

**“INTELLECTUAL PROPERTY LAWS”- ENFORCEMENT
OF LAWS IN INDIA**

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ABSTRACT:

Intellectual Property is related to work of mind. Although the legal arrangements around IP rights are sound and IPR enforcement procedures robust, the real problem facing India is the severe shortage of resources with respect to IPR enforcement. This research paper covers the current law of IPR enforcement in India, especially the challenge faced by rights owners and the notable achievements of IPR enforcement in the last few years. The research paper focuses on a comprehensive look at the legal regime governing IP rights as well as the plurality of IPR enforcement mechanisms.

Furthermore it examines the impact of digital technologies on IP protection, and proactive measures being taken by the Indian Government to deal with emerging issues in this fast-changing environment. Recent developments in law and policy such as the interconnection of IPAB with the High Courts, enhancement of cyber laws aimed at combating digital piracy, as well as schemes such as SIPP scheme are indicating an increase in the efforts towards strengthening the IP enforcement mechanism. Yet, new issues remain to be addressed. The paper concludes with recommending for strengthening IP enforcement in India, including the establishment of fast-track courts for IP disputes, enhanced training programs for enforcement agencies, stronger penalties for infringement, and greater international cooperation. Protecting the interests of Indian companies and creators, encouraging foreign investment, and fostering an innovation-driven economy all depend on the efficient enforcement of intellectual property rights.

KEYWORDS: Intellectual Property, Digital impact on IP protection, Enforcement of IP laws, Mechanism for enforcement, Challenges and Development of IP.

1. INTRODUCTION:

Intellectual Property Rights are rights that have been developed to safeguard the creative work of the human intellectual ability, which tries to promote advancements in science, arts, technology, creative work and so forth by providing incentives to the creativity. Intellectual property refers to the creative work of an analytical mind. IP rights are an “intangible right of the human mind”.

It serves to encourage creativity and dissemination and use of its fruits. If intellectual property rights are not protected, a nation's economic and technological advancement will come to an end.

Basically, IP refers to inventions, designs, brands, literary and artistic works, or other creations, over which the person has exclusive rights. IP gives an exclusive right to use, sell, manufacture, license, etc. IPR's objective is to foster innovation, economic prosperity, and competitive markets.

“Property” has wider interpretation in IPR law. In one case of **Jilubhai Nanbhai Khachar v. State of Gujarat**¹, Property in the juridical sense, as held by the Supreme Court, is a collection of guaranteed and protected rights by law. It involves all useful rights and interests, but specifically, the right to have and exclusively possess an object, the right to dispose of it as the law allows, the right to enjoy it, and the right to keep others off it. Property is dominion or absolute right of use or disposition which a person can rightfully have over something or an object.

R.C. Cooper v. U.O.², the SC stated that property means “ *the highest right a man can have to anything being a right to have land or goods or chattels and which not depend on another’s courtesy; it includes ownership, estates and corporeal things and other right such trademark, patent and even right in personam.*”

Property is either classified as Corporeal or Incorporeal property. Incorporeal property is referred to as intangible property. Intellectual property law is intangible property and properties. The subject matter of rights is are result of human labour and skill, which is also referred to as IPR.

1.1 TYPES OF INTELLECTUAL PROPERTY LAW

Before, Intellectual property law was classified as Copyright and Industrial Property. But currently,

- 1) **PATENT**- For a limited period, a patent grants the owner the exclusive right to prevent others from creating, utilizing, or selling the invention without permission (usually 20 years). Patents promote technological innovation by rewarding inventors. The Patent Office granted the Patent to use his invention for an estimated time. The IP patentee is the individual to whom the patent was awarded. To prevent fraudulent registration of the invention and inventive step and to prevent duplication, it was crucial that the invention be disclosed at the time of registration. Only when an invention is novel, creative, and suitable for industrial use can it be patented.
- 2) **COPYRIGHT**- Original works of authorship, such as books, music, films, software, and paintings, are covered by copyright. Here, literary work includes a computer programme that includes a database. It gives the creator the right to change their work along with the right to reproduce, distribute, perform, and publish copies. Usually, copyright protection lasts for the lifetime of the author plus another 60 years.
- 3) **TRADEMARK**- Trademark is a distinctive mark, symbol, word, phrase, or logo that distinguishes a company's goods or services from others. According to Section 2(1)(zb) of the Act, it states that a “mark should be graphically represented and distinguishable from the goods and services of others.” Registration of a trademark helps ensure that

¹ AIR 1995 SC 142 : (1995) Supp (1) S 596 (58)

² 1970 SC 564

companies can keep their brand image and avoid counterfeiting. It protects the public from being confused by similar and identical things and protects the goodwill and reputation attached to the marks.

