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PERSPECTIVES ON INTELLECTUAL PROPERTY RIGHTS



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PREFACE

The 21st century has seen a drastic shift in the driving change behind the economies across the globe. The shifting from a commodity-driven society to a knowledge-driven economy is one of the changes. Therefore, though it will take some time for the lay / common person or the general people to discuss and deliberate on various aspects of Intellectual Property Rights, it is the right time for the academic fraternity to read, write, and create awareness among the learned people about the Intellectual Property Rights. Therefore, we have come up with bringing out the present book that explores several perspectives on Intellectual Property Rights.

The present book consists of 11 articles written by teachers and research scholars from different higher education institutes. These articles cover a wide range of topics from the basic concepts, history, scope and limitations to the specialized applications of Intellectual Property Rights in Education, Agriculture, Information Technology and Biopiracy etc.

The book explains and explores a variety of topics lucidly and straightforwardly. Therefore, we firmly believe that the present work will benefit both the young and aspiring scholars and amateur readers on Intellectual Property Rights. Furthermore, every article contains a list of references or works cited, which will guide the readers to continue their further reading journey on the topic.

We congratulate the authors for their brilliant write-ups and thank them for their timely response to our call for papers. We are also grateful to the University Grants Commission (UGC) for providing financial support for publishing this book. Indeed, the reader will prove helpful to the stakeholders of the Higher Education Institutes undergoing the process of NAAC Assessment and Accreditation.

We are pleased to see the efforts taken by Ms Seema Pandurang Zade of Snehal Publications resulted in an outstanding paperback perfectly bound volume decently. We express our gratitude to her for all the technicalities in bringing the book into its present form.

Dr. Rohidas Nitonde
Dr. Balasaheb Jadhav

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5. Utility and Futility of Intellectual Property Rights

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Abstract

Intellectual Property Rights protect the creative process or product to provide maximum benefit to the person or organization who use their intellect to create something innovative. However, there are certain situations where fundamental rights of human beings and IPR come in oppose of each other. The paper delineates utility and futility of intellectual property rights under specific circumstances.

When a person or organization uses their intellect to create something useful for mankind, they have a limited monopoly on that creation. And this monopoly is given under Intellectual Property Rights henceforth IPR to that person or organization by the concerned Government of the country. IPR vary depending on the type of creation. They are as follows:

1. On creations in the field of art - literature, painting, sculpture, music, drama or film etc. - On this their creator gets the copyright.
2. If it is a product of identification mark or a brand name or a slogan identifying the product, it gets a trademark.
3. On the aesthetic design of an industrial product, the innovative shape of a car or mobile phone, etc. gets industrial design on top.
4. When a geographical location identifies a product, it acquires the intellectual property of a geographical indicator.

So on an innovative product or on the process of making a product, the researcher gets a patent with the help of IPR. These different types of intellectual property rights give their creators ownership rights over a period of time. No one can use this creation without the permission of the creator during this period. It is monopolized by its owner during this period. In by manufacturer return for the labor, money and time spent the, the government of the country gives him this monopoly. No one but her owner can make that thing during this period. So that production has no competition in the market. Since there is no competition then its prices are huge. These rising prices inevitably lead to conflicts over intellectual property rights and other rights. Let us see an example. Suppose a new TV has just hit the market. The quality of the broadcast on this TV is excellent. Its manufacturing company has invented and used new technology for the TV, and this technology is patented by that company. So of course no other company can make such a TV using this technology. Suppose the price of this TV is Rs 1.5 lakh. If the same price was Rs 80,000, one lakh people would have bought this TV. But since the price of Rs 1.5 lakh is too much for them, only 40,000 people bought the TV. The remaining 60,000 people could not get the TV even though they wanted to. In economic parlance, these deprived people are called 'Dead Weight Loss'! Now TV is a completely luxurious thing, not using it doesn't hurt anyone much. Therefore, it can be said that "those who can afford it will buy this TV, those who cannot afford it will not buy it".

But let's say a new drug for cancer or HIV AIDS has come in the market. It cures a particular type of fatal disease. The price is two and a half lakh rupees. Because of the high cost, it is unaffordable for many cancer or HIV patients. At that time, in the case of TV, we said, "Those who can afford it will take it and those who can't afford it

will not buy it." Can we say that? in case of life saving drug, obviously not.

Conflict between Fundamental Rights and Property Rights

The constitution of any country gives the people a fundamental right, the right to life. Patents on drugs are also granted by law enacted by the government of the same country. In such a case, the fundamental right to life conferred by the Constitution and the right of ownership conferred by the patent law stand in front of each other and the conflict becomes inevitable. When there is a conflict between these two rights, of course, the fundamental right must take precedence. Because the right given by the constitution must be more powerful than the right given by the law of the land. This is a fundamental right on the part of the average citizen who is a drug purchaser, and a patent right on the side of a pharmaceutical company that is part of the industry and alternatively the economy in the country. In such a case, it is up to the country to decide which side to take. Accordingly, the country's patent policy should be designed and implemented.

In general, if a country is poor or developing, then the patent policy of the government of that country should be on the side of the common-poor people. This means that a country should not easily issue patents on essential commodities like medicines so that medicines are easily available to the general public. On the contrary, if the country is rich, productive, then the economic condition of the people is relatively good. In the interest of the economy of these countries, the tendency is to be inclined towards the pharmaceutical company. In short, the patent policy reveals that the industry or the common man will be offended by someone.

