

Business Ethics
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Lecture – 61
TRIPS in India

In the last section we have discussed about the trade related intellectual property rights that have been generally described. Now we will discuss the trade related intellectual property rights in the Indian scenario. In the Indian scenario the importance of intellectual property right is well established at all levels whether it is statutory, administrative or judicial. India ratified the agreement establishing the World Trade Organization. This agreement inter alia contents and agreement on trade related aspects of intellectual property rights, which came into force from January first, 1995.

It lists out minimum standards for protection and intellectual property rights in member countries which are required to promote the effective and adequate protection of the intellectual property rights with a view to reducing the distortions and impediments in international trade. The obligations under the TRIPs agreement relate to provision of minimum standard of protection within a member countries legal systems and practices. So, it provides the norms and standards with respect to following areas of intellectual property like patents, trademarks, copy rights, geographical, indications industrial designs.

So, with we will discuss each of these in details, with patent it is the basic obligation in the area is that the invention in all branches of technology whether products or processes shall be patentable, if they meet the three tax of being new involving and inventing step and being capable of industrial application. In addition to the general security exemption which applied to the entire TRIPs agreement. Specific exclusion are permissible from the scope of patentability of inventions, the prevention of whose commercial exploitation is necessary to protect public order to morality human, animal, plant life or health or to avoid serious prejudice to the environment. Further members may also exclude from patentability of diagnostic, therapeutic and surgical methods of the treatment of human and animals and plants and animal and other than micro organism and essentially biological processes for the production of plants and animals.

The TRIPs agreement provides for a minimum term of protection of twenty years counted from the date of filing, India has already implemented its obligation under article 70.8 and 70.9 of TRIP agreement. So, the Act related to patents are; the Patents Act, 1970, the Patents Amendment Act, 1999, the Patents Amendment Act, 2002 and the Patents Amendment Act, 2005. The rules pertaining to patents are the Patent Rules, 2003, the Patents Amendment Rules, 2005 and the Patents Amendment Rules, 2006.

So, trademarks have been defined as any science or any combination of science capable of distinguishing the goods or services of one undertaking from those of another undertaking. Such distinguishing marks continue or constitute protectable subjects matter under the provisions of the TRIPs agreement. The agreement provides initial registration and each renewal of registration shall be for a term of not less than 7 years and the registrations shall be renewable indefinitely. Compulsory licensing of trademarks is not permitted, keeping in view the changes in the trade and commercial practices globalization of trade and the need for simplification and harmonization with the trade marks registration system etcetera; a comprehensive review of the Trade and Merchandise Marks Act, 1958 was made and a bill to replace the 1958 Act has since been passed by the parliament and notified in the gazette on 30, 12, 1999.

This Act not only makes trademarks law the TRIPs compatibility, but also harmonizes it with international systems and practices. The work is under way to bring this law into force, the Trademarks Act, 1999 new elements in the Trademarks Act, 1999, copy rights; India's copyrights law laid down in the Indian Copyright Act, 1957 as amended by the Copyright Amendment Act, 1999 fully reflects the born convention and copyrights to which India is a party. Additionally India is a party to the Geneva Convention for the protection of rights of procedures of phonograms and to the universal copy right convention. India also is an active member of the world intellectual property organization Geneva and UNESCO.

The copy right law has been amended periodically to keep pace with the changing requirements. The recent amendment to the copyrights law which came to force in May, 1995 was ushered in comprehensive changes and brought the copyright law in line with the developments in satellite, broadcasting, computer software, digital technology. The amended law has made provisions for the first time to protect for the performers rights as envisaged in the Rome Convention. Several measures have been adopted to strengthen

and stream line the enforcement of copy rights. These include the setting up of a copy right enforcement advisory council, trading programs for the enforcement officers and setting up special policy cells to deal with cases related to infringement of copy rights.

Rules and Acts related to copy rights are; the Copyright Amended Act, 2012, Copyrights Act, 1957, Copyright rules 1958, Copyright Handbook, International Copyright order, Copyright Privacy, Amendments in the Act, geographical indications. The agreement contains a general obligation that parties shall provide the legal means for interested parties to prevent the use of any means in the destination designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner, which misleads the public as to the geographical origin of the goods.

There is no obligation under the agreement to protect geographical indications which are not protected in the country of origin or which they have failed to introduce in that country. A new law for the protection of geographical indications like the Geographical Indications of Goods Act as also been passed in the parliament and notified on 30, 12, 99 and the rules made under notified on Eighth March, 2002. Industrial designs refers to the creative activity which result in the ornamental or formal appearance of a product and design right refers to novel or original design that is accorded to the proprietor of a valid pre registered design.

Industrial designs or an element of intellectual property, under the TRIPs agreement minimum standards of protection of industrial designs have been provided for. As a developing country, India has already amended its national legislation to provide for this, minimal standards. The essential purpose of the design law is to promote and protect the design element of industrial production. It is also intended to promote innovative activity in the field of industries, the existing legislation on industrial designs in India is contained in the New Designs Act, 2000 and the Act will serve its purpose well in the rapid changes of technology and international developments.

