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AN ANALYSIS OF COMMERCIALIZATION AND APPLICABILITY OF CYBER LAW IN IPR THROUGH INTERNET: IN INDIAN PERSPECTIVE

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Abstract:

Intellectual Property Right i. e. IPR is new and developed form of legal rights. Means to say that it provided the legal protection of individual, companies, researchers, and many sectors for whom to move the innovations. There are many rights granted for his specific types of work like Patent, Trademark, Copy right, and others.

Cyber law is the Rules and regulations that does not only protection of rights rather deals with criminal's aspects and any crimes through internet.

The world Intellectual Property organization in 15th agencies is United Nations. WIPO was emerged in 1967. Which result of intellectual doings the scientific and creativity as stated by field of WIPO.

In 21st century are coming that we have IPR is moved from paper to paperless world. The technology advancement are feel any aspects of human beings and many more changes in humans life. Peoples to create and share intangible creativity of human intellect in the virtual world with the help of technological advancement and revolution of digitalization through internet. Novation and Innovation are such a termed as Intellectual Property.

IPR and Cyber law are totally different of each other but there are many similarity and connecting factor between cyber law and IPR.

This research paper is explore the basic understanding of IPR and Cyber law. Besides this many students and researchers will be introduced in Indian legislations and instruments through IPR in new digital era.

Keywords : IPR, IT, Cyber law, Domain name, Cyber squatting, Patent, Copyright, Trademark, Design, Higher linking, Met tags, Spoofing, Caching, Linking, Phishing, Farming, etc.

Introduction: Over the decades, the scope of IPR is expanded its major role in our economy. Intellectual Property Rights of law is related set of {Intangible Assets} including many ideas, knowledge, thinking, and creativity are legally protected by an individuals. Intellectual Property Rights to secure in territory of India. The Copyright, Patent, Trademark, Industrial Design, Geographical Indication and any other parts are defined in India. IPR are the legal protection to given the companies and Human beings for their creative ideas, inventions, discovery and innovations. The owner's exclusive rights against any misuse without his prior information. (1) Cyber law is void in nature but comes to the protections of IPR In such as without the internet Trademark Act, Copyright and Patent Act have not dealt with Infringement. IPR and Cyber law

are standard term which authoritarians of the world wide web i.e. (W WW).On the other hand , the scope of IPR is expanded and Its major role in our economy .(2)

Before 1991, The Copyright Act, 1955 and The Patent Act, 1970 are emerged. IN 1991, Indian Economy was introduced in LPG i.e, Liberalization , Globalization and Privatization . After some times LPG was applicable in whole of India and our Economy is freely moved. In 1994 TRIPS And TRIMS are established. A TRIP is recognized in every trade related measures and TRIMS is mainly established in investment measures in 1999. The Design Act 2000, The Trademark Act,1999,and The Biodiversity Act, 2002 are established. Information Technology Act, 2000 deals with IPR. (3).

The use of computer and Internet is understanding because its useful in modern business, commerce and general society. E- Commerce now a day very important in corporate sectors. The E – Commerce and E- Business are the area of publicity through internet.

As Bill Gates rightly said -The internet is becoming the town square for the global village of tomorrow. We need to grow with the speed of growing internet network.

Information Technology Act,2000 :- This act was enacted in 9th June 2000 , and commenced in 17th October 2000 . The act comprises of 13 chapters and 94 sections. (4) This act covers E-Commerce enables the conclusion of electronic contract. Grant legal recognition to transaction, facilitation, E- Filling of data and information, Allow electronic storage of data, grants recognitions of books of accounts in electronically forms. The Act form scheduled that The Indian Panel Code and Reserve bank of India are lay down to be amendment to be made (5)

The list of intellectual property rights:-

- ❖ The Copyright Act , 1957
- ❖ The Copyright (Amendment) Act 2012
- ❖ The Design Act, 2000
- ❖ The Geographical Indication of goods (Registration and Protection) Act, 1999
- ❖ The Law relating of trade secrets ,
- ❖ The Patent Co-operation treaty ,
- ❖ The Patent Act, 1970,
- ❖ The Patent Rules , 2003
- ❖ The Patent rules (Amendment) Act, 2017
- ❖ The Semiconductor integrated circuits ,2000
- ❖ The Layout Design Act , 2000
- ❖ The Trademark Act, 1999
- ❖ The Utility Models ,
- ❖ The Service Mark
- ❖ The Confidential Information. (6)

The Indian Patent Act (1970):- A Patent is grant for government on guaranty for the limited period sec. 53,(20 years) time in inventions and discovery.