- 4) **DESIGN-** Design protection encompasses the visual and aesthetic features of a product, including its shape, pattern, and color scheme.

An article's design can be implemented in two dimensions, three dimensions, or both. Here, a design comprises the product's shape as well as two-dimensional elements like decorations, lines, patterns, and color, all combined. Ex- The distinctive shape of Coca-Cola bottles is protected under industrial design.

- 5) **GEOGRAPHICAL INDICATION-** The term "geographic indication" refers to the fact that certain products originate from a nation, area, or location and have unique traits, attributes, or a certain reputation because of their provenance. These equalities because to natural reasons, or the method of production, or other human reasons, such as the preparation of some products and the maintenance of some quality standards. For instance, the mention of the District of Champagne, France, reminds the wine Champagne that was manufactured there.
- 6) **Layout designs of integrated circuits**—Integrated circuits have a significant impact on the advancement of technology, particularly in electronics and information technology. They are used in a wide variety of products, including mobile phones, televisions, watches, radios, washing machines, and equipment.
- 7) **TRADE SECRET-** It safeguards proprietary company data that gives an edge over competitors. Any information that can be used to conduct business and that is valuable enough to give one company an actual or potential economic advantage over another is considered a trade secret. It must take all precautions to protect its trade secret. Unlike patents, trade secrets are not disclosed to the public but are protected through non-disclosure agreements (NDAs) and other legal instruments.

1.2 IMPORTANCE OF EFFECTIVE IP LAW ENFORCEMENT FOR ECONOMIC DEVELOPMENT

The link between IP and economic growth plays an important role. This includes aspects such as fostering innovation, attracting foreign investment, protecting businesses, and ensuring fair competition in the market. The main focus is on the broader economic implications of strong IP law enforcement.

Encouraging Innovation:

Strong IP law enforcement promotes innovation by giving owners exclusive rights to their creations. Encouragement to invest done in their research work and other development since they know that their work will be shielded from abuse or unauthorized use. The protection of new creations under the law encourages the investment of more resources in further innovation, which leads to technological progress and cultural growth. IP laws, including those of the Patents Act, 1970, promote innovation through a grant of monopolistic rights to inventors for their inventions over a restricted period of time.

Affecting Foreign Investment: Effective IP enforcement will obviously encourage foreign direct investment (FDI) in a country. Investors are confident that their intellectual property (patents and trademarks) will be protected, hence reduce risks arising from infringement. Implementation of effective enforcement, on the other hand, will also result in global transfer of technology. Company's are more likely to transfer valuable proprietary technology where they are likely to gain protection from a successful enforcement mechanism.

Business protection: The enforcement of intellectual property rights protects businesses from unfair business practices, such as counterfeiting and piracy. It ensures that businesses can enjoy the profits of their investments in branding and innovation without having to worry about losing market share to competitors. By securing trademarks and geographical indications, IP laws also enable businesses to distinguish their goods and services to consumers, as well as promote consumer trust and loyalty.

Promoting Fair Competition, Through the prevention of alleged illegal use of IP, enforcement of Intellectual Property law promotes fair competition. Businesses would be stimulated to innovate and improve their products in order to gain a competitive advantage because of the alleged unfair competition offered by this policy. Proper enforcement of Industrial Designs and Trade Secrets Also encourages fair competition because it makes it possible for companies to take advantage of their unique inventions without fear of misappropriation.

Economic Impacts: Enforcing good IP helps to drive economic growth by creating new industries and job creation, and also helps to improve people's quality of life by promoting the creativity of new products and services. Good economies with good IP enforcement structures are well placed to compete in global trade regimes, as they provide a conducive environment for innovation and sustainable development.

This helps in spreading knowledge and technology, which is important for economic and industrial growth. Compulsory licensing provisions in the Patents Act, 1970, provide for necessary technologies to be made available without harming the balance between public interest and patent owners' rights.

2. LEGAL FRAMEWORK FOR INTELLECTUAL PROPERTY LAW

India's legal system that governs various forms of intellectual property, which was also listed above. It includes Copyright, Trademark, Patent, Design, Geographical Indication, and other forms of IP.

COPYRIGHT is governed under the Copyright Act, 1957. It protects the creation of the author, including literary, dramatic, artistic, musical, sound recording, and cinematographic films. In the words of **Black's Law Dictionary**, copy refers to "transcript, imitation, reproduction of an original writing, painting, instrument, or others".

