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“Determine that things can and shall be done and then we shall find the way”
- Abraham Lincoln

Abstract: With economic globalization and integration and rapid development of information technology, crimes against intellectual property rights (IPR), including producing and marketing counterfeit commodities and piracy as severe IPR violations, are on the rise. Introduction of the technology in the public domain has laid down the free use of it without setting an appropriate check to it. It has also brought the intellectual property issues to forefront because large number of its sharing in the international market. But the challenge imposed by the development and growth of the Internet to the existing intellectual property laws is immense. Legislations on intellectual property rights like Patents, copyright, Trademark has already laid down criminal liability against the infringer. In spite of the fact that a lengthy procedure laid down for grant of any intellectual property to avoid confusion or infringement after the grant but still infringement is very common practice, which can be, find in Indian streets which had laid down enormous challenges in front of the courts to deliver justice.

The transitional nature of intellectual property rights not only limits its infringement to the boundaries of India therefore creating a need for international exchanges & cooperation necessary to wrestle the problem in this aspect. This paper will discuss the nature of criminal of procedures for infringement of intellectual property rights. In spite of the fact accepting international regime under TRIPS and inserting in the domestic intellectual property laws but still proceedings in a court run in a very traditional manner.

Trans-border reputation & limited time period of protection of most of the intellectual property rights are two of the major challenges in front of the judiciary to maintain to compete with other developing countries & protecting individual interests of individuals. The complexities of the intellectual property issues & incompatibility of the judiciary to understand & lack of technical know how further cuts down the pace of the whole procedure. Gap between of legislations on intellectual property & criminal law is also one of the major factors causing hindrances in delivering justice in matters regarding intellectual property.

The researcher in the paper have an intention to discuss with the number of remedies available which leads to more confusion among the judiciary appropriate from case to case. Paper will conclude with contributing some suggestions & will provide some recommendations, which might be fruitful to save the interest of the intellects and encourage them more leading it to in direction of development.

“The works of founders of States, law-givers, tyrant destroyers and heroes cover but narrow spaces, and endure but for little time, while the work of the inventor though of less pomp is felt everywhere and lasts forever."”

Keywords: Intellectual Property, Infringement, Judiciary, remedy

I. Introduction

Encouragement & Innovation is the only motive to protect Intellectual property, which could be badly hit by the justice system in India. If we talk about the criminal justice system in India in general then it the numbers itself speaks about the scenario. Now if we talk about the matters relating to the criminal liability, which is relating to intellectual property rights then lots of other things need to be taken into consideration, which impose a series of challenges in front of the Indian Judiciary system.

II. Intellectual property

Intellectual property (IP) is the creation of human intellect. It refers to the ideas, knowledge, invention, innovation, creativity, research etc., all being the product of human mind and is similar to any property, whether
movable or immovable, wherein the proprietor or the owner may exclusively use his property at will and has the right to prevent others from using it, without his permission. The rights relating to intellectual property are known as ‘Intellectual Property Rights’. Human intellect has lead to the drastic developments from time to time. Intellectual property. Intellectual Property is divided into two categories:

Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; And Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs. Intellectual Property Rights, by providing exclusive rights to the inventor or creator, encourages more and more people to invest time, efforts and money in such innovations and creations.

World Trade Organization (WTO) through its Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) brought the issue of Intellectual Property Rights on an international platform of negotiation. This agreement narrowed down the differences existing in the extent of protection and enforcement of the Intellectual Property rights (IPRs) around the world by bringing them under a common minimum internationally agreed trade standards. The member countries are required to abide by these standards within stipulated time frame. India, being a signatory of TRIPS has evolved an elaborate administrative and legislative framework for protection of its intellectual property.

III. Intellectual Property Crime

IP crime is more generally known as counterfeiting and piracy. Counterfeiting is, willful trademark infringement, while piracy involves, willful copyright infringement. These are very similar and often overlapping crimes. IP crime is not a new phenomenon but due to globalization and advances in technology counterfeiting and piracy has become big business.

