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Role of Indian Judiciary in Development and Effective Enforcement of Intellectual Property Law's through Doctrine of Judicial Review

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ABSTRACT

Intellectual property pertains to invention/creation/innovation of any artistic, literary, scientific creation, concept etc. by human intellect. Intellectual property rights refer to rights vested by the state to the inventor or creator. IPR is a strong tool, to protect investments, time, money, effort and the like invested by the inventor/creator of an Intellectual Property, since it grants the inventor/creator an exclusive right for a certain period of time for use of his invention/creation. Thus IPR, in a way, aids the economic development of a country by promoting healthy competition and encouraging industrial development and economic growth. But mere for the economic development the basic and fundamental rights can't be abridged. The concept of public welfare is of paramount importance of any democratic country. In India Supreme is considered as the guardian of Indian Constitution, it has not only lead to the development of existing law but also have lead to its effective implementation by fulfilling the grey areas.

The present article provides an overview of the various laws dealing with innovation and intellectual property rights in India. While providing brief insights into the law of patents, copyrights, trademarks, designs, and remedies for violation of these rights, the article mainly deals with the role of Higher Judiciaries of India in development and effective implementation of Intellectual property law's and checking their constitutional validity by using the Doctrine of Judicial review.

Keywords *– Constitution of India, Judicial review, Intellectual property, Supreme Court, Economy.*

I. INTRODUCTION

In the current era of virtual and digital word things are changing with a decent pace. We as a society has come a long way forward i.e., from the era of newspaper to e- newspaper, from the era telegram to telephones and then mobile phones. Technology has played an important role in the life of every human in some way or another. These inventions do not come of their

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own but require a great human intellect and monetary burden. These inventions make human life easier and smoother and very important for a nation to grow as these inventions require human intellect, which is called intellectual property. To encourage such inventors to make more and more inventions, the law as to intellectual property has been evolved over the year in the whole world, and India has been the same.

An intellectual property right is the umbrella term that is compendious and embraces Patents, Copyright, Trademarks, Industrial Designs, Layout Designs, and Geographical Indications.[2]

A definition of Intellectual Property Right's says:

"They are a composite of ideas, inventions, and creative expressions."[3]

Same as in the case of tangible property, Intellectual Property, being an intangible property, give their owners the exclusive rights to enjoy the property for a specified and limited period of time. It also restrains others from access to or using protected subject matter for the provided limited period of time. However, subsequently, it provides the right to license others to exploit the innovations when the owners themselves cannot engage in large-scale commercial exploitation.[4]

Intellectual Property law promotes innovation in various fields by acknowledging people's intellectual creativity and granting them exclusive rights over their intellectual creations. The concept of exclusive rights is mostly understood to be exclusive monopoly rights in this context given the nature, purpose, and objective of such rights, which provides the right holders with exclusive rights of not only using their intellectual creations but also managing such creations, which includes their commercial exploitation. This right is also often regarded as a negative right as per the intellectual property rights jurisprudence, which rests mainly on the labour theory, which states that if labour has been invested, whether such labour is in the form of intellectual labour or physical labour in order to create something which has a physical manifestation (as often something which is considered to be an intellectual creation is considered to be intangible and hence its physical manifestation is what qualifies to get protected by granting an intellectual property right), then such investment of labour has to be acknowledged by rewarding the person who has invested such labour and which in turn will act as an incentive for the rest of the world to innovate which will boost the Research and Development sector of any nation which is very important for the country's economic

[2] World Intellectual Property Organization, *What is Intellectual Property?* WORLD INNTELLECTUAL PROPERTY ORGANIZATION (Dec. 20, 2020, 03:55 PM), https://www.wipo.int/about-ip/en.
[3] United States v. Aluminum Co. of America, 148 F.2d 416, 430 (1945).
[4] Alice Pham, *'Competition Law And Intellectual Property Rights: Controlling Abuse Or Abusing Control? 12* (CUTS International, 2008).

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development in particular and overall development in particular. Moreover, such reward comes in granting exclusive monopoly rights to the creator concerning his/ her creation, where such exclusive monopoly rights are identified as Intellectual Property Rights.

