



INTERNATIONAL RESEARCH JOURNAL OF HUMANITIES AND INTERDISCIPLINARY STUDIES

(Peer-reviewed, Refereed, Indexed & Open Access Journal)

DOI : 03.2021-11278686

ISSN : 2582-8568

IMPACT FACTOR : 5.828 (SJIF 2022)

A STUDY OF INTELLECTUAL PROPERTY RIGHTS AND ITS SIGNIFICANCE FOR BUSINESS

Lt. Gaurang Rajwadkar

Assistant Professor

Department of Law,

Sathaye College (Autonomous),

Mumbai (Maharashtra, India)

DOI No. **03.2021-11278686**

DOI Link :: <https://doi-ds.org/doi/10.2022-26491242/IRJHIS2205020>

ABSTRACT:

The term IPR refers to the innovations, literary works, and creative creations, as well as the names, symbols, and pictures utilized in commercial transactions. The rights to intellectual property are similar to those to any other type of property. They make it possible for the inventors of patents, trademarks, or copyrighted works to profit from their own effort or investment in a product while protecting their intellectual property rights. The right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary, or artistic productions were explained in the Article 27 of the Universal Declaration of Human Rights. This right is outlined as the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary, or artistic productions. IPR also refers to the mental creations of individuals, including but not limited to inventions, literary and creative works, designs, and commercially-used symbols, names, and pictures. This paper also discusses the background of intellectual property rights, as well as its law related to IPR. On the basis of a public readiness to confer the status of property, ideas, innovations, and creative expressions have been identified as being under the purview of intellectual property rights, which is an abbreviation for intellectual property rights. IPR offer certain exclusive rights to the inventors or creators of that property, in order to enable them to reap financial advantages from their creative efforts or reputation. These rights allow the inventors or creators to profit from their creative efforts or reputation. There are many different kinds of legal safeguards for intellectual property, such as patents, copyrights, trademarks, and so on. A patent is a kind of recognition that is granted for an invention that meets the requirements of being globally unique, being non-obvious, and having a practical use in industry. There are many conventions and Session were conducted at international level. With reference to that Amendments were made in existing laws.

KEYWORDS: Intellectual, Property Rights, Business, TRIP, WTO, Act, Infringements, Punishment, Fine, etc.

INTRODUCTION:

IPR is to give unique legal rights that are linked with mental works. The law governing intellectual property allows for the protection of intangible assets such as inventions, literary and creative works, designs, and slogans, symbols, and pictures. This protection can be acquired through the use of a variety of intellectual property rights, such as patents, trademarks, designs, and copyrights. These rights give their owners the ability to earn recognition or financial benefit from their creation or invention. The intangible products of the human brain are under the umbrella of

intellectual property, which is a type of property category. There are a wide variety of forms of intellectual property, some of which are recognised in more nations than others. Copyrights, patents, trademarks, and trade secrets are the most common categories of intellectual property. The contemporary notion of intellectual property was formed in England during the 17th and 18th centuries. Although early predecessors to some forms of intellectual property existed in countries such as Ancient Rome, the modern concept of intellectual property was developed in England. Although the concept of "Intellectual property" has been there since the 19th century, it wasn't until the late 20th century that the bulk of the legal systems throughout the world began to recognise its significance.

Now IPR is correlated with the business activities were many aspects are related to each other, not only financial aspect but also goodwill of the organisation. The primary goal of laws pertaining to intellectual property is to foster the production of a wide range of different types of intellectual commodities. In order to this the law grants individuals and companies property rights to the information and creative products that they generate, although these rights are often only valid for a predetermined amount of time. Due to this, there is a financial incentive for their production, since it enables individuals to benefit from the information and creative products that they produce.

OBJECTIVE:

- To Study impact of Intellectual Property on business organisation.
- To analyse existing laws related IPR and guide lines of TRIP & WIPO.
- To study legal consequences of infringement of IPR subject to business organisations.

HYPOTHESIS:

- Intellectual Properties creates impacts on nature of the business.
- Laws related to Intellectual Property Rights were amended as per guideline of TRIP & WIPO.

REVIEW OF LITERATURE:

A literature review includes previously published content on the relevant topic. Here are some research papers which I have gone through during the study. As a secondary source, I have observed some online books, environment related policies reports of WIPO, TRIP were examined.

