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Challenges Faced by Women in Protecting Intellectual Property Rights

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ABSTRACT

Intellectual property includes ideas, creations, inventions, artistic and literary works. Major forms of intellectual property protection consists of patent, trademark, copyright and trade-secret. IP can be bought, sold, licensed or given away. IP rights are enshrined in Article 27 of the Universal Declaration of Human Rights of 1948. Only 16 percent of patent applications are filed from women, the remaining is from men. There are certain problems faced by women in protecting IP rights. Some of them are Gender bias, Financial constraints, Lack of IP education and awareness, Lack of representation. These challenges needs efforts for promoting gender equality and also inclusiveness in the field of IP. The practice of IP law and management is its own profession for the reason it requires specialized training. Most of the creations and ideas made by women are not protected under the category of intellectual property for the main reason, of long procedures involved and also unaware of the legal side of IP. Closing the gender gap in IP requires empowering women through education, mentor-ship and support. The purpose of IP rights is to encourage and develop innovation and creativity, which in turns helps to improve the quality of our lives. Women may face difficulties in understanding the intricacies of IP laws, filing applications or in enforcing their rights. Limitations on women's legal capacity cause a burden on their decision making ability. Striking a balance between work and home is important not only for women but also an equal responsibility of men. For decreasing the gender gap, it is mandatory to create an inclusive environment.

Keywords: *Women, Intellectual property, Gender disparities, Empowering Women, Inclusivity.*

I. INTRODUCTION

Human beings are considered to be superior to other living creatures because of their ability to think and create ideas. Creative thinking of human beings leads to the formation of intellectual property. Ideas, inventions, industrial designs, literary and artistic works, trademarks, trade-secret are some forms of intellectual property. There are mainly 8 types of intellectual property. The law relating to intellectual property is based on certain basic concepts i.e., patent law

¹ Author is a student in India.

centers around novelty and inventive steps. Design law is based on originality. Trademarks law on concepts of distinctiveness and similarity of marks. Copyright is based on the original and reproduction of the work in any material form. The law relating to intellectual property in India is undergoing changes to harmonize with the corresponding laws in developed countries. The laws emerged after India signed GATT and TRIPs and became a member of the WTO. The legal protection of intellectual property is necessary because of giving value to the hard work of humans which promotes the economic, social, scientific, and cultural development of the society. The creator must be rewarded by giving protection to his intellectual creation. It creates protection by preventing third parties enriched by reaping what they have not sown. The scope of intellectual property rights has greater relevance in this 21st century.

Despite there are significant efforts made for the empowerment of women, they are still not treated as equal as that of men in many parts of the world. The establishment of the world intellectual property organization(WIPO) become a milestone in the protection of intellectual property at a global level. The world intellectual property organization celebrates April 26 as World IP Day every year. The very motive behind the day is to promote knowledge about various IPs and also to promote innovations that pave the way for the development of the whole of mankind. In the year 2023, the theme of the day was "Powering change: Women in Innovation and Creativity" for celebrating women and their role in shaping the future of the world economy.

For stable economic growth in the field of IP, women along with that of men need to be empowered. IP rights not only give financial stability to women but also give them exclusive rights over their creations. Various reports across the world say that nations with better IP protection laws have better measures of gender equality. By understanding IP rights women can identify the appropriate form of protection for their IP, like patents for inventions, trademarks for branding, copyrights for creative works, etc. IP can be made a powerful tool for economic growth by making women generate income through licensing and commercialization. There are various legislative measures adopted by India for protecting IP rights. The various acts include;

1. The Copyright Act, 1957
2. The Patents Act, 1970
3. The Trademarks Act, 1999
4. The Geographical Indications of Goods (Registration and Protection) Act, 1999
5. The Designs Act, 2000

6. The Semiconductor Integrated circuits layout Designs Act, 2000
7. The Protection of Plant Varieties and Farmers Rights Act, 2001
8. The Biological Diversity Act, 2002.

II. PROBLEMS FACED WOMEN IN PROTECTING INTELLECTUAL PROPERTY RIGHTS

(A) Gender bias

The main problem faced by women in the field of IP is Gender bias and discrimination. Only 16 percent of patent applications filed through WIPOs are from women, the remaining are from men.² The ideas and creations of many others remain untapped. There is a huge gap between women to men in this IP field. Innovation and Creativity are to be valued not in regards to gender, women and men should get equal preference and access to opportunities. The best way to achieve the goal of gender equality is to narrow the gender participation gap which is of utmost importance to meet women empowerment.

