

National Workshop Report
on
Intellectual Property Right

Introduction:

A Five day National Workshop (Online Mode) on the topic “Intellectual Property Right” was Conducted jointly by IQAC, Dr. R. K. B. Law College and IQAC, Kokrajhar Law College on 08th July to 12th July, 2020. The platform of the workshop was Zoom meeting application and Google Classroom. The targeted participants of the workshop were Faculty members, Inventors, Lawyers, Research scholars, Authors, Company Personals and students. A Registration fee was collected from the participants i.e., Rs. 250/- (Two Hundred Fifty only) for the students and Rs. 350/- (Three Hundred Fifty Only) for others.

It was an interactive session and also collected the feedback and assignments from the participants. E-certificates are provided to all the participants of the session.

About the program:

Intellectual Property rights (IPR) i.e., the rights acquired by someone for his/her intangible creations have an immense contribution towards socio economic prosperity of a nation and thereby the whole nation building process. Therefore, a nation's ability to transact knowledge and innovation of its people into wealth determines the future of the country. So, a fair strong legal regulatory measure on IPR is a sine qua non for encouraging innovation. This workshop was conducted to create a platform to disseminate awareness on the significance of different types of IPR for people engaging in different fields and legal protection available for such rights in India in the globalized knowledge economy.

Object of the workshop:

The main object of the workshop was to create awareness about the importance of the subject IPR and encourage the human intellect to create and contribute to the society for the growth of the economy. To identify the various aspects of IPR and also to give awareness about the rights and protection measures available under the IPR Law.

Day-I

Date- 08/07/2020

The first day National workshop began with the inaugural session where Miss Preeta Brahma, Principal (I/C) of Kokrajhar Law College, formally welcomed all the distinguished guests and participants and also stated the object of the program.

The keynote address for the inaugural session was given by Prof. (Dr.) R. C. Borpatragohain, Former Dean, law, Gauhati University. He speaks about the two dimensional aspects i.e., conventional dimension for the hindsight approach of materialistic aim and the farsighted approach of creating and thinking which is needed at the present context. He mentioned about the constitutional perspective and the objective of the constitution of India such as justice, social, economic and political and liberty of thought, etc. are included in the preamble.

He also mentioned about the international law perspective where in the first Declaration of Human rights Article 27 of that along with Article 26 Right to Education which speaks about that there must be an environment where moral and economic rights of every individual and including this intellectual property rights of every individual should be well protected and that is the international norm based on which the National level laws are to be moulded. Secondly he mentioned the aspect of such organisations like, WTO and WIPO, the institutions which are tremendously endeavouring for harmonizing the situation and also inculcating the spirit of humanism in every human being across the world. Moreover, he informed that the International law of obligation Article 51(c) treaty law which is to be adopted in the indian constitution and to support that Article 253 of the constitution, it speaks that the parliament has a responsibility for incorporating the ideas of international treaties and documents which india have entered into and ratify to be brought into a national legislation.

Prof. R. C. Borpatragohain also give emphasis on formulating the laws and academics which will have to dwell upon on doing fundamental research how to develop intellectual property right and Culture in our society, based on which the lawmakers will make such type of law in the near future and all the indians will be well protected and indians will be the guiding factor to the rest of the world. Again, he mentioned the Stockholm Conference, Nairobi Conference, Rio earth summit based on which we are bringing those principles into our national legal order for the rights of the people or for the indigenous knowledge, traditional knowledge and copyrights which will also be encompassed and governed by that particular

perspective. He also said to dwell upon the various dimensions mentioned in the IPR by participants with the administration, the policy makers and with the judicial process.

The inaugural session ended with a formal vote of Thanks.

Day-I, Technical Session -I

The Guest Speaker for the first technical session was Prof. (Dr.) Mohan R. Bolla, Principal, Kristu Jayanti College of Law, Bangalore. He spoke on the topic “Concept of IPR & Judicial Trends- A Perspective”. He started the session with the basic concept of Intellectual Property that refers to creations of the mind, such as inventions, literary and artistic works; designs; and symbols, names and images used in commerce. He also focused on the Intellectual Property Right in relation with various international conventions and organisations such as TRIPS, WIPO, etc..

