



DYNAMICS OF INTELLECTUAL PROPERTY RIGHTS REGIME IN INDIA

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ABSTRACT

Intellectual property rights (IPR) are critical in enabling long-term innovation. IPR plays a good function in promoting sustainable innovation. Globalization is a major force at the turn of the millennium, and intellectual property has become an integral aspect of global civilization, particularly as the countries move toward a knowledge economy. How knowledge is governed and managed and who has access to it will decide how well this new economy functions and who uses it. A dynamic Intellectual Property Rights system, which provides a sense of security for intellectual works, is necessary for sustainable development. This paper outlines various Indian laws, international conventions and rules on intellectual property rights in India. Various statutes guarantee a person the right to protect his intellectual work. The sacrosanct fundamental rights enshrined in the Indian Constitution protect and incentivize innovation. India is a party to various international regimes of Intellectual Property Rights. Various forms of Intellectual Property rights often intermingle with each other. The paper takes help from various statutes passed by the Indian Parliament and Conventions formulated at the International level. This paper is a sincere attempt to explain various legal protections for intellectual property. There is a thorough analysis of these protections in the latest global developments, and necessary modifications are suggested.

KEYWORDS: *Innovation, Legal System, Intellectual Property Rights, Sustainable Development, India*

INTRODUCTION

The Indian Constitution guarantees several fundamental rights, which also includes the right to life under Article 21 (which is broadly interpreted to include integrity, confidentiality, subsistence, the right to refuge, emergency medical care, and a healthy environment), the right to equality and non-discrimination under Articles 14 and 15 (based on gender, descent, ethnicity, caste, religion, and other factors), the right to primary school under Article 21A, freedom of expression, associate, movement throughout India, and the right to avocation, trade, and commerce under Article 19.¹ Property rights were removed from the Fundamental Rights in 1978 and are assigned another status under Article 300A. Nonetheless, in the “*K.T. Plantations v. State of Karnataka* 2011 (9) SCC 01” ruling, the Supreme Court stated that intellectual property is protected to a high degree “The expression ‘Property’ in Art.300A confined not to land alone, it includes intangible assets like copyrights and other intellectual property and encompasses every possible interest recognized by law”.

In “*Syndicate of the Press of Cambridge University v. B.D. Bhandari* (2011) Division Bench, Delhi High Court”) It is also worth noting that if Legislative interpretation issues affect the rights of a diverse group of people occur, Indian courts consider the fourth part of the Constitution, which deals with the Directive Principles. The courts have always acknowledged that, while it is necessary to enforce IPR owners’ rights, the law also has to play a crucial role in maintaining the equilibrium between the



IPR owner's right to innovate and reap the benefits as well as the public interest in allowing creativity and innovation.

In contrast to other nations, the Indian Constitution under Article 253 requires statutory provisions to enshrine the conditions of a treaty in order for it to be enforceable in the Indian legal system. In the domain of human rights, particularly concerning personal liberty, the Apex Court of India has frequently stated that to the extent that a treaty's provision is consistent with the Constitution (such as Article 21), it will be construed alongside such provisions. As a result, courts in India are obligated to harmoniously interpret and apply the law on the matter in question. There is no need to rely on external sources if it is unambiguous. Courts may accept foreign judicial precedents if the substance is identical to the laws in vogue in India; nevertheless, those precedents are of persuasive value¹. In a disagreement over copyright, the Supreme Court of India recognized this in its "*Entertainment Network v. Super Cassette Industries Ltd.* (2008)13 SCC 30". Simultaneously where domestic statutes incorporate international conventions or agreements, the courts evaluate their provisions and the judgements of foreign courts in the field "*Novartis AG v. Union of India & Others* 2013 (6) SCC 1". The High Court of Madras in "*Novartis A.G. v/s Union of India* (2007) 4 MLJ 1153" was asked to determine whether the passage of a clause in the Patents Act is in contravention to the objectives of Trade-Related Aspects of Intellectual Property Rights (TRIPS). If the implemented measures violated TRIPS, the judiciary lacked the authority to hear and give remedies because it could not order the Indian Parliament to create legislation. In the presence of domestic legislation covering the topic, courts in India lack the absolute authority to rule on treaty breaches due to the dual character of the Indian legal regime and relationship to foreign organisations whose responsibilities are owed by the government. Resultantly, if some elements of the Patents Act breached India's TRIPS agreements, the feasible solution could be for Parliament to amend or re-enact the statute. This would imply that the Parliament would ensure that Indian laws are compliant with international TRIPS requirements. While the courts may use an interpretive method to interpret the legislation in accordance with the TRIPS, if such a harmonious construction is not possible, the Parliament would be responsible for appropriately amending the law that would make it at par with the provisions of TRIPS².

