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Pivotal Moments Across Eras: Significant Historical Events in the Evolution of IPR

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ABSTRACT

Intellectual Property is a term made up of two fundamental words i.e., intellect and property. The term Intellect means a person's ability to learn, think and reason whereas the term property means ownership or possession of something, therefore, intellectual property can be defined as a creative and innate idea, literary, artistic, technical, scientific etc. work that is a result of application of a person's own intelligence. Intellectual property is all about human creativity, ingenuity and innovation. Intellectual property although being a hidden property is an efficient source of generating wealth. The law recognises this fact and concocts property rights for such intellectual works and grants them to the creator which gives them exclusive use & exploitation of ideas for commercial ends Such rights are called Intellectual Property Rights.

In essence, it can be asserted that intellectual property rights are the legal entitlements served to prohibit any unauthorized utilization of intellectual property for commercial or personal endeavour unless the holder of such property has given the permission explicitly. These rights include patents, trademarks, geographical indicators, copyrights and various other rights.

Keywords: *Intellectual Property, Patents, Trademarks, Copyrights, Conventions.*

I. INTRODUCTION

Intellectual Property is a term made up of two fundamental words i.e., intellect and property. The term Intellect means a person's ability to learn, think and reason whereas the term property means ownership or possession of something, therefore, intellectual property can be defined as a creative and innate idea, literary, artistic, technical, scientific etc. work that is a result of application of a person's own intelligence. Intellectual property is all about human creativity, ingenuity and innovation[2]. Intellectual property although being a hidden property is an efficient source of generating wealth. The law recognises this fact and concocts property rights for such intellectual works and grants them to the creator which gives them exclusive use & exploitation of ideas for commercial ends Such rights are called Intellectual Property Rights.

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[2] Catherine Colstan, Principles of Intellectual Property Law, 1999, Cavendish Publishing Ltd, London, p 1.

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II. TYPES OF INTELLECTUAL PROPERTY RIGHTS

1. Patents

"It is an exclusive right"[3] granted to an invention, that may either be a product or a procedure or a process which gives a contemporary path of doing something or a new solution to the existing problem. Patent is granted for inventions or innovations having industrial and commercial value. It is given for a limited time period, ordinarily for 20 years from date of application.

A patent owner is entitled to sell his patent or grant license to others.

2. Trademarks

A trademark can be described as a verified stamp of originality. It may be any symbol or a particular mark which helps the manufacturing company to distinguish its products from the diverse range of products in the same market segment. A trademark is often seen as a representative symbol of a company's goodwill that it has developed in the market.

In the case of *Laximikant Patel v Chetan Bhat Shah*[4] it was held that "*the definition of a trademark is very wide and means a mark capable of being represented graphically and which is capable of distinguishing the goods and services of one person from those of others*"[5].

A trademark may include any sign or design or any other combination that is capable of differentiating the goods and services of a company from other undertakings. It can be consolidation of name, word, phrase, colour, number, title etc.

3. Copyright

It deals with the protection of artistic works that may range from literary, dramatic, videography, painting, music and many others. It protects and delves into the exploitation of ideas with can be expressed in physical or tangible form. This right

[3] Sreenivasulu NS, Intellectual Property Rights: A Master Glance, MIPR, April 2007, Vol 1, Pt 4, P A-191
[4] AIR 2002 SC 275.
[5] AIR 2002 SC 275.

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protects the interest of the creator and his creation if it is original and not published in public domain. This right ensures that no other person can utilize a creator's work for their own benefits without obtaining authorization form the creator. It can be interpreted as a right which reproduces the work in which copy right subsists.

4. Jurisprudence of IPR

In general, a property can be interpreted as nothing but a set of proprietary rights which are the outcome of one's labour. However, when it comes to intellectual property, it is the result of mental labour. Over the decades, we have seen significant advancements in technical and scientific fields as well as drastic changes in lifestyle of people where goods and services are concluded by a person's plan and his knowledge. Within this framework, few theories from jurisprudential angle are very much relevant. These are:

- *Natural Rights Theory:* This theory signifies natural rights as fundamental in context of possession. This theory is significantly influenced by John Locks' labour theory which contended that a labourer must receive incentives in form of proprietary rights for his hard work. Natural Rights theory which has drawn its roots from John Locks' philosophy is applicable to both tangible and intangible properties.
- *The Utilitarian Theory:* This theory was propounded by Jeremy Bentham and John Stuart Mill. This theory posits that the law should ensure "the maximum benefit for greatest number of people" The possessor of the intellectual rights is expected to make the creation and its benefits accessible to public at large. Furthermore, these intellectual rights are granted for a specific time period after which they are subject to unrestricted public usage, also these rights are contingent upon the creation's capability of industrial application. This theory is also referred to as incentive theory.