India has also achieved a mature status in the field of industrial designs and in view of globalization. The present legislation is aligned with the changed technical and commercial scenario and made to confirm to international trends in design administration. These replacement Act is also aimed to enact a more detailed

classification of design to confirm to the international system and to take care of the proliferation of design related activities from the various fields. The obligations envisaged in respect of industrial designs are that independently created designs that are new or original shall be protected. Individual governments have been given the option to exclude from protection designs dictated by technical or functional considerations as against aesthetic consideration, which constitutes the coverage of industrial designs.

The right approving to the right holder is the right to prevent third parties not having its consent from making selling of inputting articles, being or embodying a design which is a copy or substantially a copy of the protected design mean such acts as are the taken for commercial purposes. The duration of the protection is not less than 10 years or more. The details about this intellectual property rights can be obtained like the discussion that was going forward can be obtained from the site of India in business, ministry of external affairs, government of India, economic diplomacy division. So, when we are discussing the TRIPs with intellectual property law in India, so the legislations that have been modified to suite the purpose are like as we already told the, Trade and Merchandise Marks Act, 1958 has been replaced by the Trademarks Act, 1999.

The Copyright Act, 1957 has been amended to protect computer programs as literally work, the Patent Act, 1970 has been amended by the Amendments Act of 1999, 2002 and 2005, The Designs Act of 1911 has been completely replaced by the Designs Act of 2000. The following laws have been enacted to protect newly recognized species of intellectual property in India like, the geographical indications of the goods, Registration and Protection Act, 1999, the Semiconductor Integrated Circuits Layout Design Act, 2000, the Protection of Plants and Varieties and Farmers Right Act, 2001 and the Biological Diversity Act in 2002.

So, if we are going for the details of the various sections, what we find like for the trade marks the following categories of marks are also recognized are under the trademarks like certification marks, collective marks and like Indian trade mark registry has began to recognize also unconventional trademarks and has extended trade mark protection to a sound mark.

So, like on August 18, 2008 the first sound mark was granted to the Sunnyvale, California based internet from Yahoo, Yahoos three note, Yahoo yodel by the Delhi branch of the trade mark registry.

It was registered in classes 35, 38 and 42 for a series of goods including email, advertising and business services and managing websites. So, under the trade mark Act, the mark is defined to include a device, brand, heading, label, ticket, name, signature, word, letter, numeral shape of goods, packaging or combination of colors or any combination thereof. So, this interpretation of trade mark opens the avenues for getting unconventional trademarks also to be sound marks to like sound marks to the recorded for the graphical representations also. So, there are like scope for graphical representations as representations of trade marks.

So, as a part of this continued reading, for this trade mark, and for other things, regarding the patent copy rights and what are the processes of registration, how you go for like trade mark registration. And then how you go for, how can the registration processes be expedited, what are the grounds for the cancelation or revocation, what are the terms for the registration, so how do you get the assignment of the trademarks. Or what are the infringement of trademarks. So, recognition of foreign well known marks and (Refer Time: 20:11), what are reputation. So, these types of things and for the detailed discussions also on like what are, what could be like Indians, what is the Indian perspective on dealing with the domain names? Then how do they deal with? What are the Indian scenario for dealing with the copy rights? What are the rights that the copy rights provide? Is it compulsory to have a copy right registration? Then what is the term of a copy right, first ownership of copyright and maybe work for hire?

Special monetary rights in under taking works in cinematograph, film, sound recordings then may be assignment of copy rights, rights simulated to copy rights, the performers right, moral rights, broadcasting production right, infringement of a copyright, importation of infringing copies, rights conferred, infringement defenses, copyright protection of softwares and registration of copyright in the offences, copy right societies, statutory licenses for copyrighted pieces of work, then detailed discussions of patents. What are the patent Acts? Which inventions are patentable and which are not? So, what is the novelty inventions that are not inventions? Then, may be computer programs,

business method patents, through pharma, and agrochemical patents, research judicial decisions related to patents in India.

Different committee reports on this who can be the applicant, what is the process of registration of a patent? Then oppositions, proceedings what is the term of a patent? Can the patent be surrendered? What are the secrecy provisions? How can the patent be cancelled? So, these type of discussions and then industrial designs and who can, what is the meaning of a design within the scope of a design Act? Then what are the piracy issues in the design, geographical indication of goods or rights? What are the rights conferred by the registration? What is the registration process? What is the duration and renewal procedure for registration? What will lead to its infringement, semi conductor integrated circuits layout design? And what is the term again for registration infringement and protection of plant and varieties of farmers right?

So, what are the different varieties? How it can be protected? What are the terms of protection? So, registration of plant varieties is possible in India now? So, the biological diversity Acts, so confidential information and trade secrets, how it gets protected? And it is in the hands of employees and the internal processes non disclosure agreements and exit interview. So, these type of things and the international conventions to which India is a signatory. So, special tribunals all the details of these type discussions you will get in the document that we have attached as a part of the module of this discussion, which is by Nithesh Desai associates, the legal and tax consultant worldwide. So, it is a detailed discussion of the intellectual property law in India, legal regulatory and tax.