PATENT LAW

In India, patent protection was limited to specific domains rather than patent protection for products, especially for food and pharmaceuticals, without taking into consideration national challenges such as medicinal drug availability and food security. Various Panels suggested that the Indian chemical and pharmaceutical industries would profit greatly if patents were only granted for procedures and processes. Furthermore, product patents were vital to reject, particularly for food and medicine, because they should be made publicly available at affordable costs which cannot be subjected to monopolies. The Patents Act of 1970 was enacted in response to the various recommendations. Pre-TRIPS, India was one of fifty countries that excluded pharmaceuticals from product patent protection, with another ten exempting pharmaceutical drugs from process patent protection. The Patent related national legislation and other policies, including drugs and industries, were the instruments used to fulfil the country's national goals. This approach supported competitive innovation in manufacturing methods and allowed for the production of patented products using varied processes, promoting the development of more effective manufacturing processes³. This approach's encouragement of process-based innovation was the initial stage in building India's generic medicine industry. For food, drug, and medical innovations, process protection was restricted to five years. A right of manufacturing licence allowed anyone to manufacture patented goods without first obtaining the patentee's permission or approbation. Food, chemical, and pharmaceutical inventions were given a licence of approval three years after the patent. Following India's accession to TRIPS, the Patents Act was revised three times in 1999, 2002, and 2005. The 1999 Act authorized fifteen claims of patents for a chemical meant to be used as a medication or drug, or potential of being used as a medication or drug and included provisions for the grant of restricted



trading rights regarding pharmaceuticals for which a patent was issued under Section 5. The Amendment done in 2002, expanded the definition of “innovation” to include a new product, as well as the terms “capable of industrial application” and “inventive step.” The important reform, which allowed for product patents for pharmaceutical items, was passed in 2005. Clause (d) of section 3 of the Act was introduced once more by this change. This acts as a restriction against the patent applications, which do not reveal any major improvements in the efficiency of a known chemical. This was the topic of debate in the Supreme Court of India’s Novartis ruling. Furthermore, if the innovation was either marketed unreasonably or worked in contravention to serve the legitimate use of the public, the government might compulsorily licence the patent in the public interest. India’s laws were linked with TRIPS provisions in 2005, and as a result method and product, patents are awarded nowadays, with exclusionary rights for twenty years.

COPYRIGHT LAW

In “*Indian Performing Right Society v. Eastern Indian Motion Pictures Association & Ors* 1977 (2) SCC 820” the Supreme Court described copyright in a film as a “felicitous blend, a beautiful totality, a constellation of stars...that ensemble which is the finished produced orchestrated performance by each of the several participants, although the components may, at times, be elegant entities in themselves.” The Apex Court compared the different rights - to the songs, music, screenplay and still images, other design elements, and so on - to a bundle of exclusively owned rights where each one is capable of independent use.