A few years ago, India experienced a struggle over copyright and education. It was a conflict between an Indian university and some foreign publishing houses. The

question arose as to whether the copyright of these institutions was too large or the fundamental right of Indian students to education. Rameshwari Xerox is a small shop on the campus of Delhi University. The business of this shop is photocopying. The shop was hired by the university to do all its xerox work. The job of this shop is to take out photocopies of important parts of many books and sell them as 'course pack' on the advice of university professors. In short, the shop was like a photocopying shop set up by the University for the convenience of poor students. The world's best-known publishing houses, Oxford University Press, Cambridge University Press and Taylor Francis, have their own offices in more than fifty countries. These publishing houses publish five to six thousand books each year. University students need to use many world class books. As these books are very expensive, not enough copies are available in the library for all students. Not every student can afford to buy a book for their own personal use. In short, all the three publishing houses filed a case against Rameshwari Photocopy Shop and Delhi University, alleging that the university was selling the 'course packs' through that shop. 'Our publishing houses are not some charity; how do we do business if universities and shops start copying text from our books? Moreover, taking out such unauthorized copies also puts a strain on the author's stomach. Alleging this, the publisher demanded Rs 60 lakh from Rameshwari Shop. The High Court soon banned the sale of this course pack. According to the accused, if the university decides to buy all the books included in the syllabus, the average student will go bankrupt. And if they decide to do so, they will have very few students to learn. What should the rest of the students do? What about their right to education given by the Indian Constitution? Isn't the principle of intellectual property law that the interests of both copyright owners and the general public should be taken into account?

The Delhi High Court ruled

in favor of the publishers. The Indian Ownership Act made it perfectly legal to photograph books or make course packs within educational limits for educational purposes. In ruling, the judge made a very important statement - "Copyright is not a divine right." The court's decision, which states that copyright infringement may be infringed for a specific reason, is seen as a step in the right direction.

Any author has a copyright on his original writing or manuscript and the author is free from copyright after 60 years. It is considered to be the core of copyright act. According to this copyright act, the original work can be printed by anyone 60 years after his death. And as per the administrative procedure the author or his writing comes under open domain. Sixty years later, the original writing is open for publication. If anyone has made any improvements to the original text, changed it, or added it, then the copy right for this text belongs to that person. In the same way, if someone makes any change in the original writing, the legal heirs of the author can be contacted. Similarly the copyright is on the original writing, so is the copyright of the book, the cover, the design, and the calligraphy. Many authors and painters are not aware of this legal provisions. These elements are also copyrighted in the original text of any book. Nowadays many people take advantage of this and prints books and violates the provision of copyright act. There are also legal complaints cases about e-books because they copy the text from the original writing of an author. Copyright issues do not arise if all of them are properly acknowledged. Earlier, there was no term in the agreement. It is understood that the term does not mean that it is permanent, but now it is not necessary to mention the term in the agreement. It is also necessary to renew the contract after every five years. We don't know much about copyright. Copyright survivors are easily cheated out of their homes. In foreign countries writers and artists are made aware about copy right act as

well as special courses and programs are run for the new writers and artists. It is mandatory to take these courses for anyone who is willing to be a writer or want to enter in the publication sector. We have no such provision. Because of this, there is a lot more work to do about copyright.

There isn't much demand for the literature which imparts inculcations and Indian traditional values. The same can be said about Sant Sahitya or other ideological literature. Amidst this situation, though after 50 years, but it is a matter of satisfaction that *Shyamchi Aai* or Gandhian literature is free for publication. Whenever there is a new literary text in the market, it is possible for publication to withdraw from his profit. But for the welfare of the people good literature should be available in simple binding with low price editions. For example the literature of Vinoba Bhave or the religious literature of Gorakhpur Press. Here transformational support is needed. With the advent of new concepts in writing, the style of layout is also changing. It is necessary to take the help of good readers and give space to ideas and human values. Due to copyright act, the prices of the books hike hence, there is no consumption of books or the edition does not run out. Publications which provide the low prices editions for the masses are not available in India unlike western countries. As result of it, unworthy literary texts get good sale and good literature remain unread. If we improve our Copyright Act, to provide deserving honorarium to the worthy writers and publisher as well as low price good books for the laymen, it will be a win-win situation.

According to the Copyright Act, the rights of the original texts are given to the author or his family, or the rights are vested in someone (relatives or cousins) up to 50 years after the death of the author. But after that, the book is open to the public, anyone can print such book. Unfortunately the literature of Sane Guruji or Gandhi's writings are not still made popular by the publishers due to

legal difficulties in Copyright Act. To conclude, we must now give up the one-sided approach to intellectual property rights as a whole. Whether intellectual property rights are good or bad, we must stop. Whether intellectual property rights are good or bad, we should be able to weigh them according to the situation, according to the country. We must all learn to oppose the intellectual property rights that deprive the poor people of their basic rights in a poor country.

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6.

Exemptions And Limitations Under Patent Laws In India: An Analytical Study

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Abstract

In 1995, the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), come into effect. Thereafter it has an impact on the Indian Patent Act, 1970 which can be seen from the three amendments in 1999, 2002, and 2005 respectively. Initially, the Patent Act, 1970 was known for the process of patents. The Patent (Amendment) Act, 2005, brought certain changes in patent laws and presently it allows product patents to the inventor. The Pharmaceuticals patent covers the larger areas of the patent regime in India. There is a relationship between pharmaceutical patents and compulsory licenses under the Patent Act, 1970. It provides for compulsory licensing which can be granted to any person in an already patented subject matter according to Sections 84 to 92 of the Act. Apart from this, there are other provisions like sections 100 to 104 for central government power to use inventions on certain grounds. There is also a provision for Bolar Exemption under Section 107 A of the Act. However, this study is the impact of the TRIPS provisions on the compulsory license provisions in India. The research methodology used for this study is purely doctrinal. Therefore, the present study is limited to understand the relationship between compulsory licenses in patents and TRIPS provisions.

Keywords: Patent, Compulsory License, Intellectual Property Right, TRIPS.