Prof. Mohan R. Bolla spoke about the constitutional recognitions of IP law in Indian Perspective and the multi pronged Intellectual Property law legislations incorporated in India i. e., The Trademark Act, 1999, The Design Act, 2000, The Copyright Act, 1957, The Patents Act, 1970, The Geographical Indication of Goods (Registration and Protection) Act, 1999, Trade Secrets-the Companies Act 2013, The Biological Diversity Act 2000, etc.. He also explained the judicial trend of IP Law with various landmark judgements on Copyrights, Patents such as *Novartis V. Union Of India 2013*, *Bayer Corporation ors. V. Union of India 2009*, *Indian Performing Right Society Ltd. V. Eastern Indian Motion Pictures 1977* etc. In view of Novartis' case he mentioned that all life saving drugs must remain generic and there shall be no patenting permitted in order to ensure that India and all over the world and the developing countries which require free pharmacare and medicare to be provided. He also mentioned the scenario of the health systems in India which is not well checked in order to ensure that free medicare is provided at least the generic medicine. He emphasis on having such regulating measure in order to ensure that there should not be exorbitant rise of the price because if the company were get the patent of that particular drug then they tend to enhance the price that would not be accessible to patients and it will affect and imbalance the right to health which is guaranteed under Article 21 of the the Constitution of India. He said that there have to be Special Tribunal at per with National Green Tribunal which would dealing with specially the pharmaceuticals issues, drugs and

health related aspects and there have to be experts sitting as a parallel system developed in the tribunals in order to ensure that they will be rendering justice by protection of intellectual property rights.

Lastly he mentioned about the Geographical indication that the geographical indication is deeply connected with Traditional Knowledge and there is the protection which is given to indigenous people and their technology and he also mentioned the GI Goods (Registration and protection) Act 1999.

After the speech by the guest speaker the interactive session started and the day I session ended with a formal vote of thanks.

Day-II

Date- 09-07-2020

The Guest speaker for the second day workshop was Dr. Neelotpal Deka, Advocate, Gauhati High Court. He started the technical session II with the topic “Traditional Knowledge, Geographical Indication and Constitution of India: Issues and Challenges. He said that while trying to understand the intellectual property we need to follow some sequence i.e., Intellect which is the mind or brain, intellectual which is you or someone or anyone that is connected with or using a person's ability to think in a logical way and understanding things, Finally intellectual property which is an idea that somebody has created and law prevents other people from copying. He explained the terms like “Indigenous”, “Indigenous People”, “Traditional Knowledge”, “Geographical Indication”, and their relation with each other. He mentioned J. Mugabe’s concept on correlation between the Indegenous knowledge and traditional Knowledge that indigenous knowledge is traditional knowledge but not all traditional knowledge is indigenous. He pointed out that some Traditional Knowledge may be Indegenous knowledge both but later on can get the geographical Indication, like the “Muga silk” in Assam.

Dr. Neelotpal Deka explained the application of the constitutional corollary of the minorities and indogenous people and also about the Cultural and Educational rights mentioned under Article 29 and 30 of the constitution as fundamental rights. He emphasized to have proper legislation and also to insert a new article in the constitution of India for the protection of Indegenous Knowledge and the Traditional Knowledge that no outsider can misappropriate traditional knowledge of the country. Lastly he mentioned the main features of The Protection of Traditional Knowledge Bill 2016 and about the Traditional Knowledge digital library.

After the speech by the guest speaker the interactive session started and the day II session ended with a formal vote of thanks.

Day-III

Date- 10-07-2020

The Guest speaker for the third Day workshop was Dr. M. N. Bheemesh, Sr. Adviser, ALMT Advocates and Solicitors, Bangalore. He has delivered his lecture on the topic “An overview of patenting Systems and prohibitions for Double Patenting”.

Dr. Bheemesh started his speech with the developing era of science and technology which has taken greater heights and it is impossible to follow with their speed. He said that a lot cannot be anticipation of a technology, normally the technology comes first looking into their pros and cons, advantages and disadvantages of that particular technology and on that basis the lawmaker has to make the law. He started with the concepts like, patent, trademarks, copyrights, trade secrets and confidential information GI, TK and then the semi conductors and issues concerning biological diversity. He said the prominent place that has been taken by patent is the most interesting and at the same time it is the most controversial area about IP law. He also stated that the advocates can't handle such matters as they have to take the help of the scientific fraternity because the issues in the field of IP are so dynamic and growing and one cannot find an instant answer immediately. He gave an example that, whether a machine like Sophia or any such a robot can fall under the patent.

