



THE ROLE OF INDIAN JUDICIARY WITH SPECIAL REFERENCE TO GLOBAL IP REGIME

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ABSTRACT

Intellectual property rights (IPR) are intangible in nature and provide an inventor or creator with exclusive rights to their valued innovation or creation. IPR is a focus point in global trade practices and lifestyle across the globe in the current globalisation scenario. These rights encourage innovation by providing recognition and financial advantages to creators or inventors, but a lack of IPR understanding and inadequate execution may stymie the nation's economic, technological, and sociological progress. As a result, any nation must prioritise the transmission of IPR information and its proper execution. The current study examines the varied roles of the Indian judiciary, with a focus on the global IP framework.

KEYWORDS: Intellectual Property, Rights, India

INTRODUCTION:

Intellectual property refers to the invention/creation/innovation by human intellect of any artistic, literary, scientific, or philosophical production, concept, or idea. The term "intellectual property rights" refers to the state's grant of rights to the inventor or creator. IPR is a powerful weapon for protecting the inventor/creator of an Intellectual Property's investments, including time, money, effort, and other resources, because it offers the inventor/creator an exclusive right to use his invention/creation for a certain period of time. As a result, IPR contributes to a country's economic development by encouraging healthy competition, industrial progress, and economic prosperity. Intellectual property has recently acquired a trans-boundary effect as a result of globalisation, easy access to information, technology, development of innovative business models, and the reduction of trade barriers through the formation of groups and associations of countries such as EU, SAARC, NAFTA, G-8, and others, making it increasingly vulnerable to infringement. India, as a member of the World Intellectual Property Organization (WIPO), adheres to the WIPO's IPR protection guidelines to the letter. The WTO administers the TRIPs Agreement, which went into effect on January 1, 1995 and covers seven kinds of IPRs. (1) Trademarks, (2) Copyright and Related Rights, (3) Geographical Indications, (4) Industrial Designs, (5) Layout of Integrated Circuits, (6) Trade Secrets, and (7) Patents are the seven types of intellectual property (including micro organism and plant variety protection). The TRIPs Agreement's main goal is to strengthen and harmonise intellectual property norms across all signatory countries.

India has developed a world-class educational infrastructure that is rich in scientific and artistic talent. The use of the same during the Information Technology Revolution resulted in significant financial gains. IP laws act as a coercive factor in protecting new innovative information and ideas. The following quotes provide a response to the topic of whether the judge should have in-depth knowledge of IP:

"Court rulings frequently determine the path of our country's life." Archibald Cox, a famous international jurist, argued the same thing in his book "The Court and the Constitution." One of the democratic underpinnings of our Indian constitution is the role of an independent judiciary. Because judicial decisions have precedence, it is critical that the judiciary be familiar with the laws and their implications. As a result, it is critical that the judiciary has a thorough understanding of intellectual property.

"In terms of culture, humanity is always progressing... Only through recognising the requirements of the law as the requirements of the growing culture that legislation is to serve, and only in this way can the true objective of the law be known for what it is." In his book "Law in the Making," Sir C.K. Allen emphasises the need of the judiciary laying a solid foundation. This foundation can be laid in the realm of IP by judges who are well-versed in the subject.

The role of the Indian judiciary in a democratic system for the protection of personal and property rights cannot be overstated. The principal role of the judiciary is to offer legal remedies for violations of people's personal and property rights.

The effectiveness of intellectual property rights is determined by the speed with which they can be enforced by the courts. The statutory provisions only provide a limited and ambiguous direction as to the type of remedies and the procedure for protecting them, leaving courts with a great deal of discretion.

Intellectual property infringement is a perilous encroachment into one's property. The economic or corporeal torts are made up of numerous types of liability defined by the common law. The general characteristics are that the defendant must be behaving intentionally or recklessly, and the plaintiff must be suffering or about to suffer injury; and that they will not apply if the defendant has some reason for justification." Prior to the enactment of statutory laws protecting these rights, the common law courts awarded damages, and the equity courts established a remedy in the form of an injunction.

When shown in a legally identifiable manner, intellectual property is incipient property. Property right was a fundamental right for citizens until the deletion of Article 19(1)(f) of the Indian Constitution, but it is now independently notified as a Constitutional right under Article 300-A, assuring that no one can be stripped of his property except by the authority of law.

INDIAN JUDICIAL SYSTEM WITH REFERENCE TO IPR:

India has a well-defined judicial system, with the Supreme Court having plenary powers (Article 142) to issue any order necessary to achieve complete justice in any cause or matter, as well as a constitutional obligation for all civil and judicial agencies in India to assist the Supreme Court. The High Court's (Article 226) Writ Jurisdiction is broader than previously thought, and the court is autonomous and independent of the executive to maintain fairness in the administration of justice. In order to avoid arbitrary executive action, the court plays a critical role in this thriving democracy. The higher judiciary has been given the authority to rule on the legislative competence of legislative bodies as well as the legality of a legal provision. The scope of judicial review acknowledged by India's higher judiciary is the biggest and most comprehensive of any democratic system in the world.

