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THE CHALLENGING RELATIONSHIP BETWEEN CONTEMPORARY ART AND INTELLECTUAL PROPERTY

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ABSTRACT

“Every rights defines law” intellectual property was created or formed has enacted of helping and protecting the human and the property when an individual defines or explains the definition of intellectual property has to include

- a. Patent
- b. Copyright
- c. Trademark
- d. Design

Which helps to protect the actual fair and rights of an individual which it can be service or goods all of these Ips are applied and rules are formulated that need to be followed which includes Acts like;

- a. Intellectual property right act
- b. Copy right act
- c. Trade mark act
- d. Patent act
- e. Design act

Which become one of the most key on intellectual right, each country has its own rights that guide a persona to claim and protect his rights. While searching for venture, without having the important IP insurance there are basically too many gamble factors included and financial backers could pull out from the open door on this premise alone.

Contemporary Art- the work of art which has more advanced technology and created with more advanced method that attract most of the people globally, in today world is known as a modern art which carries different aspect of an artist that presented his draft of work in an art. Additionally, there are several major reasons to why contemporary art is important to society, for instance it is a mean to express oneself as it is way to provide social and cultural commentary.”

Notwithstanding, with appropriate IP insurance set up, it offers you and your likely financial backers, security and more open doors in that you will actually want to safeguard your item against encroachment and shield your elite right to utilize, make, sell or import

Keywords: intellectual property law, intellectual property rights, types of intellectual property, challenges faced into contemporary arts and intellectual property

1. INTRODUCTION

Intellectual property defined as

According to oxford dictionary” a person possessed a highly developed intellect”³

According to phrase change organizations “are the rights given to humans over the creations in their minds. They commonly deliver the writer an extraordinary proper over using his/her introduction for a positive length of time”⁴ According to author Sylvia Engdahl” out of enterprise and no extra innovative works might be issued even supposing the writer, artist, and filmmakers post their own work on the internet, in most not enough people would be aware of them authors to be more recognitions”

According to WIPO “refers to creations of the mind, such as inventions literary and artistic works; designs and symbols, names and images used in commerce.⁵ The different types of IP insurance are the hindrances encompassing the business which keeps contenders from just applying a reorder approach. The more obstructions, the harder it is for contenders to duplicate and it constrains them to improve and think of their own character.

For instance, licenses, copyright and emblem names, which empower people you bought acknowledgment or financial gain from what they concoct or make. By locating a few sort of concord among the pursuits of pioneers and the extra sizable public interest, the IP framework plans to encourage a climate wherein innovativeness and development can thrive.

The World Intellectual Property Organization was inceptioned in 1967 at Stockholm to safeguard the IPR all through the world later it becomes one of the office of United Nation in 1974. WIPO outline functions as well as direct different strategies concerned to IPR across the globe. The financial, social and manageable social advancement with conservation of bio diversities, conventional information through a balance and viable global IP framework is fundamental objective of WIPO. Other than this, it is mindful to orchestrate contrasts among different nations The WIPO Program in the year 1998-99 spending plan, were started to address the developing worries connected with the Intellectual Property Rights, of the native information holders. The Intellectual Property led to obligations, explicitly for the proprietor of the IP that are sure capacities to be

³ The oxford dictionary is found in <https://languages.oup.com/google-dictionary-en/> [last seen in 18th feb 2022]

⁴ The world organization definition is found in world tradeblog www.wto.org.com [publish on 2022]

⁵ Defined under wipo found in wipo.int/ip/en

performed by them, corresponding to their work or items. The different regulations that go under the ambit of Intellectual property umbrella didn't arise or develop together and they are as a reality, very disparate in numerous viewpoints the foundation of WTO because of organization of worldwide structure of exchange calls for harmonization of a few parts of Indian Law connecting with Intellectual Property Rights. The TRIPS understanding set least principles for assurance for IPR privileges and furthermore put down a point in time outline inside which nations were expected to make changes in their regulations to consent to the necessary level of insurance

1. BACK GROUND

Introduction of intellectual property right was due to existence of property which were own individually were by the rights were supposed to be protected under the law of the constitution

The intellectual property rights has been divided into four types that explains the ownership of commercial value and the rights provided under the rules and regulations of the given Act

It may seem like an advanced world creation, but yet it has really been around since the improvement of civilization. Many sources pin the beginnings of Intellectual Property freedoms to the year 1421 when the world's first present day patent was granted to an Italian designer. Nonetheless, as per Former Lord Justice of Appeal Robin Jacob, the historical backdrop of Intellectual Property can be followed back to as soon as 600 BCE.