(A) History Of Intellectual Property

The Venetians developed the first law of its kind to protect IP rights in 1474 related to the patent. After that, various countries made many laws, be it the statute of monopolies of 1623 for true and first inventors or reorganizations of rights of inventors in 1791 by France, but most of them were at a territorial or domestic level only.[5]

During the late nineteenth century, Intellectual Property transactions in the international market increased, which gave rise to contradictions regarding IPRs and regional restrictions. In order to resolve these contradictions, various international conventions were enacted. The "Paris convention for the protection of Industrial Property" was the first convention of its kind, which came up in 1883. It was established by countries such as Germany, France, Belgium, and ten other countries for the protection concerning Industrial Property. After the Paris convention, the major convention was the "Berne Convention for the protection of Literary and Artistic works," the first of its kind for the protection of Copyright, signed on 9th September 1886. It was in 1993 when WTO adapted these international conventions. WIPO (World Intellectual Property Rights Organization) was established in 1970, and it was in charge of 20 international conventions relating to the protection of intellectual property rights. TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement in 1994 successfully achieved the goal to link international trade with people's intellectual property rights. It succeeded in providing a more unified higher platform.[6]

(B) Meaning and Scope of Intellectual Property

Although the term intellectual property is not specifically defined anywhere in the Indian statute, it is often considered an intangible property requiring human intellect. The umbrella term of Intellectual Property is a compendious one and embraces Patents, Copyright, Trademarks, Industrial Designs, Layout Designs, and Geographical Indications.[7]

Intellectual property very broadly means the legal right resulting from intellectual activity in

[5] Peter draho, *Intellectual property and human rights*, AUSTRALIAN NATIONAL UNIVERSITY, (Dec. 25, 2020, 04:55 PM), https://www.anu.edu.au/fellows/pdrahos/articles/pdfs/1999iPandhumanrights.pdf .
[6] Jaashree Watal, *Intellectual Property Rights in WTO And Developing Countries 5* (Oxford University Press, 2001).
[7] World Intellectual Property Organization, *What is Intellectual Property?* WORLD INNTELLECTUAL PROPERTY ORGANIZATION (Dec. 21, 2020, 04:55 PM), https://www.wipo.int/about-ip/en.

the industrial, scientific, literary, and artistic fields.[8]

II. INDIA AND INTELLECTUAL PROPERTY

Right to property was a fundamental right under Article 19(1) (f) of the Constitution, although it is omitted now by the 44th constitutional amendment.[9] However, it is still a constitutional right inserted by the same 44th amendment in the Indian Constitution as Article 300A of the Indian Constitution, which provides that no person shall be deprived of his property save by the authority of law.[10] Moreover, the property is now considered to be not only a constitutional or statutory right but also a human right. [11]

Supreme Court interpreting Article 300 A has held that "The expression property in Article 300 A is not confined to land alone. It includes intangibles like copyrights and other intellectual property and embraces every possible interest reorganized by law.[12]

Unlike in other countries, the Indian Constitution compels national legislation to embody the terms of a treaty for it to be enforceable in courts in India.[13] Treaties are per se unenforceable in courts but are to be incorporated through national legislation. The Supreme Court of India, in the area of human rights – especially in respect to personal liberty, often iterated that to the extent provision of any treaty aligns with the Constitution (such as Article 21), it would be read along with such provision or right.[14]

(A) Law Governing Intellectual Properties in India

The various forms of intellectual property law in India are:

- The Patents Act, 1970, The Patents Rules, 2003, The Intellectual Property Appellate Board (Patents Procedure) Rules, 2010 & The Patents (Appeals and Applications to the Intellectual Property Appellate Board) Rules, 2011

The patent is granted for a technical invention that is novel, non-obvious, and has industrial use for generally 20 years. The act does not state what is patentable, but it states the list of the non-patentable subject matter under section 3 of the act. It gives the inventor exclusive monopoly rights to exploit their invention, although the act also provides for the compulsory licensing within the act itself for the greater public interest.

[8] *WIPO Intellectual Property Handbook*, 5-19 (WIPO Publications, 2d ed. 2004),
[9] The Constitution (Amendment) Act, 1978, No. 44, Acts of Parliament, 1992 (India).
[10] INDIA CONST. art. 300A.
[11] Tukaram Kanna joshi v M.I.D.C., A.I.R. 2013 S.C. 33 (India).
[12] K.T. Plantation Pvt. Ltd. V State of kerala, A.I.R. 2011 S.C. 3430 (India).
[13] INDIA CONST. art. 253
[14] Jolly George Varghese and Anr. v The Bank of Cochin, A.I.R. 1980 S.C. 470 (India).