The Civil Courts have jurisdiction over all civil lawsuits, with the exception of those that are expressly or impliedly banned from their authority (Section 9 of CPC). The exclusion of a Civil Court's jurisdiction to hear civil cases is not easily derived, and there is a presumption in favour of a Civil Court's authority. Foreign nationals may file a lawsuit in any Indian court as if they were Indian citizens (Section 83 of Code of Civil Procedure). As a result, in the event of infringement of any property rights, including intellectual property rights, any aggrieved person can seek redress in any court with jurisdiction over the case under Indian law. Aliens and foreign corporations can use the concept of equality before the law, which is contained in Article 14 of the Indian Constitution and pertains to "every individual," not just citizens. This should assuage any concerns in the international community concerning the protection of their nationals' legitimate interests in seeking redress for their grievances against violations of their legal rights in this country.

CONSTITUTIONAL DIRECTIVE TO HONOUR TREATIES:

According to Article 51© of the Indian constitution, the state is bound by a constitutional direction to strive for and develop respect for international law and treaty commitments in organised peoples' dealings with one another. Though the directive principles of State Policy cannot be enforced in the lower courts, they are nonetheless important in the country's government. The term "state," as defined in Article 12 of the Constitution's Part III, which deals with Fundamental Rights, and as included in Article 36 of Part IV, which deals with Directive Principles of State Policy, is quite broad and encompasses judicial and quasi-judicial bodies. As a result, Indian courts must make every effort to promote respect for international law and responsibilities under international treaties.

Article 253, which, notwithstanding the distribution of legislative powers between the Federal Union and the States, empowers the Parliament to make law for the whole or any part of India's territory for the purpose of enforcing any treaty, agreement, or convention with any other country, also mentions the constitutional goal of adhering to international law, including international treaties and conventions. Article 246 entry 14 of the Union List of subjects on which it can act, found in Schedule VII of the Constitution, vests authority in the Parliament. It has the authority to enact legislation on the issue of entering into treaties and agreements with foreign countries, as well as the implementation of those treaties, accords, and conventions. Although, with the exception of treaties that require legislation, the Municipal Courts must recognise international agreements entered into by the Union in the exercise of its executive responsibilities under Article 73 that are not contrary to law. It is not a constitutional requirement in India for the executive to be backed by Parliamentary legislation when entering into treaties or executing them. Patents, innovations, and designs; copyright; trademarks, and product markings have been given to Parliament for legislative purposes under entry 49 of the Union List.

INTERPRETATION OF STATUTES AND TREATIES BY INDIAN COURTS:

When interpreting a statute, Indian courts will interpret it so that it does not conflict with the comity of nations or recognised standards of international law, to the extent that the act's text permits. If the terms of the legislation are not clear and can reasonably be attributed to more than one meaning, the international agreements or conventions on the points become relevant, because there is a *prima facie* presumption that Parliament does not intend to act in violation of international law, including treaty obligations; and if one of the meanings that can reasonably be attributed to the terms of the legislation is not one of the meanings that can reasonably be attributed to the terms of the legislation, the international agreements or conventions on the points become. When an international agreement is enshrined in an Indian legislation, the statute should be construed to achieve uniformity throughout the many jurisdictions where the agreement operates. 6 When it comes to intellectual property rights, Indian courts use this approach, which is justified by the Constitutional direction to the state to foster respect for international law and treaty responsibilities (Article 51).

It is competent for the executive to enter into treaties binding on India in exceptional cases, such as a treaty providing money to a foreign power that must be withdrawn from the Consolidated Fund of India, a treaty affecting the justifiable rights of a citizen, or the imposition of a tax that can only be done by legislation. When treaties call for municipal laws to be enacted or changed, the courts will not be able to directly apply the treaty provision until it is integrated into the municipal law. As a result, while a state's obligation under international law to make provisions in its laws as agreed to in a treaty can be enforced in a municipal court, the obligation cannot be implemented in a municipal court. However, where the municipal law on the subject is not in any way incompatible with the Executive's treaty obligations, that aspect will be given great weight in the implementation of the municipal law, and it will be handled by the municipal courts in advance of the fulfilment of the Executive's obligations that do not need to be followed up by a court.

INDIAN JUDICIARY EQUIPPED TO TACKLE INTERNATIONAL IPR CASES:

The Indian judiciary is well-equipped to handle international issues involving Intellectual Property Rights (IPR) because the Berne Convention and TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreement have brought a slew of amendments to the country's existing legislation. The judiciary has traditionally taken the lead in protecting intellectual property rights, inventing and expanding general standards to cover such situations. In IPR matters, the courts have expanded their idea of cause of action and are no longer bound by the traditional concept of the defendants' place of abode. Courts have dealt with situations even when departing from the broad concept set forth in Section 20 of the CPC, which allows for greater jurisdictional freedom. The concept of trans-border reputation was first introduced in the Apple Computer case, in which the court determined that, despite the fact that the trade mark apple was not in use in India, it had a reputation in India in relation to computers because information had flowed in from various sources. The Delhi High Court handles more than 75% of all IPR disputes, and the lawyers are up to date on the newest revisions to the IPR legislation. Courts try and decide IPR cases quickly, usually within three months. India has made a number of initiatives to increase intellectual property protection, including amending legislative enactments to give effect to international conventions and treaties to which India is a signatory.