“British law become specified in 1623. At that point, all significant businesses were constrained by societies. Every organization held impressive power, with the public authority investing them with the capacity to direct what items and unrefined components could be imported as well as how those things would be created and sold.”⁶ Besides, the societies were liable for carrying all new advancements to the commercial center, basically giving them possession and command over innovations regardless of whether they didn't have anything to do with their creation

Ancient period of intellectual property

In 1883, the Paris Convention appeared. Peacefully accord through which creators could safeguard their advancements regardless of whether they were being utilized in different nations. Authors met up in 1886 for the Berne Convention which prompted insurance on a worldwide level for all types of composed articulation as well as tunes, drawings, shows, models, canvases and the sky is the limit from there.

Brand names started to acquire more extensive assurance in 1891 with the Madrid Agreement while the workplaces made by the Paris and Berne Conventions in the long run joined to turn into the United International Bureaux for the Protection of Intellectual Property, the antecedent of the present World Intellectual Property Organization, which is an office of the United Nations.

The following are the focus of ancient period in intellectual property

- a. To safeguard their advantages regardless the circumstances in any other nation this was discussed during the period of Paris convention
- b. To promote insurance on worldwide level in all aspect of economic factor it was agreed in Berne convention
- c. Promoted the long enjoyment that was created on the previous convention and tried to create world intellectual property organizations
- d. Both period aimed at creating a better environment of ownership and free workplace all over the world which some of the aspect that they created didn't obtain the results which they were expecting

⁶ Author by Abou Naja blog name; history and evolution of intellectual property last update 21st november 2021

The change of Intellectual Property from Divine provision to significant human ability took convoluted diversions and pit stops. In any case, the historical backdrop of Intellectual Property uncovers an engraving of how we advanced as a general public. It tells us of our past qualities, of our aggregate idea, and of our wonderful ability to find some kind of harmony among independence, society, and otherworldliness. Also we do change. As we separate from misled convictions we acquired from our old world, our development speeds up on all fronts. Current ways of thinking empower us to see past the boundaries and past shadings. The development is to bring down the extraordinary dividers isolating us as a general public

Modern time of Intellectual property

The Intellectual Property industry likewise plans to connect the holes between areas of society. The World Intellectual Property Day in 2018 tended to the uniqueness among people in the field. This prompted world associations combining strengthening endeavors for ladies in the field of advancement and improvement

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2. INTELLECTUAL PROPERTY LAW

It was created in order to protect the rights of the owner of his creativity and have the benefit of his original content that no one would have used for their benefit or copy another with regulations to secure and uphold privileges of the makers and proprietors of creations, composing, music, plans and different works, known as the "protected innovation." There are a few areas of licensed innovation including copyright, brand names, licenses, and proprietary advantages

The worldwide protected innovation regulation system was tested as well. The most ridiculously obvious problem related to focusing on admittance to prescriptions over protected innovation shields particularly for the creating economies in such strange times. In compatibility of the equivalent, a major occasion in the field in the past year was the proposition to postpone specific arrangements of the Trade Related Parts of Intellectual Property Rights (TRIPS) understanding by India and South Africa.

It has required numerous months to collect even restricted help from other created nations deferring the proper text-based arrangements at the TRIPS Council as of not long ago. Loosening up IP and lawful obstructions is irreplaceable for simpler exchange of innovation, fast assembling, controlling over requesting of dosages, lifting send out limitations and at last

“The Indian Journal of Intellectual Property Law explained their first article by Professor Irene Calboli, talking about how GIs are significant instruments conveying financial benefits for creating top notch items and advancing nearby exchange.⁸

In India intellectual property law; the twenty first century saw the rise of “Capital” as a key abundance driver of worldwide exchange between nations, on account of fast globalization and advancement of economies the world over.