For literary, dramatic, musical, and artistic works, copyright is valid for 60 years from the start of the year after the author's passing. Reproduction, public communication, adaptation, and translation are all considered rights. Provisions for obligatory licensing in situations where works are denied to the public.

The Trademark Act, 1999 deals with trademarks. A trademarked name distinguishes all of the products and services of the proprietor from those of others. It protects the reputation of the holder of the trademark and its goodwill. According to the Trademarks Act of 1999 it defines marks under Section 2(1)(m) of the act.³ A trademark⁴ is defined as a mark that can visually symbolize and set one product or service apart from another. A trademark safeguards your brand, and it gives exclusive right to stop someone from using similar and identical types of marks.

It creates a foundation for registration, protection, and implementation of trademarks. It also identifies "well-known trademarks" and provides special protection even if not registered in India. The registration process includes examination, publication, and opposition. Permits opposition and rectification procedures for contesting the validity of trademarks. Similar to copyright, the Commercial Courts Act of 2015 governs trademark litigation, which may be brought before the High Court if the plaintiff conducts business within its jurisdiction. In this case, both parties had the same name, "Atul". The issue arose before the Bombay High Court for consideration whether or not the defendant was infringing the trade mark or not. Here, court noted that it is a well-known fact and an admitted fact that the word "Atul" is a proper name. It is a Sanskrit word. Its English meaning is well known to everyone in this nation. The term "Atul" signifies incomparable, unparalleled or unweighable. Indeed, fide. It is a feature of which judicial notice is to be taken. Further, the word mark "Atul" is a common male personal name and is the defendant's son's name also, the defendant's use cannot be called mala fide.⁵ The registration grants a proprietary right to utilize a trademark; Protection against infringement and passing off; Registration period for ten years, and renewal is done again. The laws that govern the rights of patent holders are the Patent Act of 1970 and the Patent Rules of 2003. Patent provides the absolute right to manufacture, use, sell, and sublicense others for selling their creations for a span of 20 years. Patent protection is deserved so that inventiveness can be nurtured and reward the inventor, and, apart from that, give something better to people in public. Section 39 regulates the filing of patent applications abroad and mandates pre-approval for inventions of defense or atomic energy. India is a signatory to the TRIPS Agreement, which affects its patent legislation. Article 27 of TRIPS requires non-discrimination in patentability, whereas limited exceptions to patent rights are provided by Article 30. After the date of filing, patent rights are valid for 20 years. Designs are protected under the "Designs Act 2000". It protects an article's visual features, such as its shape, arrangement, pattern, or ornamentation. Protection can be achieved only upon registration, and the 10-year protection period can be extended by an additional five years. Disputes concerning designs are adjudicated under the Commercial Courts Act, 2015, as with trademarks and copyrights. Registration provides sole rights for 10 years, further extendable by 5 years. Only original and new designs are eligible for protection.

³ Section 2(1)(m), Trademark Act, 1999 (Act no. 47 of 1999).

⁴ Section 2(1)(zb), Trademark Act, 1999 (Act no. 47 of 1999).

⁵ Atul Products Ltd. v. V.P. Mehta, 2009 AIHC 2356 (Bom)

The 1999 Geographical Indications of Goods (Registration and Protection) Act. It protects products with a specific geographic origin and attributes or a reputation derived from that origin. Basmati rice, Mysore silk, and Darjeeling tea are a few examples. shields names or symbols applied to goods with a specific geographic origin and attributes or a reputation derived from that origin. An exclusive right to use the GI is presumed to be granted by the registration. Here the protection is for 10 years, renewable to infinity. Forbids unauthorized use of registered GIs.

India lacks a separate law for trade secrets, but protection exists under contract law and common law. Confidentiality provisions in contracts protect trade secrets and know-how. Misappropriation or unauthorized disclosure can result in cancellation of contracts and monetary compensation. New plant varieties and farmers' rights are protected by the Protection of Plant Varieties and Farmers' Rights Act of 2001. It recognizes the rights of farmers and safeguards new plant varieties. Here, registration provides exclusive rights for 15 years for crops and 18 years for trees and vines.

India is a signatory at the international level also. Intellectual property rights (IPR) enforcement is addressed by several international agreement and conventions that establish global protection standards, requirements, and procedures.

The TRIPS Agreement adopted under the WTO in 1995, is among the most extensive global agreements on IPR. It provides minimum requirements for the enforcement and protection of IPR in member countries. IPR enforcement structures need to be fair, equitable, and not excessive or prohibitively expensive. Judicial authorities need to be able to issue remedies like injunctions, damages, and destruction of infringing products.