IV. The Rationale For IP Protection

There is a severe hard work & intellect involved behind creation of a single IP. Therefore there is a very stringent need to protect the intellectual property of that individual who expects the same for it. A long & elaborative procedures are laid down for the registration of any IP so as to clear all doubts all oppositions from the very beginning but if still there is any scope left then that could be dealt by the courts. Courts left with the final authority has a very significant role to play in order to deliver not only justice but in time then only it will be fruitful for the sufferer. Indirectly the rationale behind the protection of IP is to save interest & encourage the right holder.

V. Criminal Justice System

A famous British historian said that, “Delay is the deadliest form of denial”. The Right to Speedy Trial was first mentioned in the landmark document Magna Carta. Clause 40 of Runnymede Charter, 1225 disallowed the selling of justice or its denial or delay. The Hon’ble Supreme Court of India has read several rights in article 21 to make ‘life’ more meaningful and worth living. One of those interpretations is right to speedy, fair and open trial. Pendency of cases is a gigantic problem which requires immediate attention. Due to the undue delay in justice delivery system, people by and large shy away from litigation,” Supreme Court Justice S.B.Sinha

On an average, 50 lakh crimes are registered everyday, which are sought to be investigated by the police. The pendency of criminal cases in subordinate courts is in the region of 1.32 crores and the effective strength of judges is 12,177. The number of under trials in criminal cases pending in the courts is 1.44 crores and of these over two lakh persons are in prison. On an average, Courts are able to dispose off 19% of pending cases every year.

Usually the criminal justice system takes a much more time to come to the conclusion as it the matter of the punishment to the accused. Even the degree of the crime is also taken into the consideration while dealing matters relating to the criminal in nature. If we study the criminal justice system in detail then the numbers will give us a clear picture of the criminal justice system in India. Many victims or even the accused died but the case has not yet decided by the courts. In deciding a criminal matter lots of factors like strong evidence & Witnesses are taken into consideration failing to which the matter becomes more complex. Even the role of

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1 http://www.wipo.int/about-ip/en/
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VI. Criminal Remedies for Infringement of various Intellectual property rights

a) Patents
The remedies, which may be available to the patent owner where infringement has been established, are usually provided for in the national patent law and are generally in two forms, civil sanctions and criminal sanctions. Criminal sanctions are available only under particular circumstances, where the infringement was committed intentionally. Criminal sanctions depend on the structure of the criminal law and the procedures applicable in the country. The usual forms of criminal sanction are punishment by imprisonment or by a fine, or both.

b) Copyright
Remedies for infringement of copyright or for violation of related rights consist of civil redress, as where infringers are obliged by court to cease the infringement and to undertake reparatory action by any appropriate means, for example, rectification in the press or liability for damages. Some laws also provide for penal remedies in the form of fines and/or imprisonment.

c) Trademarks
A successful infringement action leads to prohibition of the use of the confusingly similar mark. If the infringing mark is registered, cancellation of the registration is ordered. Most trademark laws provide for criminal sanctions for trademark infringement, but they were often enacted long ago and are no longer realistic. Counterfeitors pay fines, and imprisonment is rarely ordered.

From a view of a theoretical view if we see then criminal law & Intellectual property law hardly come along but if we see from an point of a protection Intellectual property then criminal protection is ne of the major aspect which come into picture. Almost all-intellectual property in their respective legislations has criminal liabilities for the accused. The issue not comes to an end there but still come with lots many issues to be taken into consideration. In spite of the fact of burden of cases on the regular criminal courts still the matters under purview of infringement & of criminal liability is refereed to the criminal courts. Slow procedure under the regular criminal courts kills the value of the same intellectual property, which is involved in the matter.