⁷ This was written by NALSAR university of Hyderabad university journal; India journal intellectual property law[volume 11 2020]

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Protected innovation freedoms have turned into an indispensable component of India's business clique, regardless of whether as far as new sculptures or legal professions. India's assent of the WTO (World Trade Organization) understanding has made ready for its consistence with TRIPS (Trade Related Aspects of Intellectual Property Rights). This article investigates the licensed innovation regulations in India, with explicit accentuation on the alterations delivered by TRIPS.

In Africa intellectual property law; the courts in individual African nations conveyed a progression of significant decisions in the IP field. There were additionally critical official changes in IP regulations in certain pieces of the African mainland. This commitment gives a gather together of the main court choices and official changes gave in the period 1 January-31 December 2020.

The investigation is made according to various IP privileges (IPRs), beginning with pertinent choices of courts on the African landmass prior to getting to official changes and advancements across Africa. Where there's few cases that were discussed in different countries in Africa that lead to protection of property rights in all economic countries as many European country target is Africa market in term of business, investment and trade

Europe intellectual property law; each country has its system that protect the right of the artist there's so many difficulties of a person to obtain his rights but their policy are more advanced more than any other continent brand names and modern plans may be viewed as an area where European harmonization has been incredibly effective. Brand names are seldom talked about in open arrangement conversations since they don't represent a particular difficulties to rivalry or development strategy.

The way to protect an individual intellectual property is by an IP attorney that will ensure that all aspects of the business that are eligible for IP protection are considered properly. That is, before seeking investment, pitching your business or idea or introducing your product/service to the market (even if it is simply for conducting market research), your IP protection needs to be secured prior to disclosing your product/service in any way.

3. INTELLECTUAL PROPERTY LAW

The Intellectual Property Rights are rights which, are available to state impedance to satisfy the commitments of the Human Rights. The advancement of the IPR comprises of all legally perceived freedoms. The globalization of the Intellectual Property Rights has set off the discussion on the assessment of the connection among them and the Human Rights.

All protected innovation frameworks should be supported by a solid legal framework for managing both common and criminal offenses, staffed by a sufficient number of judges with reasonable foundation and experience. Licensed innovation questions are in the primary matters to be chosen under common regulation and the legal framework should really bend over backward to manage them decently as well as additionally quickly.

Without an appropriate situation for both implementing freedoms and furthermore empowering the award of freedoms to others to be opposed, a protected innovation framework will have no worth. The beyond fifteen years, protected innovation privileges have developed to a height from where it plays a significant job in the improvement of worldwide economy. In 1990s, numerous nations singularly fortified their regulations furthermore guidelines around here, and numerous others were ready to do similarly. At the multilateral level, the effective finish of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) in the World

The Intellectual property freedoms are essential to advance and invigorate innovative work. This is to guarantee the freedoms of the people and associations, the insurance of their inventive thoughts and research thus, they can receive the rewards of their diligent effort as it is critical, for the development and improvement of mankind by, endeavors of people.

At the most commonsense level, the topic of protected innovation is generally systematized

In Anglo-American copyright, patent, and proprietary advantage regulation, as well as in the ethical freedoms allowed to creators and innovators inside the mainland European convention.

Albeit these frameworks of property envelop a lot of what is remembered to consider protected innovation, they don't outline the whole scene. All things being equal, Anglo-American frameworks of copyright, patent, proprietary advantage, and brand name, alongside specific mainland teachings

In India Patent Act was presented in the year 1856 which stayed in power for north of 50 years, which was thusly modified, Although one needs to enroll IPR at lawful expert in some adequate or unmistakable structure to guarantee their advantages.

Each kind of IPR gives particular freedoms to its designer as well as maker to support and collect monetary advantages which further persuades expertise and cultural turns of events what's more revised and was classified "The Indian Patents and Designs Act, 1911". After Independence a exhaustive bill on patent freedoms was instituted in the year 1970 and was classified "The Patents Act, 1970".