He also gave an example of Dr. Vishal Rao, the doctor who invented a Rs. 50 device to give throat cancer patients their voice again and the noted scientist Dr. Raghunath Mashelkar who has been elected as fellow of US NAI (National Academy of Inventors) and he was also elected for his contribution for pioneering the Intellectual Property Rights (IPR) and innovation movement in India. He said the people in the field should understand the important issue concerning protecting invention and one should know the provision of law before getting it produced otherwise he cannot do it.

Again in describing the concept of intellectual property he stated that the countries have laws to protect intellectual property for two main reasons, one is to give statutory expression to the moral and economic rights of creators in their creations and in the rights of the public in access to those creations. The second is to

promote, as a deliberate act of Government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development. He also mentioned the difference between invention and innovation as all the inventions are the innovations and are patentable but all the innovations are not patentable inventions. Further he explained the background of Indian patent law and the International conventions, Paris convention, Patent Co-operation treaty which is a treaty administered by the world intellectual property organisation(WIPO), a specialized agency of the United Nations organisation(UNO). He also explained the Time frame and time of patent, the aspects to look after before getting a patent, Debunking patent myths- to identify and distinguish some common patent myths, Types of patent application-PCT- international application, National phase application under PCT, Divisional Application, the patentable and non-patentable inventions under the Indian patent law, Invention documentation- reasons and importance of documentation, method of documentations etc. Lastly he explained about the Double patenting and its position in the USA, India, Canada and in the UK.

After the speech by the guest speaker the interactive session started and the day III session ended with a formal vote of thanks.

Day-IV

Date-11-07-2020

The day IV session started with a welcome address. The guest speaker for the 4th day workshop was Prof. (Dr.) Sreenevasulu N.S., Professor of law, National University of Juridical Sciences, Kolkata. His topic for the session was “Copyright Law in reference to Literary Work”. Prof. Sreenevasulu Started the session with a brief introduction of Intellectual Property Rights and Copyright law. He said that Copyright was not considered to be industrially relevant and commercial in the beginning because of the Indian culture and tradition which is meant for the purpose of the divine and for that reason Copyright law for a long time was kept outside the purview of broader intellectual property law. He said that the Intellectual property itself was called industrial property in the beginning, therefore when the title itself is called industrial property only those properties intellectually made properties which are industrially relevant are kept in the purview. He also said that copyright deals with the knowledge and the knowledge is considered for divine purpose only in India, it was not meant for commercialisation so it was kept

outside the purview of the so called industrial property as well as the intellectual property.

Prof. Sreenevasulu mentioned the TRIPS agreement on intellectual property law under WTO and development of Intellectual Property law after the various International conventions such as Paris Convention, Rome Convention, Berne Convention, etc. He also mentioned that copyright law deals with knowledge and the basic subject matter of copyright is nothing but creation of knowledge, use of knowledge, exploitation of knowledge and experimentation of knowledge. According to him the basic part is knowledge, but knowledge is not just confined to study, reading, acquiring and writing and knowledge could be something which has no corporeal and materialistic form. He further mentioned that the moment of conceiving the ideas are not protected under copyright law but when the idea is executed in such a platform then the executed form of idea is going to be protected. He mentioned the criteria which one can look at in any subject matter which is considered for copyright is whether it is worth, whether it is worth use, whether it is worth in expression and whether it is worth in execution in any of the platforms that media has provided.