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- The Copyright Act, 1957 & The Copyright Rules, 1958

Copyright is a right granted not for the idea per se, but it protects how it is expressed. It provides a monopoly of using any original artistic, musical, dramatic, etc. Work and to exploit the same as provided in the act itself. The rights provided under this act are very vast in nature, and that is the reason why Copyright is also termed as a bundle of rights. It results from various international conventions such as the copyright convention of Berne and TRIP'S agreement etc. It came in force in 1858, although enacted in 1857. It has been amended from time to time to cope with various international obligations.

- Trade Secret - There is no specific legislation in India to protect trade secrets and confidential information. The only way of protecting trade secrets is through the contract, and a civil suit is a remedy for the same. Indian courts have upheld trade secret protection based on equity principles, and at times, upon a common-law action of breach of confidence, which in effect amounts to a breach of contractual obligation. The remedies available to the owner of trade secrets are to obtain an injunction preventing the licensee from disclosing the trade secret, returning all confidential and proprietary information, and compensation for any losses suffered due to disclosure of trade secrets.[15]

- The Trade Marks Act, 1999, The Trade Marks Rules, 2002, The Trade Marks (Applications and Appeals to the Intellectual Property Appellate Board) Rules, 2003 and The Intellectual Property Appellate Board (Procedure) Rules, 2003

Trademark is the mark that differentiates one business's product from the other business in the same or another field. It differentiates not only one product from the other but also identifies its maker. In the modern era of competition, goodwill and brand quality are one of the essential assets of the business, which is somehow related to the trademark because it is a trademark only which differentiates the similar products of one company from the other.

- The Geographical Indications of Goods (Registration and Protection) Act, 1999 and The Geographical Indications of Goods (Registration and Protection) Rules, 2002

A geographical indication is an indication that relates to the originator of a good, i.e., the place where that good is believed to be invented or existed at the very first instance. The repute, eminence, or other feature of the good is fundamentally attributable to its geographical origin. This act was brought in 1999, which provides for the protection for

[15] Kamakhya Srivastava, *Trade Secrets In Indian Courts*, MONDAQ, (Feb. 12, 2020, 01:56 PM), https://www.mondaq.com/india/Intellectual-Property/204598/Trade-Secrets-In-Indian-Courts.

initially ten years. Some GI examples are Varanasi saree, Basmati Rice (India & Pakistan), Darjeeling tea, etc.[16]

- The Designs Act, 2000 and The Designs Rules, 2001

Design can be any features of configuration, shape, ornament, pattern, or composition of lines or colors, industrially applied to an article or to a part that gives aesthetic value to such an article. This act was brought in 2000, which protects for ten years initially. Producers of various products such as clothes, footwear's, automobiles, furniture, etc. spend millions of rupees to widen industrial designs to make their produce more eye-catching to clients[17]

- The Semiconductors Integrated Circuits Layout-Design Act, 2000 and The Semiconductors Integrated Circuits Layout-Design Rules, 2001

A semiconductor chip is a tool that provides the result of a programmed set of instructions by way of a circuit set on a semiconductor substance in a layered structure. The act was brought in 2000. Well-known illustrations of such chips are ROMs, RAMS, etc.[18]

III. JUDICIAL REVIEW IN INTELLECTUAL PROPERTY LAW'S

TRIPS, i.e., trade-related aspects of intellectual property rights, are considered the grundnorm for the world's IP laws. It consists of 7 parts that provide for various basic and general rules, the provisions for the minimum standards to be adopted, and the provisions for its enforcement and dispute settlement. Art.32 of the agreement itself provides for the provision of judicial review. It is a procedural guarantee of the judicial review of any decision concerning revocation and forfeiting any patent.