Timelines:-

- The Patent Law , 1856

- The Patent and The Design Act , 1911
- The Patent Act ,1970 and Patent Rules 1972 ,(20/04/1972)
- The Patent (Amendment) Act , 2006 (05/05/2005)

Discovery and Invention: - Discovery are defined to the act of exploring something but Invention is creations or designing in this new products.

Examples:-

Discovery Of:-

- America by Columbus.
- Gravity b Isaac Newton.
- Plant Cell by Robert Hooke.

Invention Of:-

- The Telephone by Graham Bell.
- The Light Bulbs by Thomas Alva Edison.
- Computer by Charles Babbage.

Who can apply for the Patent: - Business Owner, Research Scientist, Professional Employees, M E or PHD Holder, Student. (7)

Procedure of grant of Patent in India:-

- ❖ Formulate the invention ,
- ❖ Patent search and Drafting
- ❖ Fill up the application form A
- ❖ Application Publication
- ❖ Request for Examination
- ❖ First examination report and response from the applicant
- ❖ Examination and Consideration of pre grant opposition
- ❖ Grant of patent sec 43 and post grant of patent sec. 25(8)

Patent (In this case new invention of child) :- An Indian student , Hridayeshwar Singh Bhatti (born o 3rd sept 2002) , The age of 9 , who invented a six player variant of chess with assistance form his father , he earned a patent for his inventions in 2012 , making him the youngest Indian patent holder in India at that time.(9)

The Indian Copyright Law, 1957:- Copyright protects the rights of authors in the form of literacy, musical dramatis, and artistic works and cinematograph films and sound recordings. The Copyright Act enacted in 1957 and commenced from 21 jan 1958 and copyright amendment act 2012. This right are secured in (life + 60 years) of authors .The Copyright sign © and sound recording encircled (P). (10)

Plagiarism: - Plagiarism is the process which are used in finding the errors of Books, Thesis, Research Papers, Synopsis, and many intellect human beings paper. This time many software are used in checked of errors like, Turn tin, Duple checker, Grammarly etc. The control of copyright infringement is very difficult without plagiarisms tools.(11)

Database Protections:-

Protects the database of literary work, are The Indian Copyright Act, sec 2(ff c):- database is group of instructions, words, codes, schemes and other forms.

As per sec. 13 (1) (a):- Protection of database is mainly used for copyright issues i.e. literary, artistic work and dramatic musical. These provided the protections for used the Copyright Act, 1957, and IT Act, 2000. (12)

The Indian Trademark Law, 1999:-

❖ The Trademark (amendment) act, 2010.

❖ Trademark Act 1999 defined sec 2 (z-b) – The mark which are capable of being represented Graphically, are called Trademark sign. .

Example: -Device, Brand, Heading, Label, Ticket, Signature, Word, Letter, Numerals, Shapes of goods, Packaging or Combinations of colors.

The Trademark Rules 2017 in forced on 6 march 2017 with replace of trademark rules 2002. Trademark symbols (TM) and registered symbols ®, Service mark (SM), Trademark duration 10 Years.

Trademark Registered:-

- The Taj Mahal Palace Hotel ,
- The Eiffel tower ,
- The Birds Nest Stadium ,
- The Burj Khalifa ,
- The Sydney Opera Hotel ,
- The Empire State Building ,

All registered under trademark on 19 th June 2017. The first receive the Trademark in India are The Taj Mahal Palace Hotel (13)

Geographical Indication Act, 1999:-

defined under Article 22 (1) :- Indication a region , a locality , reputation , or characteristics of the goods is geographical origin . its registration period is 10 years .

Example :-

- ❖ The Blue Pottery of Jaipur (Rajasthan)
- ❖ The Chanderi Fabric (Madhya Pradesh)
- ❖ The kani Shawl (Jammu Kashmir)
- ❖ The Kullu Shawl (Himachal Pradesh)
- ❖ The Kutch Embroidery (Gujrat)
- ❖ The Madhubani Paintings (Bihar)
- ❖ The Nakshi Kantha (West Bengal)
- ❖ The Mysore Silk (Karnataka)
- ❖ The Baster Dobra (Chhattisgarh)
- ❖ The Salem Fabric (Tamil Nadu) .(14)

The Design Act , 2000 :- The Design Act , 2000 is defined sec. 2 (d) :- Configuration , patterns features of shapes , ornament , or composition of lines and colors are covered this act. The Design duration of 10 years at registration and these expended by 5 years more.(15)

Infringement of Patent through Cyberspace:-

Patent Infringement: - Patent infringement means violations of a patentees rights with respect to some invention . The right of the patent holder to claim the patent are violated to third party

Direct Infringement: - The marketing sale or commercial use of a similar patented items are include in Direct Infringement. There are two types –

Literal: -The Literal Infringement are arises, when the product is falls in the scope of patent claims.

