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INTELLECTUAL PROPERTY RIGHTS AND IT'S PROBLEMS OF THE COUNTRY

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Introduction

Intellectual property (IPR) is a category of property that includes intangible creations of the human intellect. There are many types of intellectual property, and some countries recognize more than others. The most well-known types are copyrights, patents, trademarks, and trade secrets. Early precursors to some types of intellectual property existed in societies such as Ancient Rome, but the modern concept of intellectual property developed in England in the 17th and 18th centuries. The term "intellectual property" began to be used in the 19th century, though it was not until the late 20th century that intellectual property became commonplace in the majority of the world's legal systems.

The main purpose of intellectual property law is to encourage the creation of a wide variety of intellectual goods. To achieve this, the law gives people and businesses property rights to the information and intellectual goods they create, usually for a limited period of time. This gives economic incentive for their creation, because it allows people to profit from the information and intellectual goods they create. These economic incentives are expected to stimulate innovation and contribute to the technological progress of countries, which depends on the extent of protection granted to innovators.

The intangible nature of intellectual property presents difficulties when compared with traditional property like land or goods. Unlike traditional property, intellectual property is "indivisible", since an unlimited number of people can "consume" an intellectual good without it being depleted. Additionally, investments in intellectual goods suffer from problems of appropriation: a landowner can surround their land with a robust fence and hire armed guards to protect it, but a producer of information or literature can usually do very little to stop their first buyer from replicating it and selling it at a lower price. Balancing rights so that they are strong enough to encourage the creation of intellectual goods but not so strong that they prevent the goods' wide use is the primary focus of modern intellectual property law.

Intellectual property rights

Intellectual property rights include patents, copyright, industrial design rights, trademarks, plant variety rights, trade dress, geographical indications, and in some jurisdictions trade secrets. There are also more specialized or derived varieties of *sui generis* exclusive rights, such as circuit design rights (called mask work rights in the US) and supplementary protection certificates for pharmaceutical products (after expiry of a patent protecting them) and database rights (in European law). The term "industrial property" is sometimes used to refer to a large subset of intellectual property rights including patents, trademarks, industrial designs, utility models, service marks, trade names, and geographical indications.

Copyright

A copyright gives the creator of original work exclusive rights to it, usually for a limited time. Copyright may apply to a wide range of creative, intellectual, or artistic forms, or "works".Copyright does not cover ideas and information themselves, only the form or manner in which they are expressed.

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Object of intellectual property law

The main purpose of intellectual property law is to encourage the creation of a wide variety of intellectual goods for consumers. To achieve this, the law gives people and businesses property rights to the information and intellectual goods they create, usually for a limited period of time. Because they can then profit from them, this gives economic incentive for their creation. The intangible nature of intellectual property presents difficulties when compared with traditional property like land or goods. Unlike traditional property, intellectual property is indivisible – an unlimited number of people can "consume" an intellectual good without it being depleted. Additionally, investments in intellectual goods suffer from problems of appropriation – while a landowner can surround their land with a robust fence and hire armed guards to protect it, a producer of information or an intellectual good can usually do very little to stop their first buyer from replicating it and selling it at a lower price. Balancing rights so that they are strong enough to encourage the creation of information and intellectual goods but not so strong that they prevent their wide use is the primary focus of modern intellectual property law.

By exchanging limited exclusive rights for disclosure of inventions and creative works, society and the patentee/copyright owner mutually benefit, and an incentive is created for inventors and authors to create and disclose their work. Some commentators have noted that the objective of intellectual property legislators and those who support its implementation appears to be "absolute protection". "If some intellectual property is desirable because it encourages innovation, they reason, more is better. The thinking is that creators will not have sufficient incentive to invent unless they are legally entitled to capture the full social value of their inventions". This absolute protection or full value view treats intellectual property as another type of "real" property, typically adopting its law and rhetoric. Other recent developments in intellectual property law, such as the America Invents Act, stress international harmonization. Recently there has also been much debate over the desirability of using intellectual property rights to protect cultural heritage, including intangible ones, as well as over risks of commodification derived from this possibility. The issue still remains open in legal scholarship.