There is no direct provision in India's intellectual property law where an appeal can be filed to the Supreme Court of India. Generally, IPAB, i.e., intellectual property appellant board, is considered a final authority, but the Indian judicial system and Supreme Court have been most proactive in protecting intellectual properties. It has a lion – share in the protection of intellectual property since the mid-'80s. It has been ahead of the statutes in most of the cases and has lead to various therein. Judiciary has acted as an adjudicator in the issue of various disputes arising out of IP laws and has played a significant role in granting justice to the parties by analyzing and interpreting the legislation. The researcher has attempted in the current chapter to analyse the dynamic role of the judiciary in protecting IP rights and strengthening and broadening the scope of IP Laws.

[16]Kamakhya Srivastava, *Trade Secrets In Indian Courts*, MONDAQ, (Feb. 12, 2020, 01:56 PM), https://www.mondaq.com/india/Intellectual-Property/204598/Trade-Secrets-In-Indian-Courts.
[17] *Id.*
[18] *Id.*

Supreme Court is the apex court to appeal in India, and any person can approach it either through the law directly or indirectly. Indirectly means when a specific law does not provide for the appeal to India's supreme Court like the case is there in intellectual property law, then Article 136, i.e., special leave to appeal work as life savour for the aggrieved party. However, the party can also approach the High Court under article 226 of the Indian Constitution.

The Constitution has authorized the Indian Supreme Court, under *Article 136* of the control, to award *extraordinary leave* to plea. On its pleasure, the Indian Supreme Court can award *special leave* to plea after any order or sentence, decree, determination, and judgment of any topic or cause, which has been made by any board or Court in India's domain. In the least tribunal or judiciary established under any legislation in reverence to the Armed Forces, Article 136 of the Constitution applies to any order or sentence, determination, and judgment.

Therefore under Article 136, apart from tribunal forces as specifically excluded in 136(2), the Supreme Court can entertain any case dealt by any court or tribunal in the Indian Territory. However, it is pertinent to note that it is not a right of the person, but it is the honourable supreme court's discretion to entertain the petition. Moreover, the honourable Supreme Court under Art.142 can make orders to do complete justice, although such exercise shall not be in contradiction to expressly stated legal provision.

High courts are also empowered to entertain the petitions related to IP law either through the act itself concerning IP Law or through the provisions such as Art.226 & 227 of the Indian Constitution. Article 226 empowers the Court to issue writs that shall not be a derogation of the Supreme Court's authority as provided under Art.32 of the Constitution of India. Art. 227 empowers the High Court for the superintendence on all the courts and tribunals throughout the territorial limits of concerned Jurisdiction.

Entertaining its discretion only in certain cases under Article 136 of the Indian Constitution, the Court has decided that the right to property was a fundamental right under Article 19(1)(f) of the Constitution. However, it is omitted now by the 44th constitutional amendment.[19] Still, it is a constitutional right inserted by the same 44th amendment in the Indian Constitution as Article 300A of the Indian Constitution, which provides that no person shall be deprived of his property save by the authority of law.[20] Moreover, "property is now considered to be not only a constitutional or statutory right but also a human right. [21]

Entertaining Article 136 only the Supreme Court has held that unlike in other countries, the

[19] The Constitution (Amendment) Act, 1978, No. 44, Acts of Parliament, 1992 (India).
[20] INDIA CONST. art. 300A.
[21] Tukaram Kanna joshi v M.I.D.C., A.I.R. 2013 .S.C. (India).

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Indian Constitution compels national legislation to embody the terms of a treaty for it to be enforceable in courts in India.[22] Treaties are per se unenforceable in courts but are to be incorporated through national legislation. The Supreme Court of India, in the area of human rights – especially in respect to personal liberty, often iterated that to the extent provision of any treaty aligns with the Constitution (such as Article 21), it would be read along with such provision or right.[23]

In the current era, the judiciary is not restricted to only giving a check on the other pillars of government or just by interpreting it, but the judiciary has also gone a long way ahead in IP laws not only to interpret but to make the law. In India, also judiciary has not restricted itself only to the extent of just interpreting the law but has gone a step forward by filling the lacunas available in the current legal system.

Judicial activism at both national and international levels has played a major role in protecting the IP laws. Be it at the international level where India won the fight of its traditional Knowledge in 1995 and 2005 in respect of turmeric and neem, respectively, or be it at the national level wherein Novartis AG[24], where the Court upheld the constitutional validity of Patent Act of 1970 along with its various Amendments.

The few landmark cases in which the Court reviewed its lower courts' judgments and enlarged the boundaries, and tried to fill up the lacuna in the existing laws have been discussed below.