Paris Convention for the Protection of Industrial Property (1883). Pursuant to its provisions on industrial property — patents, trademarks and industrial designs — this was one of the first international conventions on intellectual property rights. It provides for the principle of "national treatment" — that foreign nationals who receive protection for their intellectual property rights are treated as if they were resident in their country — to be introduced and there is provision for a "right of priority", which allows applicants to assert priority in other Member States, while not explicitly covering mechanisms of enforcement, providing the basic framework for international harmony and cooperation in IPR legislation.

Berne Convention for the Protection of Literary and Artistic Works (1886). At the outset, this convention stipulates that [the copyrights in literary and artistic works] and the rights of adjacent works shall be preserved and it states in particular the principle of ['automatic protection'] of (automatic protection applied to the works in the Member States without formal registration, as well as of 'national treatment'. It establishes a system for copyright protection but no detailed mechanisms of enforcement.

WIPO Performances and Phonograms Treaty (WPPT) and WIPO Copyright Treaty (WCT). These treaties treat the protection of copyright and related rights in the digital sphere, and are administered by WIPO; they have enforcement provisions (including remedies for circumvention of technological protection measures and for the illegal disclosure of rights

management information). Patent Cooperation Treaty (PCT) enables international filing of patents, but does not explicitly cover enforcement.

The Budapest Treaty on the International Recognition of Microorganism Deposits for Patent Procedures. By allowing deposits in any international depository authority, the treaty expedites the microorganism patenting process. Though procedural in nature, it indirectly assists in enforcement by harmonizing patent requirements. Madrid Agreement and Protocol, these treaties ease international trademark registration. It simplifies trademark registration in member states, secondarily assisting in enforcement by ensuring uniform protection.

3. ENFORCEMENT MECHANISM FOR IPR ENFORCEMENT

The enforcement of IPR in India involves various mechanisms, including legal and administrative, and judicial remedies.

CIVIL COURTS-

IPR owners have an option to initiate civil proceedings in courts for the IPR Enforcement in India. It includes:

1. Permanent Injunction
2. Interim Injunction
3. Damages
4. Anton Pillar Order
5. Accounts of Profits

Civil actions for IPR violations can be instituted in original jurisdictions, i.e., District Courts or High Courts having original jurisdiction. High Courts with original jurisdiction (e.g., Delhi, Bombay, Madras, and Calcutta) may hear IPR cases directly, subject to pecuniary and territorial jurisdiction. Courts are proactive in issuing fair reliefs such as injunctions (interim and permanent), Anton Piller orders (search and seizure), and damages. But punitive damages are not that frequently granted.

In *Hoffmann-LA Roche Ltd. v. Cipla Ltd.*⁶ The plaintiff claimed to have a joint patent with Pfizer Products Inc. for the pharmaceutical drug Erlotinib, and the lawsuit sought a temporary injunction to prevent the defendant from manufacturing, marketing, selling, and exporting the drug. The plaintiff argued that they possess a valid patent to Erlotinib Hydrochloride (Polymorphs A and B), which was not demonstrated by the defendant to have been acquired through fraud. Registration of the patent does not assure it against subsequent challenge. The Court also held that if the defendant is able to persuade the Court that there is a serious issue to be litigated on the question of the validity of the patent, then the plaintiffs will not necessarily be entitled to an interim injunction merely because they were issued a patent for Erlotinib Hydrochloride, which is a combination of Polymorphs A and B.

In *Wockhardt Limited v. Hetero Drugs Ltd.*,⁷ The appellant possessed the EMR, process patent, and drug license for producing pharmaceutical formulations, particularly 1% moxifloxacin cream. The appellant's patent and EMR were violated when the first respondent, Hetero Drugs Limited, began producing and selling the identical product. Following this

⁶ 159 (2009) DLT 243

⁷ (2006) 32 PTC 65

discovery, the appellant filed a lawsuit seeking a permanent injunction to stop Nicholas Piramal (India) Limited, Adyar Drug House, and Hetero Drugs Limited from producing or otherwise generating the composition that the appellant had created for the production of 1% nodifloxacin cream. The temporary injunction was granted to the plaintiff.

Regardless of the standard jurisdictional provisions under Section 20 of the Code of Civil Procedure, plaintiffs may file a lawsuit in the district court where they reside, conduct business, or perform personal labor for compensation under Section 134(2) of the Trademarks Act, 1999 and Section 62(2) of the Copyright Act, 1957. Since the Patents Act contains no provisions about jurisdiction, Section 20 CPC establishes jurisdiction for patent disputes. According to the Copyright Act, infringement lawsuits must be filed in the district court.