III. HISTORICAL DEVELOPMENT OF IPR AT INTERNATIONAL LEVEL

The origin of patent system is believed to have been take place back in 7th century in Greece where a system of granting short term rights to cooks to prepare new recipes. Gradually the adoption of such system increased globally. The first patent law in history was articulated in Venetian statute of 1494. In Europe there was not much public awareness of copyrights or patents and other matters related to intellectual property until some salient and well-known legislations were passed. Statute of Monopolies was the first one of those. The British law was introduced in 1623, at that time the industries were in the control of guilds which possessed

influential powers[6]. They got all the credit for introducing new inventions in the market which gave them proprietary rights over the said inventions even if they had no contribution in the invention of such creations.

The statute set forth the statutory requirements for the patentability of inventions, which are still relevant.[7]In USA, Thomas Jefferson drafted the first patent statute which was enacted in 1793 which exclusively focused on the requisites of patentability such as utility, novelty and non-obviousness.

As the time passed, awareness about these rights spread in the public domain and finally importance of Intellectual property was primitively given recognition by the "*Paris Convention of Intellectual Property* (1883) & *Berne Convention for the Protection of Literary and Artistic Works* (1886)."[8]

Paris Convention was an international agreement via which inventors could safeguard their inventions even if they were utilized in the foreign countries. Under Berne Convention, global safeguards were established for diverse forms of creative and artistic works like written works, musical, art etc. Subsequently, the *Madrid Agreement* of 1891 introduced Trademarks which gave wider protection of Intellectual Property.

Over the time, the offices created by Paris and Berne Conventions merged together into forming United International Bureaux for Protection of Intellectual Property. This organization later became precursor and laid down basic groundwork for World Intellectual Property Organization (WIPO).

(A) "Paris Convention on the Protection of Industrial Property"[9]:

"*The Paris Convention applies to industrial property including patents, trademarks, industrial designs, utility models, service marks, trade names, geographical indications and the repression of unfair competition. This international agreement was the first major step taken to help creators ensure that their intellectual works were protected in other countries*"[10]. This treaty was signed in Paris, France on 20 March 1883 and is the first and oldest international convention on the subject matter of Intellectual Property.

[6] Jeff Williams, The Evolution of Intellectual Property, https://www.txpatentattorney.com/blog/the-history-of-intellectual-property/
[7] Sreenivasulu NS, Biotechnology and Patent Law, patenting living beings, 1st Edn, 2008, Manupatra Publications, Noida, p 19.
[8] Paris Convention of Intellectual Property (1883) , Berne Convention for the Protection of Literary and Artistic Works (1886).
[9] Paris Convention on the Protection of industrial property.
[10] Id.

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It was later revised in the July 1967 in Stockholm. It consists of 30 articles and is in force till now furthermore, it led to an establishment of safeguarding policies for Industrial Property. The convention falls into 3 main principles:

1. *National treatment:* It states that each contracting state must grant same protection to the nationals of other states who are contracting that it grants to its own nationals. This principle applies to the non-contracting states as well if they are domiciled or have a commercial establishment in contracting state.
2. *Right of Priority:* According to this principle, a right of priority in cases of patents, industrial designs and marks depends on the basis of filing of the application in one of the contracting states. The applicants can in a certain period of time i.e., 12 months for patents and 6 months for marks and industrial designs apply in other contracting states for protection. These applications will be regarded as if they were filed on the same day as the first application was filed. In essence they will be accorded precedence over the applications filed by others throughout the specified time period. One key notable benefit of the above principle is that it gives ample time to the persons or organizations to decide in which foreign contracting states they intend to seek protection.
3. *Uniform Rules:* The convention lays down a set of common rules that all the contracting states must adhere to.
    a. Patents granted for the same creation in different contracting states are independent of each other.
    b. The conditions with regards to filing and registration of the marks are not regulated by the convention itself. The domestic law of the different contracting states shall apply for the same.
    c. Industrial designs are required to be safeguarded in every contracting state and the forfeiture of protection can't be justified on the basis that the incorporating design is not created in that particular state.
    d. Every Contracting State must endeavour to make a healthy market environment and make policies to regulate a market with fair competition.

(B) Berne Convention:

"*The Berne Convention deals with the protection of works and the rights of their authors. It provides creators such as authors, musicians, poets, painters etc. with the means to control how*

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their works are used, by whom, and on what terms. It is based on three basic principles and contains a series of provisions determining the minimum protection to be granted, as well as special provisions available to developing countries that want to make use of them."[11]

The Berne Convention was accommodated in 1886 in the Swiss City of Bern organized by 10 European Countries with the aim of making legal policies to protect original work.

It was the most significant convention held at international level which dealt with copyright protection. It is based on 3 principles and contains basic and special provisions for developing states which may utilize them at their will.

1. *Principle of National Treatment:* This principle implies that the works originating in one of the Contracting States shall be given the same safeguard in every contracting state.
2. *Principle of Automatic Protection*: It states that to seek protection there is no need to comply with any formality. The original works will be subject to automatic protection from the moment they come into existence.
3. *Principle of Independence of Protection*: This principle implies that the protection offered under the convention shall be independent of the state of origin of the work. However, if a contracting state stipulates a time period exceeding the minimum duration set by the convention and the protection ends in the state of origin then the entitlement to protection may be fortified entirely once it ends in the state of origin.