Case Law: -Eastman Kodak Co vs. Polaroid Crop, where the infringement of Patent by EastmanKodak of Pal aroids Instant Camera Technology in the case of literal infringement. Non

Literal Infringement: - It also recognize as doctrine of equivalence. Its device has same result. This infringement is provided fair protection of patent holder.

Indirect Infringement: - One persons is actively induced and other persons are adding assigning to others.

Contributory Infringement: - When the international party to act for the other party making the act for infringement are called contributory infringement.

Willful Infringement:-Someone showing the serious disagreed for the existence of the patent is called willful infringement. (16).

Case Law: -Glenmark vs. Syed Lab Pharmaceuticals, In this case Delhi High court sued for Glen mark Pharmaceuticals for allegedly infringing two patents – IN213062 and 213063 of seemedLab. The granted for the first patent was Novel Intermediates for Linezolid and related compounds. In A novel process for the preparation of Linezolid and related compounds was 213063 patent granted .on January 09, 2015 this case judgmentdeclared, the plaintiff had similar cases in favor of seemed are the judge convinced. He decided that the protection of patents granted will not be less damages .these are very serious and injurious damages. Manufacturing,selling,offering for sale , advertising or directly or indirectly dealing in the production of linezolid manufacturing in a manner from the judge granted an ad interim injunction restraining Glen mark So , the result received in infringement of the plaintiffs registered patent. (17)

Domain name: - Domain name is definedthe IP number, which need to access website. In much the same way,when we wants to call up a friend. We needs to deal the friends number. It is very difficult for one to setup of human's mind a complete number 201.165.223.23 a system involve which name is mapped to concerned number or I P address. IpAddress maximum number limits are 255.

Cybersquatting: - An unauthorized registration and use of internet domain names that are similar to IPR (Trademark, Service Mark,Company Name, or Personal Name) are called cybersquatting. Its used the domain name with the bad faith intent to profit earned of actual IPR owners.

Reverse Domain Name Hijacking: - This is reverse process of cybersquatting. It tries the trademark owner a domain name of securing by false cybersquatting claims through legal protections against the rightful owner of domain name. This process is done by larger corporation and companies.(18)

Various Type of illegal practices in IPR through internet:-

Phishing: - It is illegally processed data and information of authorized person.

Pharming: - It is advance version of Phishing. It is create the same and duplicate website of owner.

Spoofing: - Spoofing are the unauthorized entry of another computer. Accessing the IP address and Pretending the authorized user.

Hyperlinking:-high per linking to illegal sources can be an infringement of patents and copyright . It is digital reference to data that ther user follow guide and clicking the link .sometimes user are used in access of illegal work.

Framing: - Framing is the process of contents of one website while it is framed for other site.

Met tags :-Met tags are no visible effect of web pages . It is already existence of search engines and ascertaining the content of webpages.

Caching: - Caching stored in our data of webpages in your local computer RAM. Cash is server level also know as Proxy Caching an it is volatile in nature.

Linking: - Linking is allowed the user to visited the another location of the internet. It is accessed the same webpages in another places. It is also called Dee linking.(19)

Conclusion and Suggestions:-Cyber law is becoming a central point for IPR Infringement. The growth of technology,copyright,trademark, patent are not limited to usual but have spread to IPR in internet. It has very crucial that people are aware of the illegal usage of their websites and webpages. Intellectual property right is very useful assets (Intangible) of any persons. It should be protected on human, innovative ideas,creativity, knowledge, invention,discovery, and many more rights. On the other hand, very urgent need to strict rule follow in this field. So the crime is related to Intellectual property rights is avoided in future. It should act as an IPR holders important weapons to protect your right in online world. U.S .Anti Cybersquatting Consumer Protection Act 1999 are special legislation for prevention of cybersquatting in u. s.

Various types of law commenced for protecting in IP but it is protected the IT Act, 2000 Government will be enacted the many types of law for protections of IPR. It act are covered information's, cybercrime , free space and IPR laws . So one act are enacted only on IPR issues infringement of Patent,Copyright,misuse of Trademark domain name are similar . Above mentioned issued are tackle to be made a separate laws. Existing law are made in solve to amendments laws. The cyber laws are IPR cannot be compartment and online content are need to be provided much protections.

For smooth facilitation of global trade and e-commerce and various business conducted online the import and export are provided a secure atmosphere to protect IPR. Taking the route of legal redressed of disputes is not only solution. Then It is very much required a part of copyright trademark, patent, geographical indication for special and initiatives taking of their owner social

engineering attacks are generated by people and the answer and solution to these problem would come from people only.

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