COMMERCIAL COURTS-

The Commercial Courts Act, 2015 applies to commercial disputes, including IPR disputes. Cases are heard by High Courts exercising original jurisdiction where the threshold value is fulfilled.

CRIMINAL COURTS-

Several IPR infringing activities like trademark counterfeiting and copyright piracy, are criminal acts in India. Criminal proceedings can be pursued under:

1. Copyright Act, 1957
2. Trademarks Act, 1999
3. Geographical Indications of Goods Act, 1999

Penalties involve imprisonment and Fines (ranging from ₹50,000 to ₹2,00,000 or more), and Seizure and destruction of infringing goods.

The **Intellectual Property Appellate Board (IPAB)**, formerly responsible for IPR appeals, has been discontinued under the Tribunals Reforms Act, 2021. Its functions have been shifted to the High Courts.

Administrative Bodies-

Controller General of Patents, Designs, and Trademarks (CGPDTM): In charge of registering and managing patents, trademarks, and designs. It handles the opposition proceeding and cancellation of the false registration of trademarks and patents under the IPR. Implement IPR at borders under the IPR (Imported Goods) Enforcement Rules, 2007, by confiscating infringing goods. It prevents the importation of counterfeit or pirated goods at various levels. The judiciary clarifies that the enforcement action under these Rules, 2007 must comply with the procedural for fairness.⁸

National Association of Software and Service Companies v. Premier Software Ltd.,⁹ In order to obtain personal information for headhunting, the defendants posing as the plaintiff—a leading software association—visited its website, created fictitious email addresses, and sent emails using the plaintiff's name to various addresses. The defendants, the plaintiff's trademark

⁸Special Leave to Appeal C No. 34834/2012 (From the judgement and order dated 13/07/2012 in LPA No.1104/2011 of The HIGH COURT OF DELHI

TELEFONAKTIEBOLAGET LM ERICSSON vs. UNION OF INDIA & ORS. (26.11.2013 - SC Order) : MANU/SCOR/52534/2013

⁹ AIR 2005 NOC 269 (Del)

NASSCOM, sent these phishing emails pretending to be a premier hiring and selection company for the plaintiff. As a result, the defendants were subject to an interim injunction. They have also been awarded Rs. 16 lakhs in additional damages.

REMEDIES are also cited here for safeguarding IPR. Under the Civil, the redressal given to the IP holders are to- Injunctions to stop future infringement; Damages or account of profits to reward the rights holder; and Forfeiture and destruction of infringing merchandise. Under the criminal law, the remedies which are provided to the holders for IP infringement include Fines and imprisonment for crimes like counterfeiting trademarks or piracy of copyrighted works. Rights holders may notify customs officials to deny the import of goods that violate their rights under the Copyright Act and Trade Marks Act. Customs officers have the authority to confiscate and hold such items.

3.1 ROLE OF GOVERNMENT AGENCIES FOR IP PROTECTION

The government agencies act as a cornerstone in the protection of IP by enforcing and enforcement of the law, registration of the IP, promoting awareness of the IP and their registration, facilitating cooperation at the International level, and these support more innovation awareness and lead to economic growth. Regulations pertaining to patents, trademarks, designs, copyright, and other forms of intellectual property are created and updated by government offices. They help enforce these rules, such as investigating and prosecuting infringement, counterfeiting, and piracy cases. They collaborate with the judiciary to have IP rights maintained and infringers punished.

Government agencies such as CGPDTM in India oversee IP registration procedures for patents, trademarks, and designs. They assist applicants and provide support to enable smooth and effective registration. They keep correct records of registered IP, which is available to the public. Government agencies run campaigns to educate the public about the value of intellectual property rights, the benefits of preserving it, and how to avoid infringement. They arrange training programs for government officials, law enforcement authorities, and industry experts to equip them with better knowledge and expertise on IP enforcement and protection. Multiple Government agencies are responsible for protection of IP, registration of IP, administration and enforcement of IPR. These include: Department for Promotion of Industry and Internal Trade (DPIIT) India's intellectual property policies are developed and implemented by DPIIT - Ministry under Ministry of Commerce and Industry (MBCI). This ministry is responsible for the development and implementation of National IPR Policy. It is responsible for ensuring the administration of IP laws including those relating to patents, trademarks, copyrights and designs by all the states. Building public awareness and capacity building in relation to IPR. The Cell for IPR Promotion and Management (CIPAM) of DPIIT is the focal point for inter-agency coordination and implementation of the National IPR Policy. **CGPDTM**, manages patents, trademarks & designs in India. they will register trade names, industrial designs & patents & would ensure transparency and public access through national intellectual property databases.