According to Indian copyright law, bringing copyrighted things from one region or country and indulging in trading them elsewhere at a lower price than fixed by the lawful owners is prohibited. Early example of fair use (the use of copyrighted acts or performances for research related activities, academics, and essentially non-business purposes) foresaw the vibrant potential of copyrighted works. In “*R.G. Anand v. Delux Films* 1978 (4) SCC 118” the Indian Apex Court was foresighted, foreseeing the transformational nature of using a copyrighted activity as part of fair use. Copying for mockery or criticism is not considered an infringement or violation and is referred to as “fair use.” The “Kerala High Court in *Civic Chandran v. Ammini Amma* 1996 PTC 16” ruled that copying to criticize falls within the ambit of fair dealing. The Court considered the following elements: “(1) the quantity and the substance of the matter taken; (2) the objective of the work; and (3) the number of differences between the original and the copied work”

MORAL RIGHTS

Section 57 of the Indian Copyright Act, 1957, guarantees writers’ moral rights as per the Berne Convention. They are the exclusive rights of the author or creator which include the right to paternity and integrity. In the “*Amar Nath Sehgal case*” the Court concluded that Section 57 constituted the foundation for protecting not only the moral rights of the author but also the nation’s heritage. The Court observed, “*Knowledge about authorship not only identifies the creator, but it also identifies his contribution to national culture. It also makes it possible to understand the course of cultural development in a country. Linked to each other, one flowing out from the other, the right of integrity ultimately contributes to the overall integrity of the cultural domain of a nation. The language of Section 57 does not exclude the right of integrity about cultural heritage. The cultural heritage would include the artist whose creativity and ingenuity are amongst a nation’s valuable cultural resources. Through the telescope of Section 57, it is possible to legally protect the cultural heritage of India through the moral rights of the artist.*”

COMPULSORY LICENSING: COPYRIGHT

India is a party to Berne Convention and the Paris Text’s Article 9. If a complainant believes that the publication, reproduction, or information of a copyrighted work is not licenced, and the Copyright Board sits to hear the matter and finds that the conditions are unrealistic, unfair terms, the copyright owner might be directed to licence the work for the desired motto. In its 2008 decision of



Entertainment Network, the Supreme Court stated forced licencing is an exception to the right of the owner to profit from his or her work and that Section 31(1)(b) of the Act does not confer any rights on the applicant seeking a compulsory licence. In “*Super Cassette Industries Ltd. v. Music Broadcast Pvt. Ltd.*, 2012 (5) SCC 488”, the Supreme Court acknowledged copyright in a “work” is a “valuable legal right,” and “whether such a right should be transmitted or otherwise is the discretion right for the “owner” of the copyright to decide.” As a result, while investigating issues relating to the issuance of a compulsory copyright licence, the issue must be resolved conclusively, and no interim orders can be issued while the procedures are ongoing⁴.

TRADEMARKS

The trademark law in India is complex and well-developed. If a mark is “distinctive,” the law gives the owner of the mark the right to register it. Specific statutory provisions provide the necessary direction. Infringement actions for registered trademarks must meet a strict standard of proof that The plaintiff’s mark is “deceptively similar” to the defendant’s mark. The courts use a comprehensive effect test rather than a bit-by-bit or frame-by-frame analysis. In “*Ruston and Hornsby Ltd. vs Jamindara Engineering Co* AIR 1970 SC 1649”, the Indian Supreme Court held that the question in the instant litigation is whether the defendant’s goods are labelled or marked in such a way to make the purchasers believe they are the plaintiff’s goods. In the event of an infraction, the question that must be answered is, has the respondent employed a point similar to, or identical to, the plaintiff’s mark, a passable lookalike of the plaintiff’s trademark. If the defendant is found guilty, an injunction will be issued as it infringes on the plaintiff’s trademark⁵.