Novartis Ag v. Union of India case[25]

In this matter, a civil appeal arose out of a special leave petition filed by the Novartis Ag against the order of IPAB.

In this case, the applicant Novartis has filed for the patent in 1998 at the patent office of Chennai of the drug termed as 'Gleevec.' This is a drug used to treat cancer. The office dismissed the applicant's application on the ground of section 3 (d) of the patent act.

After that, the applicant filed a writ in the High Court challenging the constitutional validity of section 3(d) of the act. However, the High Court referred the case to IPAB, and it held that although the application has passed for novelty and non-obviousness but is barred by section 3(d) of the act.

Section 3(d) bars the patentability of the invention, which is *"mere discovery of a new form of*

[22] INDIA CONST. art. 25.
[23] Jolly George Varghese and Anr. v The Bank of Cochin, A.I.R. 1980 S.C. 470 (India).
[24] Novartis AG v Union of India, (2007) 4 M.L.J. 1153 (India).
[25] Novartis Ag v Union of India, (2013) 6 S.C.C. 1 (India).

a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, the machine or apparatus unless such known process results in a new product or employs at least one new reactant".

Aggrieved by the decision of IPAB, the applicant filed the special leave petition in the Supreme Court of India under Article 136 of the Constitution of India.

The Supreme court entertained the special leave petition application. However, it upheld the decision of IPAB. It held that the application is barred by 3(d) and held that the foregoing provision is neither unconstitutional nor against the TRIP'S Agreement.

The Court held that the object behind section 3(d) is to prevent evergreening. The courts further specified that this case should not be interpreted to mean that Section 3(d) bars all incremental inventions. Concerning the field of medicine, especially in cases of life-saving drugs, a great acre and caution needs to be taken to protect the right to life of the masses.[26]

Moreover, the Court held that the Patent act is constitutional and in compliance with the TRIPS agreement on the issue of constitutional validity.

Bayer Corporation v. Union of India[27],

In this case, Supreme Court straightway dismissed the special leave petition filed by the applicant against Bombay High Court's decision.

This was one of the landmark cases where the Supreme Court upheld the High Court's decision providing compulsory licensing for a life-saving drug named 'Nexavar.'

Under the Doha declaration, the concept of compulsory licensing was evolved, and India was a signatory to it. The concept of compulsory licensing empowers the government to provide an organization other than the owner organization to use the patent technology and use the patented product even without the real owner's consent. In this case, a nominal royalty is provided to the owner, although the owner can neither reject compulsory licensing nor determine the rate for loyalty. Compulsory licensing can be granted after 3 years of the grant of patent. If the conditions of section 84 of the acts are fulfilled, such as the public's requirement are not met non-availability of the invention at an affordable price or if an invention is not worked in Indian Territory.

In the current case, all the conditions were fulfilled for compulsory licensing. NATCO, a

[26] *Analysis Of Novartis A.G. vs. Union Of India,* IPLEADERS, (Feb.19, 2020, O6:56 PM), https://blog.ipleaders.in/analysis-novartis-g-vs-union-india/.
[27] Bayer Corporation v. Union of India (2013) W.P(C) No.1323 (India).

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pharmaceutical company, has filed compulsory licensing. One month, the drug was sold by Bayer at a price as high as INR 2, 80,000.

As the patent office held that the price charged by Bayer Corporation was very high, being unaffordable so compulsory licensing was provided to NATCO to sell the monthly drug at the cost of only 8,800, and royalty @ 6 percent was to be paid to the Bayer Corporation.

The IPAB also upheld the patent office's decision, and a writ was filed in Bombay high court by the Bayer corporation.

The High Court upholds the decision of IPAB and observed that -

"Medicine has to be made available to every patient and,this cannot be deprived/scarified at t he altar of rights of patent holder".

Finally, the Appellant filed a special leave petition in the Supreme Court of India, which, while dismissing the SLP, noted that

"In the facts of the present case, we are not inclined to interfere. The Special Leave Petition is dismissed, keeping all questions of law open."[28]

Supreme Court, in an appeal filed through special leave petition upholding the judgment of High Court, enlarged the scope of copyright law whereby holding that although judgment per se is not capable of Copyright as per the statues but the work done to make the judgement understandable by way of footnotes and headnotes are capable of copyright protection.