So, this will give you a detailed idea of the different like regulations, what are there? How it can be accessed? And how you can see the details process of it? We have also attached a document with this the trade related aspects of intellectual property rights from the center for WTO studies by Indian Institute of Foreign Trade. So, where you find in very like in a question answer format the discussions about like, the introduction to the trade related aspects of intellectual property rights and questions like why was TRIPs included in WTO? What are the intellectual proper rights? And how do they grant protection to the owner of an IPR? And what are the IPR that are covered under TRIPs? Like we discussed about copyright, then geographical indications, trademarks, industrial designs patents layout designs and disclosed information including trade secrets. So, links between TRIPs, WTO and WIPO and also like questions, which are about the

India's role in it. So, India's obligations under the TRIPs like, what are the impact of TRIPs on the relevant Indian legislations and with reference to the different Acts which were there.

So, what are the different amendments taken and how it is helped? So, what are the criteria for the grant of a patent? And what is the any special or unique criteria provision patents in the Indian law, if some exceptions are there? So, all these type of detailed discussion in the question answer format for frequently asked types of questions regarding patents, trademarks, copyright and all these discussions are there in, with which is a very handy note for knowing the India's, how it is India's effort to protect the trade related intellectual property rights. So, these documents which will be attached to the modules will help you to gain further knowledge on intellectual property rights and these are legal steps taken and amendments in the Act.

However, at the end we should understand like laws are there definitely India has taken a very good effort in framing laws, regulations and modifying it to make it more relevant to the current situations and in so that number of things can be given coverage under this intellectual property rights. But may be at the all these when you are speaking of rights, it speaks of a corresponding duty also, of the persons connected to it to respect that in corresponding virtue of the, what to understand like we have a duty to respect the right that the other person has.

So, it is a, the moral implication in this thing is that, the person has to understand that the other person has a particular right to respect it and to do the duty in the sense to not to violate the right and to do recognize the dignity that the particular man has and right that the person may be possessing and complaint corresponding duty the other person has to respect those rights and giving the person the due, the that is due to that person which is both physical and may be spiritual in nature. And then it is the raise the social contract also because every human being or every business is functioning in a web of relationship. So, there is a social contract to respect the social contract and to raise the social contract.

So, that the right to privacy, the right to property and the accessibility of the information and the, with the individual is also respected and. So, we must understand like the inter law information technology at the end of the day should help us to fulfill the goals of

people enjoying certain rights and other people having their corresponding duty to respect these rights and it is not it should not be working as an weapon to diminish the right of a person to either for a property or for privacy or to do with the dignity of the or to like it should not be aimed towards to bringing down the dignity of the human being. So, it has we have to understand like the IT has an immense power which, if used properly in the positive sense may lead to total development, but if it used in a negative sense it may lead to destruction.

The protection laws are there well framed to give coverage to the protection of these rights as we have seen from the detailed discussion of the intellectual property rights and the different ways in which it has been amended and try to give coverage to the different rights that are, that the creators of these intellectual properties should be enjoyed, but at the end of the day of course, it is the part of responsibility of the users also to be aware of their rights to use it in the proper way, know about information, the importance of information security, take proper steps in checking or cross checking before sharing data with others.

So, that you are not like handing over your data, your information to some party who is not the suitable party for using it for and may use it for some unauthorized purposes. So, it demands a lot of self responsibility of the user also to protect his or her right to see that it is not misused by the other unintended parties, unauthorized parties because we have allowed them to misuse it by not within the, may be when you talk of like I agree to this certain things and you do not read the instructions properly, you hurriedly scroll through the instructions and then hurriedly tick for the I agree part because may be you are having access to some free downloads softwares, so these type of things.

So, maybe you are compromising for the sake of like the free download things that you are getting, you are yourself by ticking I agree without yourself reading the details of it and hurriedly going for that option. May be you are compromising you are doing a trade of between the data that you are sharing about yourself to some party, which is not very well known or unauthorized party, who can make unauthorized use of the data that you are sharing, may be in this case voluntarily with that party. So, it requires a lot of awareness and self regulation and power of understanding like where to opt for and where not to opt for.

So, these becomes difficult again truly in cases of vulnerable users, like may be children and teenagers who may or may not be knowing the risks of using these things or maybe for the aged people, for the uneducated people also who may not have the full understanding of what may have happen with their data. So, there lies the challenge of spreading this awareness about, what may happen with your data if it gets misused or if it is not used properly.

So, data security and information security is one of the major challenges where and also definitely the intellectual property rights is a specific challenge for the business organizations, but here when you talking of the data security aspect of it for the individuals, from the general society aspect, from the consumers prospective, from the suppliers prospective I think every of the stakeholders have to come together to understand their part of the responsibility. And the spread the awareness take measures so that the risk with take due diligence, due care in the processes, apply the prudence in the processes and make people aware of these things. So, that the risks related to data security or like data theft can be minimized and it can be used for positive purposes, which leads to the development of the individual, the organization and the society at large.

So, everyone has to take up their own part of responsibility in seem like that information which has a potential for generating immense positive effects in terms not only in terms of wealth, in adding values to their products and services, in adding value to yourself also is not misused and used in the proper way for proper development.

Thank you.