The concept of trademark dilution had been acknowledged by Indian courts. long before laws replaced the old 1958 Indian Trademarks Act in India’s TRIPS entry, i.e., the use of brand names concerning items or services similar to the plaintiff’s goods or services. The Trademarks Act of 1999 gives statutory approval to this recognition. Anti-dilution trademark rights might be applied. in the case of well-recognized marks and services and goods that have developed such a distinctive public image in India that they can be used for unrelated services and goods may infringe on the possessor of their rights⁶. It has been held that in order to succeed in trademark dilution claims, the plaintiff must establish that the goods in question are not similar to the defendant’s goods; the plaintiff must also prove without any doubt that his mark has “a reputation in India” and that its use “without due cause” takes undue advantage of or is “detrimental to” the plaintiff’s unique character and repute. Trademarks for company names are also protected under “Section 29 (5), Trademarks Act, 1999”. Similarly, trademarks in domain names are provided and upheld. The Supreme Court stated in its “*Satyam Infoway v. Sifynet Solutions* 2004 (6) SCC 145” that “a domain name may have all of the characteristics of a trademark and could be the basis for a passing-off action.” Those general customers could be misled by website sameness and held that “the first domain name had misrepresented its goods or services through its promotional activities, and the first domain owner would thereby lose its custom.”

REMEDIES

The most typical remedies for infractions or breaches of intellectual property rights are injunctions and damages. In addition, infringement of a trademark or copyright is punishable. Because trials in IPR implementation cases can take a much time, ad interim relief is frequently disputed. India adopts standard law criteria for granting ad-interim support, such as identifying irreparable damages by assessing the prima facie case and balancing the parties’ interests. Courts have applied the analysis based on three factors that are of the presence of a prima facie case, substantial suffering, and balance of convenience in patent cases and others. The element of “public interest” was acknowledged in “*Hoffmann-La Roche Ltd. v. Cipla* (2009) 40 PTC 125 (D.B.)” as part of the practice of balancing convenience that the Court does when contemplating the award of a temporary sanction.



DAMAGES

In India, courts assess and award damages the same way as in the United Kingdom. The Delhi High Court ordered punitive penalties for the first time, even though no objective criterion for determining damages could be established. This was in *Times Incorporated v. Lokesh Srivastava* 116 (2005) DLT 569. The Court reasoned that when dealing with trademark, copyright, and patent infringement cases, courts “should grant not only compensatory damages but also award punitive damages to discourage and dishearten lawbreakers who commit violations with impunity... so that they realize that if they are caught, they will be liable not only to reimburse the aggrieved party but also to pay punitive damages.”

CONCLUSIONS

The intellectual property regime in India has evolved substantially during the last ten years. After India’s joining of TRIPS, there is a growing awareness among the legal community and judges that Intellectual Property Rights is a harbinger of rapid economic growth and development. Both the bar and the bench reflect this changed attitude. In terms of competency, younger lawyers are increasingly demonstrating a greater and more skill-based awareness of various challenges in intellectual property law and the importance of India’s global responsibilities to IPR protection. This is also evidenced by the rise in the number of legal firms devoted solely to intellectual property law practice.

On the other hand, the courts’ growing jurisprudence demonstrates that they are hesitant to accept various conceptions, particularly legal remedies, on a doctrinaire basis. The courts have till date tried to strike a balance between innovators’ rights and stopping the violators; conversely, where IPR owners’ claims for protection are broader in canvas and stop innovation, development and progress, the courts have not accepted such claims. The question of what remedies should be provided for infringement of intellectual property rights is an important example of courts striving to strike a right balance between the possessors of Intellectual Property Rights and the broader public interest. The denial to grant Status quo on life-saving pharmaceuticals demonstrates that Indian courts do not regard Intellectual Property rights as absolute and that such rights can be subordinated to the broader public interest. Keeping in view the socio-economic conditions of the country, courts are trying to tread on a middle path. However, there is a growing recognition among Indian judges that as technology advances, Intellectual Property Rights are becoming extremely vulnerable to breaches other than those previously recognised. As a result, Indian courts have awarded a variety of hitherto unheard-of civil law remedies, including ex parte injunctive relief against unnamed defendants, interim damages, and so on. These are just a few examples of an evolving judicial trend that strives to adopt global practices in cases of violation of such rights. In some ways, India’s Intellectual Property legal regime is still in its preliminary stages, and the significance and capacity of Indian courts in moulding and chiselling it is remarkable.

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