Copyright Office, it executes the Copyright Act, 1957. It preserves the Register of Copyrights, containing information on copyrighted works, authors, and owners. It directs the registration

of copyrights and issues certified copies of register entries. It also prohibits and manages compulsory.

National IPR Policy, enacted in 2016, the National IPR Policy is an elaborate framework for protecting and promoting IPRs in India. The main objective is to: improve IP legislation and enforcement agencies; encourage innovation and creativity; foster public awareness and education regarding IPRs and promote commercialization of IP assets.

Importation of infringing goods on intellectual property rights can be prevented by customs authorities. This is regulated by the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, which are outlined by the Customs Act, 1962. To prevent infringing or counterfeit goods from being cleared for import, these rules lay down the mechanism for right holders to record their intellectual property with customs authorities. The customs officials are to follow some practices, such as notification of the importer and rights holder regarding suspension of clearance of suspected IP-infringing goods. IPR Rules contain a remedy to prevent the import of infringing products but do not grant new IP rights. The question of validity of IP rights, as yet the domain of civil courts, lies outside the jurisdiction of customs authorities, who work under these rules. Imports of goods which infringe intellectual property rights (IPR) might be halted by customs authorities. These are regulated by the Customs Act of 1962 Intellectual Property Rights (Imported Goods) Enforcement Rules of 2007. Rights holders can register their intellectual property with customs authorities under these rules in order to safeguard their goods against ownership and parallel imports. The customs officers are bound to undertake specific procedures, i.e., informing the importer and the legitimate owner of the suspension of clearance for those goods that are suspected to be infringing intellectual property.

Devendra Soonabhai Naik v. Accurate Transheat Pvt. Ltd.,¹⁰ Under section 15(2) of the Copyright Act, 1957, the applicant, Accurate Transheat, requested that the registrar delete the artist's machine design. The Board ruled in favor of the deletion of such registration.

Right-holders can register their IP with customs authorities to request protection under the IPR Rules. This registration allows customs to recognize and take action against infringing goods at the border. Courts have given careful consideration to striking a balance between the public interest and the rights of IPR owners. For example, in SEP cases, courts have underlined the necessity of judicial adjudication before issuing exclusion orders to prevent excessive damage to industries and consumers.¹¹

Many IP laws, such as the Copyright Act of 1957, the Trade Marks Act of 1999, and the Patents Act of 1970, give the Central Government the authority to establish regulations and publish notifications. India abides by the TRIPS Agreement and is a member of the World Trade Organization (WTO). In addition, India is a signatory to several treaties administered by the World Intellectual Property Organization (WIPO), such as the Paris Convention, Berne Convention, and Patent Cooperation Treaty. These memberships guarantee that India's IP regime is up to international standards.

¹⁰ (2005) 31 PTC 172

¹¹ Telefonaktiebolaget Lm Ericsson Publ Vs. Intex Technologies India Limited, EX.P. 3/2024
MANU/DEOR/57083/2024

*Academy of General Education, Manipal v. B. Mallini Mallya*¹² In this case, the appellant institute staged a new style of "Yakshagana" ballet dance after K's death in 1997. The respondent sued for copyright infringement, seeking a declaration, an injunction, and damages. The Supreme Court, which has a significant say in case decisions, decided that the dance was not an infringement if it complied with the requirements of section 52 of the Copyright Act.

CHALLENGES IN THE IPR ENFORCEMENT

IPR enforcement faces more challenges in the digital era. One of the most difficult tasks is due to digital piracy, which is difficult to stop and control. The easy copying of the work of the original owner and circulating to others has become easier and become a very difficult task to stop these types of acts of infringement.

As India has a well-settled law of judicial system that talks about the registration, procedure, protection, and enforcement procedure of Intellectual Properties. However, due to various laws and systems set up for the protection of IPR from infringement, violations of IP occur. Main reason was "lengthy procedure and slow judicial process". Here, the Indian judicial calls as its lengthy and slow pace. Here, several years will take place to come to a decision. The delay of the procedure leads to a delay of the decision of courts and takes time for the right-holder to get their remedies and justice. Also, the establishment of various IP courts was done, and various government agencies were set up for dealing with the cases, still, there were inconsistencies with the judgment of courts, creating ambiguity and uncertainty for the right holders of IP. Also, at the International level the same issue face due to the inconsistency of judgement of courts and their jurisdictional courts.