This treaty also authorized the entitlement of rights such as right to translate, the right to make adaptations and arrangements, the right to recite etc. to the copyright holders.

The convention also provided for the moral rights which are basically rights of the creator to be recognized as the author or owner of the work and his right to object if someone changes or demeans his work in a way that tarnishes his reputation.

(C) "Hague Agreement concerning the International Deposit of Industrial Design, 1925"[12]:

"The Hague Agreement governs the international registration of industrial designs. First adopted in 1925, the Agreement effectively establishes an international system – the Hague System – that allows industrial designs to be protected in multiple countries or regions with

[11] Berne Convention for the Protection of Literary and Artistic Works, https://www.wipo.int/treaties/en/ip/berne/
[12] Hague Agreement concerning the International Deposit of Industrial Design, 1925

minimal formalities."[13]

This convention aims to provide international protection to industrial design by allowing the applicants to file a single application with the International Bureau of WIPO, that enables the owners to secure their designs with minimal formalities. An application can include up to 100 designs and the term of protection is 5 years which is renewable.

(D) "Patent Cooperation Treaty, 1970"[14]:

The patent cooperation treaty was commenced in 1978 and it allows securing of patent for an invention simultaneously in numerous nations by filing an international patent application. It may be filed by any person who is the national or a resident of Contracting State. It can be filed with the national patent office of the contracting state or the applicant also possesses the option to file it with the International Bureau of WIPO in Geneva.

(E) Budapest Treaty

The Budapest Treaty is an international treaty which was signed in Budapest, Hungary in 1977. It specifically talks about a topic in international patent process that is Microorganisms.

All the contracting states must recognize the microorganisms deposited as a part of patent process.

(F) "Trademark Law Treaty 1994"[15]:

"The aim of the Trademark Law Treaty is to standardize and streamline national and regional trademark registration procedures. This is achieved through the simplification and harmonization of certain features of those procedures, thus making trademark applications and the administration of trademark registrations in multiple jurisdictions less complex and more predictable."[16]

This treaty also encompasses the Model International Forms which aligned with maximum requirements for procedures. It prohibits any kind of attestation, authentication or certification of signatures except for registration surrender.

(G)"WIPO Copyright Treaty"[17]:

The WIPO copyright treaty is a special type of agreement which comes under the Berne Convention that deals with the protection of works and rights of the original authors in this

[13] Id.
[14] Patent Cooperation Treaty.
[15] Trademark Law Treaty 1994.
[16] Id.
[17] WIPO Copyright Treaty.

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modern era of digital environment. In aggregation to the rights granted by the Berne Convention, this treaty further delves into the subject and provides economic rights to the creators.

This treaty was concluded in 1996 and came into effect in 2002. It deals with two specific subject matters which are:

1. Computer Programs
2. Databases

Other than the rights granted by the Berne Convention, this treaty additionally gives rights such as right of distribution, right of rental and right of communication to the public. The term of protection given must be at least 50 years for any kind of work.

(H)"World Intellectual Property Organization (WIPO)"[18]

It is one of the 15 specialized agencies of the United Nations (UN). It was established by signing a convention in Stockholm in the year 1967. It began its functioning in the year 1970 when the convention came into force. It is a global forum for intellectual property specifically designed to promote worldwide protection of industrial property and copyrighted materials.

The inception of WIPO can be traced back to 1883 when 14 nations signed the Prais Convention for the protection of industrial property. Subsequently in 1886, Berne Convention mandated contracting states to secure the rights of creators of artistic, literary etc works. Initially there were two different organizations which were made to implement the above stated treaties but later they got merged in 1893 and came to be known as United International Bureau for the Protection of Intellectual Property. Its headquarters were located in Bern but later they were relocated to Geneva. WIPO primarily has 2 objectives that are protection of Intellectual Property by global collaboration and regulating administrative cooperation among various unions. WIPO's role in enforcing the protection schemes drastically increased in 1990s through a cooperation agreement with World Trade Organization. At present 180+ countries hold membership of WIPO and the organization also conducts a biennial conference that decides the budget allocations.

IV. CONCLUSION

In conclusion, this article intricately weaves the historical tapestry of Intellectual Property Rights development. The journey unfolds through milestones like the Venetian statute of 1494,

[18] World Intellectual Property Organization (WIPO), https://www.wipo.int/portal/en/index.html

the Statute of Monopolies in 17th-century Britain, and Thomas Jefferson's pioneering efforts in the late 18th century. Crucially, the article emphasizes international cooperation as exemplified by the Paris Convention of 1883 and the Berne Convention of 1886. These agreements not only acknowledge the global importance of IPR but lay the foundation for protecting intellectual creations on an international scale. The evolution culminates with the establishment of the World Intellectual Property Organization (WIPO), symbolizing the contemporary need for a unified approach to intellectual property.

In essence, this historical exploration reveals IPR as a dynamic force, reflecting societal values and technological progress. Understanding these pivotal moments offers profound insights into the origins of the modern intellectual property framework, underscoring its role in fostering innovation, creativity, and collaborative progress across diverse eras and global landscapes.

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