

LEGALFOXES LAW TIMES

A CRITICAL STUDY ON THE PROTECTION OF ARTIFICIAL INTELLIGENCE UNDER PATENT LAW

By Sanjula Sachdeva

- 1. INTRODUCTION OF INTELLECTUAL PROPERTY RIGHTS-** The main intent of intellectual property rights is the creative work of the human intellect. Invisible or the intangible right to a product of a man's brain is a right to intellectual property rights. Intellectual property rights is also known as knowledge goods.

The main incentive of the protection of IPR is promoting the prior progress of science and technology, arts, literature and other relevant creative works as well as rewarding the creativity.

The term "intellectual property" has been referred as the use of human kind for the purpose of imagination and motivation. For the intention of generating or developing anything original after the significant efforts in terms of manpower, time, resources, ability, capital, or whatever necessary. An intangible property of the individual who put in effort to make it happen is the supreme concept that led to the invention.

Intellectual property is usually divided into two branches- copyright and industrial property.

It constitutes that the development of the society is dependent on IPR and its framework. Lack of knowledge relating to IPR may lead to disappearance of the innovation in society.

- 2. MEANING AND DEFINITION-** The term 'property' can be defined as an object over which right of ownership extends. Property also includes objects over which one has the prior exclusive right of control as well as disposal.

Another definition relating to property defined as *sufficiently comprehensive to include every species of estate, real and personal, and everything which one person can own and transfer to another. It extends to every species of right and interest capable of being enjoyed as such upon which it is practicable to place a money value.*"

In legal view, property is defined under different legal acts such as:

- Benami Transaction (Prohibition) Act, 1988: According to Sec. 2(c) property can be defined as *“property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.”*
- Sale of Goods Act, 1930: According to Sec 2(11) property has been defined as *“the general property in goods, and not merely a special property.”*

Also, the Hon’ble Supreme Court of India has defined the term ‘property’ in the leading case of R.C. Cooper v. Union of India which states that the *Property can be defined as the maximum right a man can have to anything, the right being the one which has lands or tenements, or the goods which cannot be dependent on other’s courtesy. It also includes ownerships, estates and interests in the corporeal things and also the rights such as trademarks, copyrights, patents as well as right in personam capable of transfer. It signifies a beneficial right having a money value, with reference to transfer or succession, and of their capacity of being injured.*

Property may either be corporeal or incorporeal. Corporeal property may also be known as tangible property which relates to material things.

Incorporeal property can also be termed as intangible things which mainly relates to the immaterial things which has been recognized as the subject-matter of rights recognized by law.



3. TYPES OF IPR- Indian law has described the following areas of IPR:

- ❖ **PATENT:** Patent has been defined as an exclusive right granted to a person for the purpose of exploiting his invention for a prior limited period of time by the patent office. A patent has to be granted for atleast period of 20 years in India. During this granted period, the inventor has been entitled for the purpose of excluding anyone else from exploiting his invention. Patentee is a person to whom patent is granted according to Indian law.

Patent is an aspect of India’s ministry of commerce and Industry’s controller general of patents, designs and trademarks and the administrative authority of patents is the patent registrar.

The first to file rule has been defined that if two people apply for a patent on the same invention and it has been governed under Indian patent law.

- ❖ **COPYRIGHT:** The legal right of the owner of intellectual property is known as copyright. It allows to protect their authorization of the work by the original creator. Copyright law protects representation of ideas, rather than protecting innovations. The works of literature, dramatic works, recorded music, creative works, cinematographs films, and sound recordings for which copyright protection has been granted under section 13 of the Copyright Act, 1957.

- ❖ **TRADEMARK:** Trademark has been defined as a sign which distinguishes one company's goods or services of other companies. Any device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colours or any combination thereof are mainly included in trademark. According to section 2(1)(zb) of the Trademarks Act, 1999 states that a trademark should be capable of being represented graphically and it should also be capable of distinguishing the goods or services of one person from those of others.
The main purpose of trademark is identification of goods, identification of source, indication about quality of goods and advertising.

- ❖ **GEOGRAPHICAL INDICATION:** A symbol which utilized for goods with a prior geographical origin along with attributes or the reputation attributable to that context is termed as geographical indication. The particular goods originate from a country, region or locality and has some special characteristics, qualities or reputation which is attributable to its place of origin are being indicated by the geographical indication. The connection between goods and place becomes so prominent that any reference to the place reminds goods being produced there and vice versa.