The other reason is also due to the cost of litigation. In India, there are various types of people. Due to higher cost of litigation, some are not in position to adopt the legal procedure, and some cases also do not come to action. Here, the main reason for the higher cost is that multiple appeals and procedures are done, so the cost of litigation of IP is higher. The language differences in the society play a very significant setback for the implementation of IPR. This is also the factor that complicates the process of enforcing IPR. In the Januvia case, the courts are grappling with defendants' enforcement of orders, addressing this by imposing severe penalties for defying the courts' orders. The petitioners, who owned a patent for Sitagliptin, sold the drug under various brand names, including "Januvia" and "Janumet." The respondents, who rebranded the drug, reduced the petitioners' brand value. The petitioners filed an injunction, but the court dismissed the case after a compromise application. The court resolved the case after a compromise application was made, but the defendants violated the settlement, prompting petitioners to initiate contempt proceedings against them.¹³

Also, the nature of IPR is global, i.e., the concept was dealt with at a global level. The global nature complicates the enforcement of IPR. Here, the jurisdiction issues arise when dealing with the IPR. Also, there was one of the Digital IPR laws, the enforcement in the digital area

¹² (2009) 4 SCC 256

¹³ Merck Sharp & Dohme Corporation and Ors. Vs. Glenmark Pharmaceuticals Ltd., CS(OS) 586/2013, CC No. 46/2013, I.A. Nos. 9827/2013, 8048/2014 and 13626/2015
MANU/DE/2963/2015

seems difficult due to the internet is available at vast platforms. The Digital IPR means that the rights provided by law to safeguard inventions and creations in the digital space. With the development of the digital space, understanding and dealing with digital IPR is imperative for creators and companies to safeguard their property and ensure legal adherence. There are copyrights, trademarks, and patents, which protect original work, brand names, logos, and processes, and grant exclusive ownership to inventors for a specific period. In the digital world, the trademark includes the work like domain name and the social websites. Digital IPR are confronted with a number of challenges, such as: Unauthorized copying and distribution of digital content is widespread. This is especially so for music, films, software, and e-books, resulting in huge financial losses for creators. Digital IPR enforcement is complicated due to the international nature, jurisdictional issues, and the balance between protection and fair use, particularly in determining usage amounts. New technologies (like blockchain or AI) can complicate traditional IPR frameworks, making it hard for existing law. Many creators, especially independent ones, may not fully understand their rights or how to protect their work, leading to unintentional violations. Management can protect content, but it can also frustrate legitimate users and lead to negative experiences. The increasing use of AI-generated content raises IPR laws.

The shortage of resources further hampers efforts to address intellectual property violations. The trained personnel were not there, and a lack of funding led to the misuse and also the lack of coordination between the enforcement agencies, like as customs officers, police, and judiciary, which led to wrong decisions regarding IPR and led to suffering for the innocent people. Sometimes, the process of handling matters is difficult as customs officers are scheduled to seize infringing goods. Here, it requires the registration of IP by the IP owner. The incidence of counterfeit products in India is of major concern due to the high demand for low-priced substitutes and ineffective enforcement mechanisms. In other areas, the domestic economy might depend on manufacturing and selling counterfeits, and enforcement may become politically touchy. At last, the concept of corruption and inefficiency in a legal area, hinders the IPR enforcement.

ADVANCEMENT AND INNOVATIONS DRIVEN BY IPR ENFORCEMENT

The enforcement of Intellectual Property Rights (IPR) laws have greatly improved in India since the creation of specialized IP courts. Calcutta High Court established the Intellectual Property Rights Division and Appellate Division, a significant step in India's Intellectual Property law, joining Delhi, Madras, and Himachal Pradesh, which had already implemented specialized regulations. The Intellectual Property Appellate Board was abolished on 14 August 2021 through the Tribunals Reforms Act, 2021. This resulted in the shifting of jurisdiction over matters relating to IPs to High Courts and commercial courts, requiring special IP divisions to be established for effectively dealing with such cases. The Delhi High Court established an IP Division in July 2021, with the IP Division Rules, 2022, notified on February 24, 2022, excluding proceedings reserved under the Commercial Courts Act, 2015. Following recommendations from a committee of IP practitioners in Chennai, the Madras High Court created its own Intellectual Property Division in 2022, which is overseen by a Single Judge

Bench and a Division Bench for appeals. Section 13 of the Commercial Courts Act of 2015 establishes a Division Bench for appeals.

