprise. Its

[8] AIR 1982 SC 1444

[9] Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries, AIR 1982 SC 1444: :(1979) 2 SCC 511

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origin dates back to ancient times, when craftsmen reproduced their signatures, or "marks" on their artistic or utilitarian products. Over the years these marks evolved into today's system of trade mark registration and protection. The system helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trade mark, meets their needs. A trade mark provides protection to the owner of the mark by ensuring the exclusive right to use it or to authorize another to use the same in return for payment. In a larger sense, trademarks promote initiative and enterprise worldwide by rewarding the owners of trade marks with recognition and financial profit. Trade mark protection also hinders the efforts of unfair competitors, such as counterfeiters, to use similar distinctive signs to market inferior or different products or services. The system enables people with skill and enterprise to produce and market goods and services in the fairest possible conditions, thereby facilitating international trade.

TRADE MARK SIGNS

The registered trademark symbol, is a typographic symbol that provides notice that the preceding word or symbol is a trademark or service mark that has been registered with a national trademark office. An unregistered trademark is a trademark which is not registered under the Trade Marks Act 1999. It does not have safeguards against infringement. The proprietor of an unregistered trademark does not have the right to use ® symbol. An unregistered trademark only possesses the ™ logo. It indicates that such trademark is not registered but is distinguishable from other similar goods or services. Service marks are trademarks used in relation to services alone, such as names of travel agencies, finance companies, airlines etc. are not registered under the Act and are not protected. As a result, there is no remedy available for imitation. The best protection available for service marks in India is by a remedy against "passing off".

THE OBJECT OF TRADE MARK LAW

The object of Trademark has been explained by the Supreme Court, and it says that:

> *"The object of trade mark law is to protect the rights of persons who manufacture and sell goods with distinct trade marks against invasion by other persons passing off their goods fraudulently and with counterfeit trademarks as those of the manufacturers…"*[10]

The distinction between a trade mark and a property mark[11] is that the former denotes the manufacture or quality of the goods to which it is attached, the latter denotes the ownership in them. In other words, a trade mark concerns the goods themselves, while a property mark concerns the proprietor. A property mark attached to the movable property of a person remains even if part of such property goes out of his hands and ceases to be his.[12]For example: The mark used by the Indian Railway on their goods may be termed as a Property Mark for easy identification of the owner. A mark is deemed to be deceptively similar to another mark if it so

[10] Dau Dayal v. State of Uttar Pradesh, AIR 1959 SC 433

[11] *Section 479 IPC:* A mark used for denoting that movable property belongs to a particular person is called a property mark.

[12] Sumat Prasad Jain v. Sheojanam Prasad and Ors., AIR 1972 SC 413.

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merely resembles that other mark as to be likely to or cause confusion.[13]A collective trademark is made up of letter, words, designs, names, etc. It is a trademark owned by an organization such as an association, and it is only used by its members. Collective trademarks[14] help in identifying the level of quality, geographical origin. It also indicates the individual source of goods or services. Collective trademark is open for use to a variety of traders and not just one individual, provided, the trader is the member of the organization. The provision on it says that it is a trademark distinguishing the goods or services of members of an association of persons, not being a partnership with the meaning of the Indian Partnership Act,1932, which is the proprietor of the marks from those of others.

CONCLUSION

The popularity and awareness of the intellectual property is progressively growing with time. The artificial intelligence, the availability of fast internet and technically the shrinking global distance has widened the scope of all types of intellectual properties. WTO[15] and TRIPS[16] are just a couple of examples to earmark their role in unifying IP regime the world over. India too has kept pace with all developments in the field of IP.[17] The global awareness and outreach are simply amazing, so much so, that since 2000, every year on 26th April, the World IP Day is celebrated.[18]

[13] Section 2(1) (h) of the Trademark Act 1999.
[14] 2(1) (g) of the Trade Marks Act,1999.
[15] https://www.wto.org/english/tratop_e/trips_e/intel1_e.htm
[16] https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm
[17] https://ipindia.gov.in/about-us.htm
[18] World Intellectual Property Day 2022 – Celebrating Creativity & Innovation (wipo.int)