There are several reasons for this gender bias. Firstly, men have more access to the stem fields i.e., science, technology, engineering, and mathematics. However, this ratio is slowly improving. Secondly, women who have patents face difficulty while commercializing their products. The most important thing to ensure women's participation in any field, especially in the IP field is building a women-friendly culture. It became a necessity to create an inclusive environment for decreasing the gender gap. The value of gender diversity in IP has grown, and various action-oriented programs have sprung up to target and improve specific metrics. For example, ChIPs is a networking organization for women in IP law, founded by women chiefs in IP at silicon valley.

Creating opportunities is not simply a matter of adopting gender neutral policies. Many employment procedures appear to be objective: evaluation processes, sexual harassment policies and equal employment opportunity policies.³

(B) Lack of representation

The second problem faced by women in protecting intellectual property rights was the Lack of Representation in the IP field. Women lack representation, especially in stem fields such as science, technology, engineering, and mathematics. The low number of women in the stem field is indeed of real concern. Stem fields are characterized by female representation ranging from

²WIPO statistics, 2020.

³An essay on Women and Intellectual Property Law: The Challenges Faced by Female Attorneys Pursuing Careers in Intellectual Property; by Kara Hagen.

just under 20%.⁴ An even larger range is observed within social science fields. The lack of female representation in the IP law industry is also a challenge for women facing in the protection of intellectual property. Women who work with lawyers have a deeper understanding of their experiences and challenges, may feel unsupported in the court. This becomes a particular problem when women face discrimination and harassment about their inventions and creation.

First of all, there are inherently fewer women than that of men in degree fields like electrical engineering, and computer science, who may see themselves as well-positioned for a career in patent litigation. Though the magnitude of this gap has largely decreased across the last several decades, the difference is still visible, prompting efforts to achieve it. Patent law purports to be gender-neutral. In the life sciences sector, women receive more than half of new Ph.D.'s but only make it onto 15% of patents. Researches show that women's inventions had a significantly higher chance of being rejected. Inventor-ship can be said as socially constructed. It is replicating and inadvertently embedding and bias we see in the real world. Inventions and creations are not only affected by under-representation. It not only means acknowledging that equality in innovation is not about equal opportunity for inventors but democratizing technology.

(C) Access to resources and funding

Access to resources and funding is the next problem faced by women in protecting intellectual property rights. Women entrepreneurs and inventors may face challenges in accessing resources and funding to protect and commercialize their intellectual property. The various difficulties include obtaining loans, venture capital, or grants which limit their ability to file patents. The main reason for the distinct rates of participation of women in the economy of distinct countries is the changes in legislation or actions to promote gender equality, as well as education and gender equality awareness in each country. One of the challenges for researchers working to understand and quantify how well the IP system serves women throughout the world is a lack of data.

These barriers over time have resulted in women lagging behind men across various indicators, like financing to business ownership to patenting. Women have creativity and innovative thinking equal to that of men but in many cases, they don't get the material benefits and other rewards associated with their labor. Women lack basic legal rights over property more generally, disincentivizing them from pursuing IP protection. Lack of access to capital can

⁴National Science Foundation, 2011

affect IP gender disparities both directly and indirectly. A lack of capital has a direct effect on it. Financial barriers are greater for women as compared to men, as women tend to have fewer financial resources, in effect it prevents female inventors and entrepreneurs from filing patent applications⁵. Researchers show that women see their start-ups or small business as providing supplementary income, but they tend to lack the confidence or desire to expand them into more substantial ventures.⁶

(D) Lack of intellectual property education and awareness

The very next problem is the lack of proper intellectual property education and awareness. There is a lack of awareness and education about intellectual property rights among women. They have only limited knowledge about the importance of protecting IP or the processes involved in safeguarding their creations. There is a low understanding of why IP is important and the need to protect it. A lack of understanding of the value of protecting IPRs can be a barrier to participation in the IP system especially for women. Sixty-two percent of respondents did not consider IP to be relevant to their ability to exploit their ideas commercially.⁷

Existing research rarely examines whether the understanding of IP differs by gender, but such a distinction is largely beside the point. Rather, the challenge lies in the fact that for most people, IP is a technical subject outside of their experience. This lack of understanding of either the value of IP, is nevertheless a challenge to increasing the participation of women in the IP system. The technical nature of the subject matter can make efforts to encourage women to use the IP system. Fewer women are allowed to occupy positions that provide knowledge to navigate the IP system.

(E) Balancing work and family responsibilities

One of the biggest problems faced by women in protecting intellectual property right is balancing work and family responsibilities. Women, especially those with care-giving responsibilities, may face challenges to balance their work in the field of IPR with their family obligation. This creates an impact on their ability to dedicate time and resources to protect their intellectual property effectively. Work and family need to get balanced, not as single responsibility of women. However, the issue of work-family balance mainly concerns women. Work-family conflicts may have worsened because the crisis may have placed increased pressure on women entrepreneurs concerning the survival of their businesses, relating to a desire

⁵Marcowitz-bitton, et al.,2019, p. 15

⁶International Trade Centre.,2017

⁷National union of students and united kingdom intellectual property office “student attitudes towards intellectual property”

to self-insure.