Intellectual Property Rights Division (IPRD) and Intellectual Property Rights Appellate Division (IPRAD), both dealing with first-instance of cases, were constituted by the Calcutta High Court in November 2024. Here, IP experts are appointed as judges to these courts to provide expert adjudication of sophisticated IP disputes. IP Rights Division Rules require the electronic filing of pleadings and documents, making the process easier. Customized timelines for different proceedings have been implemented to fast-track the case adjudication. Such divisions deal with all kinds of IP issues such as patents, trademarks, copyrights, and so on, including the disputes there with. They also deal with appeals against their rulings. The setting up of specialized IP courts has resulted in quicker disposal of cases, stemming the tide of pending IP cases. The induction of specialized judges has enhanced the level of adjudication, with serious legal and technical issues being settled more effectively. Though specialized IP courts hold promise, challenges like resources being limited, financial constraints, and accessibility persist. These issues need to be overcome to achieve the optimum benefits of these courts. The goal of specialized IP courts is to strike a balance between safeguarding private intellectual property rights and serving the general public interest.

CONCLUSION AND RECOMMENDATION:-

This term refers IPR as the legal rights of both individuals and non- individuals' entities have over their unique ideas and creations, such as original designs, symbols, art, literature, and innovative inventions. The legal measures and procedures taken by a particular entity to enforce the intellectual property rights of that entity are called IPR enforcement, one of the purposes of IPR enforcement is to prevent and restrict infringement activities undertaken by an individual or an individual who uses, reproduces, distributes or sells protected intellectual property without the owner's consent or approval.

Intellectual property laws are just a few of the laws that govern India's well-developed legal system for protecting and enforcing intellectual property rights (IPR). These laws, under the umbrella of specialized IP courts and tribunals, are in line with international best practices, such as the TRIPS Agreement.

Owners of IPR can seek legal remedies against infringers under mechanisms of IPR enforcement. Thus, by curbing unauthorized use, infringement or misappropriation of these precious intellectual property assets, the business environment can be fair and competitive. In cases of serious infringement of intellectual property, criminal action can be undertaken.

IP disputes can also be settled by alternative dispute resolution mechanisms such as mediation or arbitration and traditional litigation. The judiciary has been actively granting equitable relief to the accused in cases of patent infringement such as injunctions and conferring powers on local commissioners to conduct search and seizure of goods. Laws implementing IP related provisions of the Indian Government, such as Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, have been strictly enforced to prevent shipments of fake goods and border-control authorities have been authorized to intercept infringing articles at the border. Though the availability of Counterfeit products and uncertainty of stakeholders are important

issues, efforts are being made by India in bringing intellectual property rights laws in line with international standard. To encourage innovation, attract foreign investment and foster economic growth, a robust IPR enforcement mechanism is needed. Government and police get involved in implementing the orders of courts when it comes to implementing IPR legislation. To protect and preserve inventive works and innovations worldwide enforcement of IPR is of utmost importance.

Strong IPR enforcement mechanisms are required to protect intellectual property assets and build a just and competitive business environment in India. Individuals and entities can prevent unapproved distribution, duplication and use of their intellectual property by focusing on IPR enforcement. There is a need for more specialized IP courts, faster proceedings in disputes, and coordination between enforcement agencies such as police, customs and the judiciary. Regular training is needed of law enforcement officials, judicial officers, and policymakers to ensure good IP enforcement. Full implementation of fast-track procedures in IP cases will assist in minimizing delays and achieving timely disposal of disputes. Increased awareness programmes on the importance of IPR protection can help reduce counterfeiting and piracy. AI, blockchain and digital tracking mechanisms can make it easier to detect and prevent IP infringements. International collaboration, enhanced global cooperation, and alignment with global best practices can improve India's capabilities to effectively deal with cross-border IP infringements. Encouraging collaboration between the judiciary, law enforcement agencies and IP holders can lead to more effective enforcement. Conferences and training programs can facilitate this collaboration. Modernizing the functioning of customs authorities by equipping them with advanced tools and training can help better control the import of counterfeit goods. Intellectual Property Rights (Imported Goods) Enforcement Amendment Rules, 2018 Significant changes were made to the customs system by adopting some major changes. These modifications improved the functioning of customs authorities, helped in controlling the import of counterfeit goods, and made it possible to keep track of IP infringement in appropriate legal channels. India can have a better and efficient regime of IPR enforcement that provides better quality, services, and advantages to consumers, rights holders and the general economy by adopting these suggestions. Further, through government and private sector- organized conferences and training programmes on the need for joint enforcement and the use of technology for anti-counterfeiting, India has developed striking progress in building the IPR enforcement framework in India and needs a multi-pronged strategy to tackle procedural time conundrums, variation in decisions and infringing goods.

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