Prof. Sreenevasulu said about the copyrights law of Artistic work, architectural work, dramatic work, musical, sound recording and cinematography films and all these six subject matter which have been kept after the literary work. He explained the broad aspect of literary work and as literary elements and nonliterary elements. Also mentioned about the Interpretation regarding literary work in physical form and literary work in digital form and about the expansion of the purview of the literary work which included computer programs and writing in electronic form after 2013. Whether this expansion includes graphics, pictures and images, it actually comes under the artistic work and has a separate protection for artistic work. He explained the difference in terms of protection given in case of Copyright, patent and trademark under Intellectual Property law. And stated that copyright law protects an individual's expression or ideas, so copyright is a monopoly which talks about compilation of different rights since the trademark and patent is one right, right on a product or right on a process or a right on a trademark. Further he said that the reason for long term protection of copyright is that the expansion and expression of personality includes personality rights, moral rights and human rights and this will be with that person who will be alive and after the death of the original author 60 years protection will be given. In the last

part of the session he stated about the infringement and violation or misuse and copy of copyrights. So the main focus by Prof. Sreenevasullu was on the Significance of copyright law in the context of subject matter of copyright law, the significance in terms of evolving the copyright law at the National and International level, significance in terms of defying the scope, definition, meaning of copyright as a subject matter.

After the speech by the guest speaker the interactive session started and the day IV session ended with a formal vote of thanks.

Day-V

Date- 12-07-2020

The last day of the National workshop started with a welcome address. The guest speaker for the Day V session was Prof. (Dr.) T Ramakrishna, Professor of Law and Chair Professor (I.P.R.) National Law School of India University, Bangalore. The topic covered by Prof. Ramakrishna was on “Overview of Trade Marks”. He started the technical session with the basic concept of trademark and various functions of trademarks, i.e. Identification, Source, Quality and Advertising Symbols. He said that trade marks give answers to the question “who are you?” and not “what are you?” and said that the Product identification is the basic function of the trade mark law. Regarding quality he said that a brand is essentially a seller’s promise to consistently deliver a specific set of features, benefits and service to the buyers. He also stated that the quality identification function depends on level of quality, consistency of quality, felt quality and expected quality and the quality identification function is significant in reducing purchase errors by alerting consumers to the good history of quality.

Prof. T Ramakrishna explained how brand awareness happens with a high degree of brand acceptability, a high degree of brand preferences and brands with a high degree of brand loyalty. Also explained about the spectrum of distinctiveness, Abercrombie test, Arbitrary marks, suggestive marks, descriptive marks in a detailed manner. He stated about the Generic term and said that names of a product or service itself is antithesis of a mark. Also mentioned trademark under International Conventions and explained the definition of trademark as that a mark is capable of being represented graphically and capable of distinguishing the goods or services of one person from those of others and it includes shape of goods, their packaging and combination of colours. Further he mentioned how a label, a ticket,

a name, a signature can become a trademark and discussed various case laws to explain trademarks of things, personal name, letters, numerals, sound, shape, colour, smell constitute a trademark. Then he explained the grounds for refusal for registration i.e. Absolute grounds of trademarks and Relative grounds of trademarks and Disastrous consequences test. He said that motion images, Descriptive marks, and geographical names cannot become trademarks. He added many landmark judgments to explain the various aspects of trademark law Under the Trademark Act.

He gave examples in certain names like Mahatma Gandhi, Parliament, Ashoka Chakra, Rashtarpati Bhawan, Raj Bhawan etc. which are excluded from the purview of trademarks and one cannot have a trademark on those particular names. Moreover, he explained about the Similarity of marks with the popular case law of Cadila Healthcare Ltd. V. Cadila Pharmaceuticals Ltd. (2001), and mentioned factors which to be considered to determine descriptive similarity, and prohibition incase of using the same mark to different goods. Then he explained the Procedure for registration of a trademark and the incidents of Trademark infringement under the trademark Act. In concluding speech he explained about the Uniform Domain name Dispute Resolution and Domain Name Dispute Resolution relating to trademark and domain name, structure of domain name etc. He mentioned the case of Yahoo Inc. V. Akash Arora anr. (1999) and the last case of M/s. Satyam Infoway Ltd. V. M/s. Sifynet Solutions Pvt. Ltd. (2004) where the Supreme Court validated the application of trademark law to prevent the use of similar names. Lastly, he stated that about the evidence of registration and its use in bad faith and their circumstances and ICANN approved UDRP remedies.

After compilation of the guest speaker's speech the interactive session was started and participants and the dignitaries had joined in the discussion. The day V National Workshop was concluded with a formal vote of thanks by the organising team.