4. PROBLEM FORMULARION

the study is focused on how intellectual property has been established with its importance, it explains the meaning types and how was considered more meaningful in economic sector, it explains how the laws and rights were formulated and how the world organization tried to provide protection to the individual work and a better system that will encourage more skills and knowledge to be used and how and its challenges between contemporary art and intellectual property rights

5. METHOLOGY

The moment study involves both doctrinal and non-doctrinal techniques for research system, with an endeavor to take on the similar methodologies. In doctrinal examination techniques that have been applied here are: Studying of different Statutes and International Conventions, journals, post research papers, articles, All India Reports, Supreme Court Cases, and different books by various writers.

6. TYPES OF INTELLECTUAL PROPERTY RIGHTS

They are four types of ipr which explains the importance and the right that an artist has under the protection of intellectual property right, this provide more investment in the economic sector and also helps the increase of creativities with respecting the original creditor of the work

The following are the types of intellectual property right

I. Patents-

are rights granted in respect of inventions, for example technological improvements, great and small, which contain at least some scintilla of inventiveness over what is known to the Utilitarian Theory specifies that the accessibility of a helpful item or an interaction to the mass will bring about its relevance and furthermore give an impetus to the general public to additionally make do on it and thus prompted another innovation and clearly the designer acquires the business and exclusive benefit, in order to get pentability three things need to be followed which are Novelty, Non obviousness and industrial application. Were each country introduced Patent Act that protect and guide its individual rights and originality. Example of the country that introduced patent system and its act

- a. Patent system in India- the Indian Patent Act, 1970 holds that a simple disclosure of another type of a known patient or the simple revelation of another utilization of a realized substance would not be patentable. And it's a period Of 20 yrs, the articulation patent indicates a right conceded to any individual who designs or finds a new and helpful interaction, item, article or machine of assembling,

or piece of issue or any new and valuable improvement of any of those⁹ The object of Patent Law is to support logical examination, new innovation and modern interaction. India being involved with the TRIPS Agreement explicitly joins inside its homegrown enactment the Patentable Subject Matter specified in Article 27 of the TRIPS Agreement;

- b. Patent system in USA- Patent was introduced in 1790 and reviewed in 1953 which lead to be part of 35 of the us code that deals with exclude of patents and 1999the America passed the American Inventors protection act, One among the conditions is the patent has been used by public for more than a year before the application filed for the application of the patent or in another country cannot be patented article 1 section 8 clause 8 of us constitution gives the right and power to congress to promote the science and useful art

USA CASE ON PATENTS

On a case of Bilski vs Kappos 561 us/ 593/ 2010

The patent was introduced which deal with mathematical problem but the registration was decline which the supreme court stated that when the invention is the process it must be tied to some machine or apparatus or transformed to some state. The law of nature or physical substances ideas cannot be patentable, USA has always been the hub of patent disputes topped the list amongst most of the developed nations due to which most of the companies operating in USA took up defensive patenting

II. Copyrights

Copyright can be characterized as an individual's elite right to approve specific demonstrations, (for example, propagation, distribution, public execution, variation) corresponding to their unique work of creation. The maker of the work ordinarily claims the copyright, in any event at first. In any case, copyright is regularly sold or allotted, in entire or to some extent, to a business distributor, a producer, a recording studio or to another person who will take advantage of the work financially.

As a result, copyright frequently helps business intrigues more than individual creators What's more, groundbreaking thoughts and information won't promptly help a general public assuming their communication is restricted. Just when information is learned, examined and added to by understudies, specialists, researchers and the customary resident, is its worth really appreciated.

Examples of some different countries that introduced copyright act, though in every country in the world to have copyright act and laws that the citizens and individual need to follow when they are creating their individual artistic work, copyright is one of the useful right that an artist can protect his originality and creativity . All the work that are registered under copyright protection act can never be copied or stolen by any individual without the permission of the original author. Copyright of an individual can be given even after the death of an individual and in each country depends on the laws provided in the specific country¹⁰

- c. Copyright system in Africa- African economies customarily depended only on the extractive businesses of minerals and oil stores as their wellsprings of incomes for financial and social development the World Intellectual Property Organization (WIPO) drove the endeavors to investigate and feature the importance of licensed innovation privileges, especially copyright in the development of the African information economy and ventures

The advanced copyright system of the proposed, Nigerian regulation and makes ideas for a system fit for Nigeria also Africa. This article closes by investigating the meaning of the African advanced copyright system.