The term work-family balance implies finding equilibrium between work time and family responsibilities. Women bear the brunt of the responsibility for raising the children and taking care of the household.⁸ Due to the unbalanced division of family responsibilities between men and women, great barriers are faced by women entrepreneurs. This unbalance causes a burden in career progress and professional achievements for many women and it partially says the reason for lower rates of employment especially for women. Therefore balancing work and family is perceived as a complex and difficult problem to solve, which leads to anxiety, dissatisfaction, stress, and lower performance. Although all of the women received some support and help from their husbands, in reality husbands take on household and family responsibilities much less frequency than women do.⁹ The life of women has always been a bit of a battle between work pressure and family responsibilities. Striking a balance between work and home is important not only for women but also for equal responsibility to men. Women must be able to enjoy the process of their work, excel in their careers, and follow their dreams, achieve it, without being made to feel guilty.

(F) Legal and procedural barriers

The next problem faced by women in protecting IP rights is legal and procedural barriers. The legal and procedural aspects of protecting intellectual property involve complex and challenging, especially for women creators. Women may face difficulties in understanding the intricacies of IP laws, filing applications, or enforcing their rights. This results in a higher risk of infringement of IP rights. The challenges include lengthy application procedures, inadequate legal representation, and limited awareness of IP laws and regulations. Women may face bureaucratic hurdles or encounter difficulties while understanding and complying with intricate legal requirements. Limitations on women's legal capacity cause a burden on their decision-making ability. Legal differences in property ownership and inheritance rights can limit women's economic prospects.

Even entrepreneurs who are generally aware of the value of IP can find the system to be discouragingly complex and expensive. The practice of IP law and management is its own profession for the reason it requires specialized training. Most of the creations and ideas made by women are not protected under the category of intellectual property for the main reason, of the long procedures involved and unaware of the legal side of IP law. Closing the gender gap

⁸PHILPOT ET AL..., supra note 37, at 137-141, at 1375

⁹PHILPOT ET AL..., supra note 38, at 137-140

in IP requires empowering girls and women through education, mentor-ship, and support. Despite the financial stakes most countries still have laws that make it harder for women to work. Legal barriers affect women's ability to work, inhibit their job prospects, earning potential, and ability to balance work and family.

(G) Lack of mentoring and networking opportunities

The next reason that discourages women from protecting intellectual property rights is the lack of mentoring and networking opportunities. Women mainly in the IP field may encounter limited opportunities for mentors-hip and networking, which further leads to a negative impact on their professional growth and development. Support and access in any field can bring about drastic changes by giving proper guidance, advice, and connections necessary for success in the field. A further dimension of the IP gender gap is that women face further barriers once they are working in IP fields or attempting to take advantage of the IP system.

Networking is not just a matter of providing inspiration. There are several indicators that show that women receive only less effective guidance in managing their IP-related rights and less sponsorship for more advanced opportunities. Women tend to receive smaller grants than their male counterparts and also women are often less likely to engage in the commercialization of their inventions.¹⁰ These disparities make it less likely that women will be mentored by influential leaders in their fields, and their professional networks tend to be less powerful. During a WIPO meeting in 2018, observing that the gender gap in IP may be attributed not to features of the IP system per se but rather to general social and cultural hurdles that prevent women from realizing their full potential, including but not only related to the exploitation of IP rights. Even after the IP has been protected, women generally have lower levels of commercialization of their creations and ideas. This may be due to the incentive structures and additional costs.¹¹

III. CONCLUSION

The challenges faced by women in protecting intellectual property are multifaceted and complex. There are concrete steps that can be taken to address these challenges and promote gender equality in the field of creativity. These steps include providing greater education and mentor-ship opportunities for women, decreasing gender bias and discrimination, increasing the representation of women in legal and business professions, and supporting women's initiatives in every field, especially in the IP- field. By bringing these measures, we can build a more

¹⁰Flaherty, c. "smaller pots for women" insidehighered.com

¹¹Fechner and shpanka, 2018

inclusive and equitable innovation system that gives benefit to everyone. We can recognize and reward the contributions of women creators and can ensure them with equal opportunities as that of men to succeed. When women own IP rights, they can secure financing, commercialize and negotiate access to IP. The full potential of women creators needs to be used for the development of our society by removing the challenges they face in protecting intellectual property rights.

By providing women with the resources they need to protect their innovations, a more diverse and inclusive intellectual property space that fosters innovation paves the way to economic growth and development can be created. The purpose of IP rights is to encourage and develop innovation and creativity, which in turn helps to improve the quality of our lives.
