



PRESERVING INNOVATION AND PUBLIC INTEREST: CONSTITUTIONAL IMPLICATIONS OF PATENT LAW REFORM

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Abstract: This study has been undertaken to study the Patent Law in India. This study will focus on the implications of the Patent Law reform with context to Constitution of India. The study tends to examine the relationship between patents and preservation of innovation. As Patent law protects the inventions and the skill of the maker, it is in the interest of public that Patent Law shall be expanded. Any new invention is done by way of innovation. Hence, Patent law plays an inevitable role in the preservation of the innovation. The patent law in India has been emerging day by day. The analytical framework dealing with patents has been discussed in this study.

KEYWORDS : *Patent, Public Interest, Patent Law reforms, Constitutional implications*

INTRODUCTION TO PATENT:

A patent is the preserver of the innovation of the mind that is applied in the creation of new science. Patent are the intellectual property that protects the exclusivity of a new invention. The right of exclusiveness is guaranteed by the Government to the inventor who seeks the patent. Patenting one's invention prevents others to make, sell, use or distribute any invention not belonging to them. The prime reason of introduction of the patent is to encourage the inventors by protecting their skill and exclusiveness. This helps in adding more value to their fields. Any kind of usage or theft of idea is protected under the patent law. It does not only have psychological and social effects but also helps inventor to gain monetary benefits out of his invention. Not only new inventions but also the previous inventions can be protected under the patent law. The term patent has been taken from Latin term "patere" that means to lay open. Or to be able to make public invention. In order, to get the benefits of the patent, following requisites shall be satisfied:

1. The invention must be new and not in existence. In case of an old invention that must not have been patented or applied to be patented by any other inventor.
2. The nature of the invention must be non-obvious. It must contribute to its field. Changing of technology in an existing invention cannot be qualified for the patent.
3. The usage of the invention shall be subject to public interest bonafidely. The invention shall contribute to public good.

The invention shall not be hitherto existing in the public domain in any of its form. The term of a patent has may extend up to twenty years from the date of granting of the patent. The nature of Right to patent is territorial which implies it extends to the jurisdiction of that country only. The infringement proceedings can only be initiated in that country only. If a person wants to achieve patent infringement in any other country, firstly the registration has to be achieved in that country as per that law. In the medical field, there are certain genre of medicine that are prohibited by law to get patent. The patent title must be first hand and the person applying shall derive title from it. The patent application must bear all the facts and shall be true by

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the first inventor himself. As per European Patent Convention, gives exhaustive list of such subject matter that is prohibited from being patented. If any further information is required, the post of Patent attorney has been created to hold enquiry.

1.1 History of Patent:

In Indian Context, the very first attempt to introduce Patent law in Indian was Act VI of 1856. The Act VI dealt with protection of the new inventions from any kind of infringement with their ownership. The act did not have adequate provisions. Hence, again the Act was reintroduced with certain modifications. The fresh Legislation included “Exclusive privileges”. The importers were removed from the head of inventors. But this act also did not performed sufficiently. As the patent was a new concept as compared to others. It gradually started gaining the popular opinion.

Hierarchy of Acts enacted by the Indian Legislature: The Patent and designs protection Act 1883 was amended in 1883 to introduce changes. Further, in 1911 The Indian Patent and Design Act was enacted and all the other enactments were repealed by this Act. But this act was repealed by The Patents Act 1970 as well as The Patent Rules 1970. After that in 2005 an amendment was introduced in The Patents Act 1970. The amendment was introduced to enable necessary licensing. Various products were also extended in the technological fields such as micro-organisms, chemical and foods.

1.2 Types of Patent:

1.2.1 UTILITY PATENTS:

Utility patents are those patents which specifically deal with processes and composition of the machines, matter, which involves the manufacturing. It is the most prevailing kind of patent. In case of utility patent, patent can allowed for an existing invention but an advanced technological process discovered. In context to the utility patent, an Indian inventor may apply to no of countries to obtain patent for its technological advancement

1.2.2 DESIGN PATENTS:

This type of patent is also known as Surface Ornamentation of an object. It tends to incorporate shaping and configuration of an object. There is an implied condition on this type of patent that the design is inseparable from the object. The design patent seeks to preserve the appearance of the object. It also extends to preservation of the Functional or structural features of an object.

1.2.3 PLANT PATENTS:

The purpose of getting the plant patent is to preserve new and distinctive plants. The implied condition imposed on this type of patent is the plant which is applied to be patented shall not be a tuber-propagated, in an uncultivated state, but it may be obtained for the plants which produced by the asexual mode of reproduction. Currently, there are no provisions regarding the plant patents in India.