The Patents Acts of 1970 were amended several times to incorporate India's commitments under the TRIPS agreement. Allowing mail-box applications was a requirement of the agreement for the product patent regime to be enforced. The award of product patents to food and pharmaceutical products, which was amended by the 2005 amendment, was the most contentious component of the TRIPS agreement. In accordance with the TRIPS agreement, India established the Trade Marks Act of 1999 to protect a number of well-known international trademarks. The Protection of Plant Varieties and Farmers' Rights Act of 2001 was enacted to help the seed industry develop. Some of the legislations introduced in the country to comply with the TRIPS agreement include the Geographical Indications of Goods (Registration and Protection) Act, 1999, and the Semi-

conductor Integrated Circuit Layout Design Act. In India, the administrative apparatus for enforcing IPRs has been upgraded, and anti-piracy efforts have been increased. Special cells have been established, as well as a training programme for police officers conducting raids on counterfeit goods. The Indian judiciary and other government agencies should be commended for their efforts to raise awareness and improve IPR enforcement. Though significant progress has been made in terms of IP laws, more attention is needed in the areas of non-traditional trademarks such as sound marks, smell marks, and others that have received international recognition. There is a need to raise IPR awareness in India. There is a direct link between a country's economic progress and its IP situation. The World Intellectual Property Organization's Japan office conducted a poll in six Asian countries in September 2007 that yielded encouraging results: China, India, Japan, Malaysia, the Republic of Korea, and Vietnam. It stated that enhancing a company's IP portfolio aids in wealth generation and enhanced brand and product awareness. When awarding injunctions to pharmaceutical firms in cases involving life-saving pharmaceuticals, the court must consider the public's overall interest. "Whenever there is a clash between human rights and property rights, human rights must win," said former US president Abraham Lincoln. According to business magnate Bill Gates, "intellectual property has the shelf life of a banana," which appears to be right in the end.

CONCLUSION:

There is an urgent need for a specialised and sensitive judiciary that can deal with intellectual property rights concerns appropriately while also ensuring the effectiveness of the enforcement system. The participation of rights holders in enforcement proceedings should be encouraged. The amount of damages granted by the court should not only compensate the right holder for the losses incurred, but also serve as a deterrence to infringers from participating in illegal behaviour. Infringers may also be ordered to participate in disciplinary advertising to compensate for the damage to the right holders' goodwill. The approach of the judiciary in safeguarding basic human rights and the impressiveness of law is amply reflected in the decisions of the Supreme Court and the High Courts. India is renowned for its highly mature and developed legal system firmly imbedded in rule of law and the approach of the judiciary in safeguarding basic human rights and the impressiveness of law is amply reflected in the decisions of the Supreme Court and the High Courts. Administrative activities that are arbitrary or that take an unjust and arbitrary approach in their decision-making process have been condemned by the courts. The authorities who make orders that may have a detrimental influence on a person's rights have a legal obligation to observe the principles of natural justice and fair play. Authorities are expected to make legal orders as a protection against arbitrariness, and their decisions must be disclosed to the parties concerned. The Indian judiciary has maintained its independence from outside forces. Any intelligent judicial system in any modern country would begrudge the role that the Indian judiciary can play in preserving legally recognised rights, particularly intellectual property rights. The fairness of the procedures reflected in Indian statutes, as well as the recognition of equal rights for aliens under Article 14 as fundamental rights, should instil sufficient confidence in our legal system to encourage entrepreneurs to be confident in the protection of their intellectual property rights recognised by domestic laws. The judiciary can play an important role in ensuring the preservation of private and other rights, which will ultimately be determined by the perspectives of those who must strive to obtain them. It is also critical that they fully comprehend the nature of the legal rights recognised, the need for their protection, and the procedures that must be done in the event of an emergency. The Judicial Academy was developed to provide periodic grooming and refreshers that can keep decision makers up to date on current events and situations, as well as cognizant of the important role they perform.

Last but not least, honourable Justice Sanjay Kishan Kaul stated, "Though there should be laws to protect the inventor's hard work and effort, we must not forget that the purpose of IP laws is not to create a monopoly or only to benefit a few individuals or corporations, but to benefit society as a whole by giving them access to new choices, products, inventions, and literature."

The function of the judiciary in the context of the global intellectual property regime is difficult, since it must balance the rights of people or businesses with those that benefit society as a whole, as stated above.

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