⁹ This was writted under the indian patent act of 1970[page no 25]

The job of IP partners (judges, attorneys, makers, and policymakers) in conceptualizing a successful copyright system to safeguard the African innovative ventures proceeds to evolve.¹¹

- d. Copyright in India- Copyright in India is represented by Copyright Act, 1957. This Act has been revised a few times to keep pace with the evolving times. According to this Act, copyright concedes creator's lifetime inclusion in addition to 60 years, Copyright insurance likewise incorporates novel privileges which include the option to guarantee initiation of a work, and the right to go against changes to it that could hurt the maker's standing.

The maker or the proprietor of the copyright in a work, can authorize his right authoritatively and in the courts by examination of premises for proof of creation or ownership of illicitly made "pilfered" products connected with safeguarded works. The proprietor might get court requests to stop such exercises, as well as look for harms for loss of monetary prizes also acknowledgment.

For instance, Article 36(1) of the Berne Convention offers that "every state celebration to the Convention to take on, as per its constitution, the actions important to guarantee the utilization of this Convention, Article 26(1) and (2) of the Rome Convention. Article 2 of the Phonograms Convention commits each Contracting State to safeguard makers of phonograms against the creation of copies (duplicates) without the assent of the makers and against the importation and conveyance of such copies. Article 3 of the Convention passes on the execution to the Contracting States, which may pick at least one of the accompanying: copyright or other explicit

Example of cases in copyright is

Bleisten vs Donaldson lithographing co 188 US 238 year 1903

In addition to necessity that restricts the place on what may be included in that articulation need to be "non-utilitarian" or "non-useful" in nature. Utilitarian items, or items that are valuable for work, fall, assuming they fall anyplace, inside the area of licenses. At last, freedoms just stretch out over the genuine substantial articulation and the subordinates of the articulation not to the theoretical thoughts themselves

Trade mark- to construct a brand, one of the main strides in doing as such is to safeguard every one of your imprints qualified for exchange mark assurance. Eventually, this resource will be the most important resource in your business and accordingly you should safeguard it appropriately

The security of an exchange imprint will give is to keep outsiders from utilizing the indistinguishable or comparative name or exchange mark connection to the labor and products to which the imprint is applied.

III. Design

Enrolled plans safeguard the appearance and can be either tasteful plans or as practical plans. Stylish plans are enrolled solely for the tasteful appearance of articles, while useful plans are enlisted for highlights that are, essentially somewhat, directed by their capacity. Both stylish and useful plans give a syndication right to a restricted time of 15 and 10 years, individually.

On account of a stylish plan, the article should be new and unique, and on account of a utilitarian plan, the article should be new and not typical. While the prerequisite for the plan to be new is like that of patent insurance, for plan security in South Africa, there is a 6-month effortlessness period, this safeguards plans, for example, drawings or PC models;

Design in India- the Designs Act of 1911 has been supplanted by the Designs Act, 2000. The regulations overseeing plans are the Designs Act 2000 and the Designs Rules 2001. Plans are substantial for a limit of a

¹¹ Written by Samuelli Samiali Andrews topic under; reforming copyright for developing africa [page number 508], link [Reforming_Copyright_law_for_A_Developing.pdf](#);

decade, sustainable for a further five years. The new Act consents to the necessities of TRIPS and consequently is straightforwardly pertinent for worldwide exchange. Modern Design regulation arrangements with the feel or the first plan of a modern item, a modern item generally contains components of both craftsmanship and art, in other words creative as well as utilitarian components. The plan regulation avoids from its domain the working elements of an article and awards assurance just to those which have a stylish allure. It is important to be certain that the plan of the furniture isn't enrolled either as a patent or plan in the nation of product.

7.THE CHALLENGING RELATIONSHIP BETWEEN CONTEMPORARY ART AND INTELLECTUAL PROPERTY

Contemporary workmanship alludes to the craftsmanship that is being delivered in the 21st century. This incorporates performing business exercises, the proprietary innovations and agreements that need to be safeguarded from being replicated dishonestly by an outsider. Imaginative work and advancement are the immediate method for progress and upper hand in the current business circumstances. It should be shielded from being replicated to guarantee development and business development. The examination features the basic interconnection between contemporary workmanship and saving something similar through licensed innovation regulation

The current business climate is profoundly cutthroat. The outer changes have compelled the entrepreneurs, supervisors, and pioneers to zero in on imaginative techniques for creating items and arriving at clients. These are the proprietary innovations of a business that assistance business to guarantee treatment of cutthroat tension.