IPR Developments in India

- 1947: Patents & Designs Act, 1911
- 1995: India joins WTO
- 1998: India joins Paris Convention/PCT
- 1999: Patent amendment provided EMR retrospectively from 1/1/95
- 2003: 2nd amendment in Patents Act
- Term of Patent – 20 years after 18 months publication
- Patent Tribunal Set up at Chennai
- 2005: Patents (Amendment) Act 2005
- 1999 – 2005: Plant Varieties and Farmers' Rights Act & Biodiversity Act. Designs, TM/Copyright Acts updated GI Registry set up at Chennai. IP Acts TRIPS Compliant

Need of IPR

1. "Monetary profit is the most important, in most cases, the only motive behind man's relentless toil, inventiveness and ingenuity".
2. With the advent of biotechnology one of issue is legal characterization of the new invention.
3. It is created to protect the rights of individual to enjoy their creations and invention.
4. Created to insure protection against unfair trade practices.
5. To assure the world a flow of useful, informative and intellectual works.
6. To encourage the continuing innovativeness and creativity of owners of IP.

IPR protection and awareness is still limited in India. This needs to change to foster a culture of innovation.

Protection of intellectual property rights is vital to the development of a country. Companies and individuals can spend years and a fortune to develop a product or service that is creative or innovative. All this effort can come to naught if the owners of intellectual property are unable to ensure its protection.

Let's take a look at intellectual property rights issues and challenges in India. For a long time, the level of IPR protection was very low in India. Copying, plagiarism, piracy and other IPR violations were rampant, causing huge losses to IPR owners. With India's political, social and economic evolution, protection of IPR is vital to ensure intellectual, cultural and economic growth.

History of IPR in India

The first patent law was introduced in India in 1856, which was followed by the Indian Patent Act of 1970. The first major step towards IPR protection came in 1995 when India joined the World Trade Organisation (WTO) and became a signatory to the Trade-Related Aspects of Intellectual Property Rights (TRIPs) agreement. This set minimum standards of intellectual property regulation by its members. The Madrid Protocol, of which India is a part, now permits the filing, registration and maintenance of trademark rights in more than 90 countries.

Challenges of IPR

On the other hand, the impact of IPR in India is limited and currently faces challenges. Violations are rife because of poor enforcement of rights and court cases that could run on for years. This is a sore point, particularly for large multinational corporations in areas like pharmaceuticals and agriculture. India, for example, is on the United States Trade Representative's (USTR's) 'Priority Watch List' for poor protection of the rights of American companies, along with countries like China, Russia, Indonesia, Saudi Arabia and Venezuela.

The Indian government, for its part, has been reluctant to enforce IPR to protect the interest in Indian citizens in some instances. For example, under the provision of compulsory licensing, the government can force the patent owner or get someone else to mass-produce an essential drug in an emergency. Another contentious issue is Section 3(d) of the Indian Patent Act, which prevents large pharma companies from 'evergreening' or continuing the patent in perpetuity by making minor changes in earlier patents.

IPR protection in agriculture is a sensitive topic in India. Under the TRIPs agreement, subsidies like minimum support prices for agricultural produce and those for fertilizer etc. have to be phased out. Since issues of food security and livelihoods are involved here, political parties are unlikely to allow this to happen anytime soon. There has also been some resistance from farmers to the patenting of seeds by multinational corporations.

Traditional knowledge and products acquired over the centuries using local know-how, have been kept out the reach of patents. The government has created a database of such products and processes in the Traditional Knowledge Digital Library.

Future forward: Government initiatives

The impact of IPR in India has led the government to take steps to enhance the IPR regime in the country. In 2016, it approved the National Intellectual Property Rights (IPR) Policy, which will lay the future roadmap for intellectual property in India. It aims to increase awareness, stimulate the creation of IPRs, ensure strong and effective IPR laws, redressal and modernization of IPR administration, among other things.

Under this policy, the Cell for IPR Promotion and Management (CIPAM) was created for simplifying and streamlining of IP processes, apart from undertaking steps for furthering IPR awareness, commercialization and enforcement.

Protecting IPRs can be a tough proposition in India, where awareness is low and enforcement weak. But protecting patents, trademarks and copyrights are vital for innovation and development. However, even with rapid progress on the industrial, scientific and economic front, we lag behind countries like China. Good IPR protection will foster a culture of creativity and innovation that could help us close that soon.

Problems from IPR

- IPR has encouraged monopolies; many take over's have been motivated by access to an IPR.
- It may adversely affect biological diversity and ecological balance.
- Adversely affect the livelihood of the poor in developing countries.

Conclusion

Successful implementation of the IPRs agreement has a number of pre-requisites. The important ones being legal, administrative and institutional reforms, appropriate research investment, and first rate science and technology capability. Provided the IPR protection is adequate and effective (worldwide), the IPRs accord can promote innovation, transfer of technology, foreign direct investment, use of genetic resources and environmental protection.

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