Eastern Book Company & Ors vs D.B. Modak & Anr[29]

This is one of the landmark cases related to copyright law. In this case, the Appellant were in the business of printing and publishing the Supreme Court's judgments in publication named "SCC" i.e. supreme court cases. After analysing the judgements, they used to add head notes and short notes and put other inputs used to make the judgment user-friendly.

The respondents have launched the software's and were alleged to publish in CD ROMS, the work of the Appellant. The appellants claimed that there exist Copyright of theirs as they have applied man force and capital for the same.

The single-judge bench of High Court, although not given the stay on the publications of the CD ROMS. However, the respondent accepted that the appellants have Copyright in the headnotes.

[28] Apoorva Mandhani, *BAYER CORP. V. UNION OF INDIA*, INDIA LAW, (Feb.12, 2020, 03:56 PM), https://www.indialaw.in/blog/blog/intellectual-property-rights/bayer-corp-v-union-of-india/.
[29] Eastern Book Company & Ors v D.B. Modak & Anr, (2004) Civil Appeal No.6472 (India).

In an appeal to the division bench, the Court held that the respondent can publish the judgements with their headnotes and inputs and shall not copy that of the appellants. However, the contention of the appellants that the whole work is Copyright of the appellants were rejected.

Aggrieved by the decision of high Court the appellants filed a special leave petition under article 136 of the Constitution of India. The Supreme Court held that Copyright although not subsists in judgements of the Court as provided under section 52 of the copyright act but appellants have the Copyright in headnotes, footnotes, and other inputs are referred in their journal and paraphrasing of the judgement, i.e., the way of expression is the Copyright of the Appellant and respondent shall not add the same. However, the respondents can make their own headnotes, footnotes, and can use their own inputs.[30]

Trademarks are one of the most dynamic IP Law, in today's competitive era. It is somewhat connected with the goodwill of the company, and in today's era of technology-savvy world, websites lay a major role in the business. The websites used to have IP addresses, which is commonly known as the domain name. People reorganize the business from the domain names. Some of the infringers do cyber squatting, i.e. to buy the existing business's domain name or the related trade name to gain wrongful profits at a later stage. There was one of its kind case in India that of yahoo, where the domain name was also considered as a trademark, and it settled the precedent for the upcoming cases in relation to trademark.

Yahoo!, Inc vs. Akash Arora & ors[31].

In the current case, the respondent has registered the domain name of 'yahoo India', which was similar to the domain name of the plaintiff, i.e. 'Yahoo.com', and having a trademark on Yahoo!. Moreover, the trade in which the respondent was indulged was similar to that of the plaintiff. The High Court took the cognizance of the case on the application of the plaintiff and held that using the trade name by the respondents were an infringement of trademark and termed it as "Passing off" of the trademark, as the plaintiff has made image and reputation in the market and the people may get mislead due to it.

Intellectual property is the property counted with the advancement of technology. However, due to disputes related to this, the inventor is derogated from the same enjoyment and takes years and years to solve the same. Moreover, the statutes also do not provide specifically the

[30]Anlkit Rastigi, *Eastern Book Company and Ors. v. D.B. Modak and Anr*., INDIAN CASE LAW (Dec.12, 2020, 01:56 AM), https://indiancaselaws.wordpress.com/2015/02/10/eastern-book-company-and-ors-vs-d-b-modak-and-anr/.

[31] Yahoo!, Inc v Akash Arora & ors, (1999) 78 D.LT. 285 (India).

procedure to be used by the Court in dealing with the issues related to IP laws.

In the *Bajaj Auto Limited case*[32]**,** the Supreme Court has held that the suits related to intellectual property are pending in the tribunals and courts for years and years. The Court is directed to hold day-to-day proceedings for the proceedings related to intellectual property rights and shall be disposed of normally in four months.[33]

The Court observed that disposal of intellectual property requires special attention because if the courts will take years in such an era where technology is changing every day. New inventions are happening. If years will be taken, then at the time of disposal of suit that invention is certain to be obsolete and useless and thereby demotivate the inventors to do further invention.

High Court, in Hoffmann's case, has interpreted the test of obviousness as to existing work. It shall not be important to test that the material so asked IP protection should be published for being obvious.