Constitutional and legal provisions related to Patent Law:

2.1 CONSTITUTINAL IMPLICATIONS ON PATENT LAW:

The right to patent is not explicitly dealt under the Constitution of India. The Constitution of India deals with the fundamental rights which are enshrined in Part III of the Constitution. The objective of the Indian Constitution does not narrow in the implementation. Not only the rights which are explicitly mentioned in the constitution are protected by it, but any right that is derived or inferred from such rights are also guaranteed by the Constitution Of India. These rights are inherent and can be inferred from various kinds of international conventions as well such as Universal Declaration on Human Rights and various other conventions that deal with the human rights.

In specific circumstances, when any necessity medicine is not affordable and usage of it is required in a large no. then the state is under the obligation that there shall be compulsory licensing procedure regarding that medicine. The objective behind the compulsory licensing is to make available the medicine at ground level at an affordable price. Hence, in the consonance of the above situation the Patent Act 1970 was enacted to grant compulsory licensing to various commodities.

With the growing technology and inventions, it is important to study intellectual property’s advent in the recent years. The state has dealt with the regulation of businesses, economy and social activities by way of Directive Principles of the State Policy. The Directive Principles of State Policy are enshrined in Part 4 of

the Constitution of India. These are the principles that regulate the scope and preservation of the Intellectual property.

As the Preamble of the Indian Constitution, declares India to be a mixed economy i.e. were neither the state nor the private persons have monopoly over any of trade in India. The businesses in India shall be carried out by both Private and public Companies. It implies the upholding of the liberty of economics of the country. Therefore, the strong intellectual property laws such as patents are required to safeguard such economic liberty.

The various articles of the Indian Constitution take within the ambit the intellectual property such as Article 31 and Article 300A. There shall be liberal interpretation taken while applying them and they shall presume to include not only tangible property but intangible property as well.

The meaning of Intellectual Property does not only extends to patent but also to trademarks, geographical indications, copyrights etc.

There is no express mention of the Intellectual property rights in the Indian Constitution, but there is no exclusion as well. All the matters are dealt under the three lists enumerated in the seventh schedule. The schedule comprises of three lists i.e. Union List, State list and concurrent List. In the Union List's Entry 49 we see the mention of patents, inventions, designs and other alike intellectual property rights. This implies that the union government has the power to make the rules regarding these under Article 246 of the Constitution of India.

It was also held in the case of *K.T.Plantation Pvt Ltd v. State of Karnataka* in 2011. The Hon'ble Supreme Court has held that article 300-A cannot be limited to land as a property only. It constitutes not only tangible but includes non-tangible property as well. It includes all kind of possible interests that vest in a property which are recognized by the law. Therefore, by way of Judicial pronouncements and the legislative wisdom Intellectual Property rights are also included in the Property. Any kind infringement regarding Patent can also be challenged.

The position of patent has been furthered strengthened by The Patents Act 1970 and other legislations as well.

PATENT DISCLOSURE AND COMPULSORY LICENSING:

The right to information has been granted to all citizens under Article 21 of the Indian Constitution. The protection of information in the case of patent is granted for 20 years also but the information that is supposed to be protected shall be disclosed. All the particular pertaining to the invention shall be certain free from ambiguity, complete and concise. Such particulars shall be sufficient if one wants to understand the same as well. In case of any non-disclosure of any kind of infringement with the information regarding the invention, the Patent may be revoked as prescribed by section 64(h) of The Indian Patent Act 1970. Right to know and right to information has been introduced as fundamental right by way of judicial pronouncements under article 21 of the Indian Constitution. Right to know is also an integral part of article 19 and article 21 of the Indian Constitution. It has been held as one of basic pillars of the participatory Democracy.

Right to affordable medicine;

The part III of the Indian constitution deals with fundamental rights. The fundamental rights are those rights which are basic in the living of the individual and inherent; these cannot be denied to any human being. The need of the compulsory licensing arises when there is a need of affordable medicine. The state is under obligation to grant compulsory licensing in order to make it available for the society at large.

Section 84 of The Patent Act 1970, has laid down three step criteria for the grant of compulsory licensing. It also includes those inventions which are not related to public's reasonable expectations in the interest of Public interest.

Rights of Patentee:

In divergence, the rights of the patentee are preserved under Article 14 of the Constitution of India. In addition to it, the rights of the patentee are preserved under Article 19(1)(g) of Constitution of India. Any kind of violation or infringement of Patentee Rights is forbidden under reasonable restrictions guaranteed under the Constitution of India. Any kind of Infringement cannot take blanket immunity by lieu of Article 19(1)(g) of Constitution of India on the ground of engaging in the business, trade in relation to the patented goods.