Mr. Dev Gangjee in his article "Non-conventional trademarks in India" had discussed and analysed the current scenario for the registration of non-conventional marks and various issues involved in its registration of a non-conventional mark. In this article, he had focused on the functional, graphical representation and procedural requirement in Indian trademark law as Indian legislation on trademark law had specifically focused on the graphical representation requirement for the registration of a trademark. He had recommended in his article to adopt a cautious approach to provide protection to non-conventional marks keeping in mind the procedural requirements under

the trademark law.

Mr. Mark Perry in his book “Global Governance of Intellectual Property in the 21st Century: Reflecting Policy Through Change” while discussing the need for the protection of non-conventional marks in the globalized world further discusses about the Singapore treaty which came into force in the year 2009 on the law of trademarks where rule 3(4)-3(9) of the treaty provides for protection to three dimensional, hologram, motion, color, position and sound marks as well as other non-visible signs. This treaty is considered as the first treaty in the field of trademark law which explicitly recognized the need for protection to non-conventional marks.

Prof. Nikhil Kashyap and Priyanka Ghai in their article "Non-Traditional Trademarks: An Unprotected Arena" had discussed about the registrability of various non-conventional marks such as in case of smell marks they discussed about the Stickman judgment where the court had stated that the graphical representation is not possible in this case though it is distinctive in nature. In the opinion of authors, the sound marks should also meet the requirement of graphical representation vis-a-vis the distinctiveness requirement. Based on Libertel case, author further states that the sound mark must fulfil the three-fold test requirement namely non-functional, source indication and distinctiveness.

Ms. Melissa E. Roth in her article "Something Old, Something New, Something Borrowed, Something Blue: A New Tradition in Nontraditional Trademark Registrations" had admitted the fact that the use of non-conventional marks had increased in present time and there is a need to look for the uniformity of registrability criteria for these marks, he is in the favor of establishing uniform standard.

RESEARCH METHODOLOGY:

In this research paper doctrinal research method were adopted, it majorly relies on the various Books, scholarly articles, Journals, reports of relevant organization and online available resources. Since, the nature of work is a doctrinal study so the researcher will be going to adopt the secondary sources of data while making this research work. Different IPR laws and policies framed as per requirement of the industry, various conventions were organized at international level, to make IPR laws in a uniform way. Such reports and references were tested for said research.

IMPORTANCE OF IPR:

The concept of intellectual property is essential to the operation of every corporation and serves as the enterprise's backbone. An organization's primary focus should be on locating and putting into action those intellectual property solutions that will, in turn, enable the firm to achieve even greater levels of success. It is a fallacy that only lawyers are qualified to handle or deal with intellectual property assets. This is due to the fact that in order for a company to position itself as a leader in the marketplace, it is of the utmost importance that its IP assets are managed and

strategized as required. The acquisition of knowledge and expertise necessary to effectively manage intellectual property assets is now a prerequisite for maintaining ongoing competitiveness. Management experts are the most qualified to oversee the management of these assets and to commercialize them in order to create money. The importance of knowledge as a differentiating element between businesses and their rivals has grown in recent years.

Henry Ford said it quite accurately when he said that the only real protection a man has in the modern world is the store of information that he possesses. Nevertheless, it is of the highest significance that this reservoir be safeguarded using the many property rights safeguards available for the mind of a human being. Intellectual property assets are extremely valuable corporate assets that need to be exploited and managed in an efficient manner in order to achieve and maintain a competitive edge. Entities with intellectual property rights are allowed to enjoy exclusive ownership over their innovative new or original items, as well as their creative designs and branding. Because of the exclusivity, there is a suitable motivation for investing in the company's improvement of their competitiveness.

Businesses are able to make money through the selling of protected goods and services, as well as through the granting of licenses and franchising opportunities, which fall under the category of intellectual property. Protected intellectual property assets considerably boost the worth of a company in the event that it is merged with or purchased by another company. It should come as no surprise that intellectual property is also quite important in international marketplaces. Assets that are protected by intellectual property can be exported to other countries, or franchise agreements can be established with enterprises based in other countries. It is essential to take into consideration the fact that the most successful companies who have created a robust income stream as a direct result of the substantial intellectual property assets in their possession. A robust intellectual property portfolio that can be leveraged to boost income through licensing streams can help an organization realize the most possible advantages. The rapid pace of development, globalization, advancement of technology, increase in commercial activities contributed to business entities becoming more aware of the significance of Intellectual Property assets and the role they play in the expansion of businesses.