- ❖ **TRADE SECRET:** Any sensitive information that can be sold or registered in respect of intellectual property rights are trade secret. A confidential information of any business or enterprise is also known to be a trade secret.
Designs, drawings, architectural plans, blueprints and maps, data compilations, viz, list of customers, algorithms, and instructional methods, manufacturing or repair processes, document tracking, information about research and development activities, etc are mainly included in trade secret.
Information shall be trade-related as it is secret and should only be known to some limited group of people and some fair measures has to be taken to keep the information secret by the rightful holder.

- ❖ **DESIGN:** Design has been defined as the feature of shape, configuration, pattern, ornament or composition of lines or colours applied to any article whether in two or three dimensional or in both forms, by any industrial process or means, whether manual mechanical or chemical, separate or combined which is in the finished article appeal to and are judged solely by the eye.

4. **CONSTITUTIONAL IMPERATIVES OF IPR-** Right to property has been considered as a fundamental right under Indian Constitution. Provisions of Constitution of India which deals with property- Art 19(1)(f) which deals with right to acquire, hold and dispose of property and Art 31 which provides for compulsory acquisition of property. Both provisions of Indian Constitution has been repealed by 44th amendment if constitution of 1978 and right to property has been declared as a legal right under Article 300A which states that “No person shall be deprived of his property save by authority of law”. Article 300A is applicable to tangible as well as intangible property.

In *Entertainment Network v. Super Cassette Industries, 2008*, the Supreme Court observed that an owner of a copyright has a right akin to the right of property. The primary method that an owner of copyright employs to exploit the copyright and to make this work available to the public is through the vehicle or voluntary licenses in terms of section 30 of the Copyright Act, 1957.

5. **PATENT LAW-** The Patents Act 1970 and Patents Rules 1972 were enacted in the place of Indian Patent and Design Act 1911 on 20th April 1972. The Patents Act was mainly based on the suggestion of Justice N. Rajagopala Ayyangar Committee. One suggestion was that inventions concerning medications, medicinal products, food and chemicals could only be granted process patents.

India signed numerous international agreements with the motive of enhancing its patent law and of establishing a partnership with western world. The membership of Trade Related Intellectual Property Rights (TRIPS) scheme was one of the significant step in reaching this goal. India also signed on 7 December 1998 and on 17 December 2001 the Paris Convention and the Treaty on Patent Cooperation signed the Budapest Treaty.

Patent law provisions of the 1970 Patent Act as amended by the Patent (amendment) Act, 2005 and Rules of Patent Law of 2006 regulate the current Indian status. This is a patent law place.

The Head Patent Office in Kolkata is based in Delhi, Mumbai and Chennai, its subsidiaries. In the Indian Patent Scheme, the General patent, Design, Trademark and Geographical Indications controller is regulated. Both offices are authorized to deal with any part of the Patent Act and have their own territorial authority in order to receive patent application.

- 6. MEANING AND UNDERSTANDING OF ARTIFICIAL INTELLIGENCE-** *“The ability to learn and understand, and to apply this knowledge to achieve a goal or complete a task”* is termed as Artificial Intelligence (AI). Humans and animals learn to collect and use their brain to interpret knowledge from their environment and experience by using their 5 senses. For the purpose of analyzing the data that they collect, AI system only use a training and optimization model. This model has been revised and modified as new information becomes available.
- 7. SIGNIFICANCE OF AI-** Artificial Intelligence is the future of the nation. The human minds are becoming more dependent on them each day as technology is developing day by day. AI is the one of the developing technology that will have an impact on the daily routine of the individual. Therefore, understanding the risks and factors of AI being recognized in law, will showcase the advancement of law needed at a particular stage to acknowledge it.
- 8. COMMITTEES REPORT ON AI-**
- ❖ **Niti Aayog Report:** Valuable recommendations on AI are being provided by the Niti Aayog Report, which are as follows-
 - Create and propose an appealing IP regime for AI establishing a task force to investigate appropriate amendments to IP acts, including Department of Corporate Affairs and Industrial policy and Promotion.
 - Establishing a compliant data protection data network in order to safeguard human and privacy rights and establish sectoral standards on privacy, security and ethics.
 - ❖ **MeitY Committee:** For developing a policy framework on AI, this committee constitutes four committees. The recommendations of committees are as follows:
 - Development of an Open National Resource Platform for Artificial Intelligence, to be a key centre for information convergence and diffusion in AI and ML.
 - Exchange of best practices, use of government procurement contracts to focus on best practices concerning defence, privacy and any other.
 - A commission of stakeholders to examine the aspects in a systematic way. Examination of current legislation to understand the changes necessary to implement AI applications.
 - In order to be flexible in adaptation to developed technologies, the AI system should identify broad concepts and organizations should be able to evolve their internal systems in accordance with the principles set out.
 - The AI period shall be addressed by standards. A new standards committee for AI was formed by the Bureau of Indian standards.