Article 19(6) imposes reasonable restriction where the statutory rights vested in the patentee are safeguarded under the Patent law. These provisions are inferred from the provisions of the Indian constitution as the constitution does not make any express mention of it. In case any kind of ambiguity arises or any other issue, judicial interference can be sought in order to understand the interrelation between the two provisions. Precedents can also be helpful to interpret the same.

3.1 Patent disclosure v. Right to Information:

The right to information is available to all the Citizens of India. It is a statutory provision guaranteed under The Patents Act that if the patentee is willing to protect his invention for a period of twenty years then he must disclose the same in order to immune his invention for the specified period. The specifications regarding the invention must be stated by the inventor without any ambiguity. It shall be concise. The ground is that any person who has the knowledge in the specified field should be able to understand the invention.

If the specifications are certain and without any ambiguity, the law is under obligation to grant patent to patentee for the period of not less than 20 years. The innovation must be in satisfaction and conformity with other rules prescribed under this act.

In case of any concealment, non-disclosure or any kind of misrepresentation in its usage, the Patent is liable to be revoked under section 64(h) of The Patents Act.

TRIPS AGREEMENT OF WORLD TRADE ORGANISATION:

Article 7 of the TRIPS agreement recognizes the Patent law. The article suggests that the patent law shall always be in conformity with the Public interest. It suggests;

“The protection and enforcement of the intellectual property rights should contribute to the promotion of technological innovation. And to transfer and dissemination of technology to the mutual advantage of producers and users of the technological knowledge and in a manner conducive to social and economic welfare and to a balance of rights and obligations.”

Patent law as serving Public Interest:

Public Interest law deals with the interest of Public at large that does not have monetary powers to obtain any kind of legal assistance. Public interest prefers interest of public over any kind of private interests. And if we talk about Patent laws it is a framework which provides exclusive rights to an inventor to preserve his invention.

The term knowledge has two aspects. Firstly, it can be treated as commodity which can be bought, sold and can be preserved by the copyright and Patent. Secondly, it may serve a social objective in case of dissemination. The controversy keeps on moving to one to another. The question is constantly arisen that how the knowledge shall be treated. It may be treated as public asset as well as Private right depending upon the circumstances. The real aim of incorporating intellectual property rights in the legal system is to ensure inventor's identity with their skill.

4.1 Value to Public at large:

By way of patent laws, it is supposed to provide value to public at large. It helps in stimulation new and original ideas. It further promotes the ingenious activity. It promotes exchange of commercialization of the invention. By the virtue of patent law, development is also promoted. It also protects disclosure of any kind of information which shall not be shared otherwise. By way of patent law, exploration of prospective inventions shall be enhancing in the society.

4.2 Enhanced knowledge:

The long term objective of introduction of patent laws is to promote scientific research about different ideas. It also ensures that new technology is invented. By all these, industrialisation is also promoted. As patent is used, it increases the flow of inventions.

WAY AHEAD:

The patent law in context to Public Interest bears normative, constitutional and Philosophical justifications. The patent law works in public interest by promoting and encouraging innovation. With the growing population and society revolution there is more need of resources that can be met through only by way of innovation. Patent law incentivizes the innovators by procurement of exclusive rights to them. This leads to more investment in in the sector of research and development. It helps in advancements that are beneficial to society. Patents motivate economic growth by fostering competition and investment in the various sectors. This creates new employment, create market and new products. It also ensures that the rights of the consumers are also protected by way of preventing copy and imitation of any kind. It improves quality and safety. This also helps in globalization. The worldwide market is also enhanced by protection of intellectual rights. This also helps in solving various problems relating to ownership. In order to take protect the interest of the society and the inventors, there shall be balanced approach adopted to secure both the ends. The

innovation shall be promoted but not at the cost of accessibility. Another factor that must be kept in mind shall be affordability over exclusivity. There shall foster of social interests along with protection and preservation of the patents.

Inorder to protect the interest of the public as well as the patent holders, there are ccertain things that may be implemented by the state. To start with, the patent application process shall be streamlined. The category-oriented application shall be helpful for the law and the inventor as well. With the continuous revolution in the field of the innovation, there is a need to invest in enhanced examination quality check to promote good quality and exclusive inventions. The criteria of the patentability shall be balanced. The genuine inventions shall be promoted along with the innovation. The state shall ensure to make all necessary efforts to create a friendly ecosystem in the field of Patent Law. The state shall also make arrangements to cope up with the international conventions prevailing to maintain the standard of the patents.

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