This contemporary imaginative work should be gotten with the goal that it isn't utilized by the competitions to acquire unnecessary benefit. The standard set by the test for inventiveness is a low one, and it isn't hard for a creator of a work to fulfill the prerequisite of exhausted judgment, work and ability to show that the work being referred to is truth be told original.

Thusly, while applying the trial of inventiveness to the work of Noble and Webster, various contemplations must be taken into account concerning previous works and how much judgment what's more exertion it took to make the work. While thinking about crafted by Diet Wiegman, it very well may be seen that crafted by Noble and Webster isn't special, or then again the first of its sort

The mystery should be safeguarded through exchange insider facts with the goal that selectiveness and classification can be kept up with. The utilization of proprietary advantages gives the benefit of business intensity and limiting access of outsiders.

The utilization of IP programming has turned into an indispensable piece of the contemporary business to better view business viability Protected innovation privileges are a chance for specialists to get inventiveness and development to upgrade business development and position on the lookout. Contemporary workmanship depends on the idea of rehash and development of a thought that is unmistakable from a current thought or cycle

8. RESULTS AND DISCUSSION

The main role of IPR in such a situation is to safeguard contemporary craftsmanship and screen its accomplishment for additional enhancements. IPR is utilized in assembling units and is a vital piece of the cordiality, medical care, administration, and training area. This empowers the maker of new thoughts towards future achievement. It improves a singular's ability to lead research that empowers in fulfilling the client needs and prerequisites. IP is tied in with safeguarding a person's capacity to think for development and make something novel and unique

After reading and understanding the meaning and the main purpose of intellectual property law and rights are every important to every individual who has the idea of establishing his own advanced artist which can be in business, music, art or literature, I have obtain that more of the effort is needed has still majority of individuals do not know the importance of claiming their rights and protect them

In order to obtain more objective and achievements few of the things need to be amended so has to obtain more importance like

- i. Education should be more provided to all the artist has many are not aware of how the registration of intellectual property can protect and provide a better solution on their own content and skills
- ii. To make more advanced laws that matches with the advanced technology that has been developed from past few years and more study of law to each country has to provide a proper environment in enforcing the laws that were being created
- iii. To find more advanced solution that can create more trust worth among the artist and the laws as it can create a sustainable way of an individuality to adopt any measure or conditions that will be established
- iv. The government and the artist should try to improve their inter relationship as both of the individuals are important in the establishment of proper and a good welfare of the economic status in a particular country

This topic is that more laws should be established which will help to improve the protection of intellectual property and more effort should be provided in developing countries has the application of intellectual property law is in a disadvantage stage

9. SUMMARY OF THE CHAPTER

The research of this topic explains the meaning and nature of the topic, It examines about the idea and significance of the observer also provides the historical formulation on how intellectual property came into force when did other country adapt the system and how the intellectual property was divided into different types and each amendment of every act of intellectual property law intellectual property law and its rights in details the researcher provided how the importance of intellectual law and rights that an individual need to understand and be followed in order to protect the originality of an artist and also to include the more confidence in the discovering more talented and advanced technology. it explains types of intellectual property rights and its acts that are been provided in respective countries also it provides examples to countries that do practice the system which are under the guidance of world intellectual property these types are trademark, copyrights, designs and patent

Also it explains the challenges that are faced in the relationship between contemporary art and intellectual property where by intellectual property is applicable in all aspects even though modern tools and technology are used by the artist work to provide the originality of his work but still the application and registration of intellectual property carries its important, it has challenges that they need to face and provide better solution to the artist and in order to protect the economy of a country

10. CONCLUSION

In conclusion the research topic provided the ideals and solutions that can help on improving the protection of the rights to every artist and improve to the better advance way that nobody will face any negative effect due to his original art, The researcher has additionally depended upon Law Commission Reports, world intellectual Reports and Recommendations, and took the assistance of Internet moreover. For leading an exact examination, the specialist has depended upon Observation

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