9. LEGAL PROVISIONS UNDER COPYRIGHT LAW PROVIDING PROTECTION

TO AI- The moral right to shield human intelligence and intellect's original inventions is being done by copyright. Copyright will secure such work when once the creation is the expression of creator, and not just an idea. The exclusive owner's right to do, or to authorize the performance of, any act (such as reproducing work, publishing the work, adapting and translating, etc) with regard to the work in accordance with Sec.14 of Copyright Act, 1957 has been characterized as Copyright.

It has been stated that where a job is produced in accordance with the contract and at the instigation of the employer, the owner of the work shall be the employer in such circumstances as stated in Sec.17 of the act.

The court in the case of *Rupendra Kashyap v. Jivan Publishing House Pvt. Ltd.* AIR (1994), held that "*in the context of question papers for an examination, that the author of the examination paper is a person who has compiled the questions. The person who does the compiling is a natural person, a human being and not an artificial person. Central Board of Secondary Education is not a natural person and it would be entitled to claim copyright in the examination paper only if it establishes and proves that it has engaged persons specifically for purposes of preparation of compilation, known as question papers, with a contract that copyright therein will vest in Central Board of Secondary Education.*" The Copyright Office's Manual of Practice and Procedure has settled this dispute which states that for copyright purposes, only natural person information as author of the work should be provided.

For the purpose of granting AI rights to create works to the current Indian copyright law and is not comprehensive in nature. The need to protect copyright from human intrusion has been repeatedly insisted by the India, but it is likely to be questionable whether AI will be accepted as a separate body.

10. DATA PROTECTION LAWS IN INDIA-

The collection, store and processing of personal information privacy legislation, rules and methods designed to minimize intrusion into your private life has been referred as data protection. The information or data relating to a person who is able, whether has been acquired by government, a private organization, or any agency, to that information or any other information has been referred as personal data.

As per other essential rights existent under Art.19(1)(a) of Indian Constitution, the courts have interpreted the right to privacy viz, freedom of speech and expression, right to life and personal liberty with accordance to Art.21 of Indian Constitution. Right to privacy as a fundamental right, subject to certain restrictions in the landmark case of *Justice K S Puttaswamy (Retd.) & Anr. v. Union of India and Ors.* has been affirmed by the Supreme Court Constitutional Bench.

The IT Act 2000 and the Indian Contract Act 1872 (ICA) are the important legislation concerning data protection in India. The IT Act 2000 covers concerns relating to (civil) compensation payment and (criminal) punishment.

An organization, that possesses, transfers or processes any sensitive personal data or information, and that is negligent to the implementation of and maintenance of reasonable practices if security that cause wrongful loss or wrongful gain to any person, may then be liable to pay the person affected for damages in pursuant to Sec.43A of IT Act, 2000.

Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data and Information) Rules, 2011 have been notified by the Government. The protection of 'sensitive personal data or personal data' which deals with IT Rules and comprises with personal data consisting of:

- Passwords;
- Conditions of physical, physiological and mental health;
- Sexual guidance;
- Medical records and history;
- Information on biometrics.

While dealing with 'sensitivity data or personal information', by the body corporate or any person who collects, obtains, owns, stored, processes or handles information on behalf of the body corporate which is being followed by these guidelines which defines appropriate safeguards and procedures. The entity may be held responsible for compensating the person who was impacted by it, if entity or any other person may act in the name of entity in the event of infringement or infringement.

The disclosure of information is also punishable in the act of Information Technology, 2000 with a term of three years in jail and fine extending to Rs. 5,00,000 intentionally or knowingly, without the consent of the person concerned and in violation of the lawful contact in accordance with Sec.72A of IT Act, 2000.