FOLLOWING ARE THE INTELLECTUAL PROPERTY WHICH IMPACTS ON BUSINESS:

PATENT:

Patents are among the most valuable kinds of intellectual property rights. A government authority or license that confers a right or title for a specified length of time, notably the only right to prevent others from creating, using, or selling an invention this is the definition of a patent. When people or organizations develop a new product or method of carrying out an existing task, they often

go to the patent office, where they provide information about the invention or method in question, pay a fee, and receive legal protection for their "property." The fact that these people spend years and a significant amount of money building something, and then want to be reimbursed for their work, is sufficient to validate this practice. Patents serve as an incentive for the invention of new goods and processes and are an essential component of a culture that encourages innovation.

TRADEMARK:

A trademark is a distinguishing symbol that assists customers in determining the origin of a particular product or service. It might be in the form of text, a word, a numeric, a phrase, a symbol, a design, a signature, a shape, a color, a sound, packaging, or texture, or it could be a mix of any of these components. The purpose of a distinctive trademark is to enable customers to readily link a particular mark with the source of a particular product or, in the case of services, with the providers of those services. It is beneficial to the buyers since it helps ensure that the items are of a specified quality and kind. Additionally, it establishes a reputation or goodwill for the company or service provider in question. For instance, when a customer examines a brand-new product and sees the symbol shown below. This is the power that may be created by a symbol, and it can yield goodwill for the owner of the trademark.

DESIGNS:

In light of the significant advancements made in the field of science and technology, it became apparent that a more effective legal system for the protection of industrial designs was required. This was done in order to provide effective protection to designs that have been registered, as well as to encourage design activity in order to promote the design element that is present in an article of production. In light of this context, the Designs Act of 2000 was passed into law for the primary purpose of striking a balance between these interests and ensuring that the law does not unnecessarily extend protection beyond what is required to generate the required incentive for design activity while also removing impediments to the free use of designs that are already available.

COPYRIGHT:

The Copyright Act of 1957 is the primary statute that governs intellectual property law in India. This Act has been revised a number of times in order to keep up with the ever-accelerating pace of technological advancement. According to this Act, copyright protection extends throughout the author's lifetime in addition to sixty years for collective innovation. The term "works eligible for copyright protections" will be applied to refer to any and all unique intellectual creations that are expressed in a form that may be reproduced. The rules governing copyright provide a distinction between many categories of works, including written, artistic, and musical works, in addition to sound recordings and cinematograph films. The work is protected despite the fact that it is of poor quality and despite the fact that it may have very little in common with conventional types of literary

or artistic expression. The author or owner of the copyright to a work has the ability to enforce his right administratively as well as in the courts by inspecting premises for evidence of the production or possession of illegally made "pirated" goods related to protected works. This can be done in both administrative and legal settings.

INFRINGEMENTS:

IPR infringement refers to the unauthorized use, duplication, or sale of materials or products that are legally regarded as protected intellectual property (IP). According to federal and state law, the definition of infringement depends on the intellectual property right (IPR) that is being disputed.

Trademark:

In the case of a criminal proceeding, the court dictates the following punishment: Imprisonment for a period not less than six months that may extend to three years. A fine that is not less than Rs 50,000 that may extend to Rs 2 lakh.

Copyright:

In the case of criminal copyright infringement, the minimum punishment for an infringement of copyright is imprisonment for six months with a minimum fine of Rs. 50,000/-. In the case of a second & subsequent conviction, minimum punishment is imprisonment for one year & 1lac Fine.

Patent:

Section 120 says any person falsely represents that any article sold by him is patented in India or is subject to an application for patent in India then he shall be liable for a fine which may extend to Rs 1 Lakhs.

Design:

The punishment shall hold the wrongdoer guilty and liable for imprisonment for a minimum of one year which can be further extended to three years with a fine ranging from 1lac to to 2lacs.

SIGNIFICANCE OR IPR FOR BUSINESS:

In the modern world, the vast availability of goods and services on the marketplaces has made life extremely difficult for any firm, regardless of how large or small it may be. Every company, in the never-ending race to stay one step ahead of its rivals in this environment, is always working to develop new and improved products that will provide a higher level of value to users & consumers than the items that rival companies have to offer. Businesses rely on innovations that lower manufacturing costs and increase product quality to differentiate their products, which is a requirement for success in today's marketplaces and a precondition for achieving success overall. In order to compete successfully in a competitive market, businesses need to make consistent efforts to express the unique value that is provided by their product. This may be accomplished through efficient marketing that is supported by carefully considered branding initiatives. In the present paradigm of economic growth, which is knowledge-driven and focused on the private sector, the

many forms of intangible assets that a company possesses are frequently more essential and valuable than the actual assets that it possesses. The rights that fall under the umbrella term of intellectual property cover a significant portion of the intangible assets a company possesses. These include the protection of trade secrets, copyright, design and trademark rights, patents, as well as rights to other forms of intellectual property, such as inventions. It turns the results of human intelligence into marketable assets & provide a wide variety of IPR instruments that businesses can rely on to help drive their success via the development of new business models. At this point in time, it is necessary for all companies, and particularly those that have previously achieved a certain place of substance, to calculate on the effective application of one or further forms of intellectual property. In order to acquire and keep a significant competitive edge in the request. Thus, in order to cover and exploit the intellectual property means the laws should be followed.