In the *F. Hoffmann-La Roche case,*[34] a single-judge bench of the Delhi High Court held that "*publicity of the material is not the sole test to determine obviousness, and also recognized the distinction between "obviousness" and "anticipation*". The Court ruled that:

"…*The test of obviousness cannot be that the material or formula was published, but that having regard to the existing state of prior art or the published material, was it possible to a normal but unimaginative person skilled in the art to discern the step on the basis of the general common Knowledge of the art at the priority date. The other deciding factor is whether the differences between the prior art would, without Knowledge of the alleged invention, constitute steps which could have been obvious to the skilled man or whether they required any degree of invention."*[35]

Once again in the Amar Nath Sehgal case, Court has extended the scope of the provision of section 57 of the copyright act and decided that the special right provided under section 57 does not only mean the author's moral rights only. However, it is also about the cultural heritage of the nation.

In the *Amar Nath Sehgal* case, [36] Court held. Section 57 was the basis to protect the moral

[32] Bajaj Auto Limited Vs. TVS Motor Company Limited, (2009) 12 J.T. S.C. 103 (India).
[33] 5 *Important judgments on Intellectual Property Rights cases*, VAKILNO1.COM, (Feb. 12, 2020, 09:56 PM), https://www.vakilno1.com/slider/5-important-judgments-intellectual-property-rights-cases.html#.
[34] F. Hoffmann-La Roche Ltd. & Anr. v Cipla Limited, (2008) 148 D.L.T. 598 (India)
[35] Justice Ravindra Bhat, *Innovation and intellectual property rights law—an overview of the Indian law*, 30 IIMB MANAGEMENT REVIEW, 51, 51-61, (2018).
[36] Amar Nath Sehgal v Union of India, (2005) 30 P.T.C. 253 (India).

rights of the author and the cultural heritage of the nation. The Court observed: "*Knowledge about authorship not only identifies the creator, it also identifies his contribution to national culture. It also makes possible to understand the course of cultural development in a country. Linked to each other, one flowing out from the other, right of integrity ultimately contributes to the overall integrity of the cultural domain of a nation. Language of* Section 57 *does not exclude the right of integrity in relation to cultural heritage. The cultural heritage would include the artist whose creativity and ingenuity is amongst the valuable cultural resources of a nation. Through the telescope of* Section 57 *it is possible to legally protect the cultural heritage of India through the moral rights of the artist.*"[37]

IV. CONCLUSION

Undoubtedly, in the last few years, higher judiciary has played a major role in interpreting the law what it is and making law through various directions issued by it in cases like Bajaj Auto case, etc, to ensure speedier disposal of suits. It has been ahead of the Statutes in most cases & has prompted Amendments therein. Moreover, the judiciary task is not that easy as it has to look at both the aspects as that of inventors, i.e., the owner of Copyright at one hand and that the interest of the general public on the other hand. Because if it is not balanced properly, it will either result in demoralizing the inventor who will in some way or other affect the economy and technological advancement of a country; on the other hand, it may result in the exploitation of the general public if monopoly without restrictions is provided to the investors.

Honourable Justice Sanjay Kishan Kaul, remarked that "*Though there should be laws to protect the hard work and effort of the inventor, we must not forget that the purpose of IP laws is not to create a monopoly or only to benefit a few individuals or corporations, but to benefit the society as a whole by giving them access to new choices, products, inventions and literature etc*."[38]

From the above-said statement of Honourable Justice, it is clear that the task of the judiciary is not as easy as it looks like, but it is very tough and complex. Judiciary has to harmonize both sides as on one side there are the interest of the inventors and investors, and on the other hand, there is society at large, so the judiciary has to counterbalance the rights for development and effective implementation of intellectual property law.

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[37] Justice Ravindra Bhat, *Innovation and intellectual property rights law—an overview of the Indian law*, 30 IIMB MANAGEMENT REVIEW, 51, 51-61, (2018).

[38] Aniket, *The Role of Indian Judiciary with Special Reference to Global IP Regime*, LEGAL SERVICES INDIA (Aug.19, 2020, 06 :16 PM), http://www.legalservicesindia.com/article/797/The-Role-of-Indian-Judiciary-with-Special-Reference-to-Global-IP-Regime.html.