FINDINGS:

- IPR laws are Made to cover the invention and creation of the person, which helps to exercise his rights in a legal way
- To grow the brand value business or its product IPR is important aspect similar as trademark.
- As per transnational norms amends were made in the being laws also the perpetration of the same were started.
- IPR gain earnings through licensing, franchising which will grow the business.
- IPR laws insure freedom to operate – retaining or empowering in crucial IPR can reduce the threat of businesses infringing IPRs of others when using technologies, trademarks, designs, and brand.
- Colorful airman exploration and study is going on for the successful perpetration of IPR acts.

SUGGESTIONS:

- Mindfulness of IPR should be made at all situations of society by which existent can exercise rights.
- For business organisation Summits can be organised to make them apprehensive about policy changes.
- IPR should be checked by the indigenous authority, were felonious approach as business organisations can be confined.
- Business organisation should arrange training and mindfulness programs for workers where they can motivate them for creation, also the Legal IPR cell should be constituted.
- Correction in the Passages agreement for protection and recognition of non-conventional marks
- Development of invariant standard criteria for protection of non-conventional mark.

CONCLUSION:

It should come as no surprise that the administration of intellectual property and intellectual property rights is a multifaceted bid that requires a large number of distinct conduct and styles, all of which need to be aligned with public laws as well as transnational covenants and conventions. Similar correction and perpetration also impacts on the business terrain. The request demands, the request response, the expenditure involved in rephrasing IP into marketable gambles, and other factors all have a significant impact on intellectual property and the affiliated rights. To put it another way, the administration of intellectual property rights should take into account issues pertaining to trade and commerce.

Different types of intellectual property rights bear unique approaches to treatment, operation, planning, and strategy, as well as the participation of individualities who have specialized moxie in fields similar as business processes, exploration, engineering, drug, law, finance, marketing, and economics. Depending on the field of moxie it covers, each sector of the frugality ought to have its own IP programs, operation style, strategies, and so on. The pharmaceutical sector is laboriously developing its intellectual property strategy. There are variety of illustration where Intellectual property gives immense benefit to organisation not only in a fiscal way but also while measuring a goodwill and brand image of the organisation.

REFERENCE:

1. The Protection Of Industrial Property, 1883- Paris Convention
2. The Singapore Treaty On The Law Of Trademarks, 2006.
3. The Copyright Act, 1957/ Patents Act, 1970/ Brand Act, 1957/ Designs Act, 2000
4. B.L. Wadehra, Law Relating To Intellectual Property, (Universal Law Publishing Co, th Ed, 2011).
5. G.B. Reddy, Intellectual Property Rights And The Law, 256 (Gogia Law Agency, 9thEd., 2012).
6. Hiroko Onishi, Well- Known Trade Marks A Relative Study Of Japan And The Eu, 34 (Routledge, 2015).
7. Abhijeet Kumar, Guarding Smell Marks Breaking Conventionality, 21 Journal Of Intellectual Property Rights 131.
8. Govt. Of India. Annual Report Of Controller General Of Patents, Designs & Trade Marks (Cgpdtm). Author. Recaptured From [Http//Www.Ipindia.Nic.In](http://www.ipindia.nic.in)
9. Controller General Of Patents Designs And Trademarks, Department Of Industrial Policy And Promotion, Ministry Of Commerce And Industry Website [Http//Www.Ipindia.Nic.In/](http://www.ipindia.nic.in/)
10. Bainbridge Di. New York Longman; 2002. Intellectual Property.
11. WatalJ. London Kluwer Law International; 2001. Intellectual Property Rights In The Wto And

Developing Countries

12. Ipo Intellectual Property Handbook, Wipo PublicationNo. 489 (E) Isbn 978-92-805-1291-5, Wipo 2004 Second Edition Distributed 2008.
13. Nair M D, Passages, Wto And Ipr – World Patents, Journal Of Intellectual Property Rights, 15 (2010) 151-53.