VIII. Challenge to territorial rights
The nature of the intellectual property laws is territorial. It means that that domestic legislation will govern the same right if infringed. But if we consider cases where the infringement is done outside the boundaries of the nation then there would be difficult for the domestic courts to frame criminal charges against hat person who itself resides outside the boundaries of the nation where the infringement is taken place which further leads to the denial of justice to the person. It will further leads to the crashing of the encouragement of that particular individual. Even the John Doe orders consume time which is not fixed and with no guarantee of positive results.

IX. Challenge to time of protection
Time period of protection of most of the intellectual property rights is time barred, it is just for a specific time period but after that fall into the public domain for e.g. patent law prohibits others from using the same technology or manufacturing of same product for a period of 20 years from the date of filing the application without the consent of the person who is owner. Now this time factor plays a very vital role in delivering justice to an individual. If we consider the proceeding of the criminal courts in India then it is a very clear-cut picture that it takes a pretty long period of time. No doubt there are interim remedies available but still the factor of time period can’t be ignored. Such long proceeding before court may lead to loose interest of the person. Therefore fast trials specially in matter of intellectual property rights is a very necessary step towards justice & delay to it a challenge before the criminal justice system in India.

X. Challenge to subject matter
Intellectual property rights cover enormous types of subject matter into it. Even the registration of such intellectual property requires compulsory technical background in certain IP’s. Therefore when such matter comes in the courts then it is very necessary to have a technical know how or a strong hold in that subject matter in order to deliver justice in the appropriate manner. But if we consider the background of the judges inour justicesystem then it can be easily seen that majority of them lacks with the knowledge in the subject matter of

intellectual property rights which might lead to injustice to the right holder. A matter has been adjourned due to such factors, as it needs time for judges to take opinion of the experts in that field. But now intellectual property rights are of major concerns & should be taken into consideration as an part & parcel among the judiciary. The scope of subject matter is not only limited to the judges bur also to lawyers so a good knowledge & idea of the subject matter of the intellectual property is too very necessary for the lawyers.

XI. Economic Challenge
Loss of the economic value associated to the intellectual property is one more major concern for the Indian judiciary system. No doubt there is grant of damages in term of remedy but the question I that is it appropriate to the loss, which is caused by the infringer. The motive of the infringer is to gain economic benefits from the property. But the actual loss is much more higher than the loss incurred by the infringement. It is very difficult to assume at the time of infringement the amount of profit it could bring in future, so the damages granted by the courts are negligible in that case. Some Intellectual properties even get exhausted if they are infringed by infringer then the granting of damages will not fill the gap, it may lead to total crash of the economy of the individual. Such kind of intellectual mostly relates to patents, Trade secrets etc. Today if the trade secret of Coca-Cola gets in public domain then it may lead to closing of the company then how far courts would be able to compensate the company.

Even the lawyers practicing in specialization of intellectual property are very few in number due to which they exercise a monopoly right & charge heavily to their clients. Now if the intellectual property of a scientist or person working for public welfare is infringed then it would be very difficult for him to maintain the litigation in the court as compare to the corporate entities. Therefore expensive trials are also one of the major challenges in front of the Indian Judiciary system.

XII. Challenge of Corporate Liability
Corporate liability is being considered as a worst hurdle in the path of justice as it only liable to pay damage if any loss is caused by it even it is criminal. Infringement of intellectual property by a corporate will only oblige them to pay damages to the infringer and no criminal liability can be constituted. Corporates have not much issue with paying damages as it amounts then peanuts in return of which if they are getting a information to exploit in the market. Maintaining litigations against such corporates is sometimes not possible for an individual as the lawyers engaged in this field of litigation are very expensive to hire.

XIII. Suggestions
A lot can be done through the following suggestion in coming up with all the challenges before the Justice system in dealing with Intellectual property rights to some extent.

- To overcome the territorial rights the domestic legislation need to be made more strong & flexible. Need of a strict check on the import-export is also one of the major step taken in this regard. Signing treaties with various other nations for protect the intellectual property in that country can be one step in direction of protecting IP countries where it is very common practice. Conducting the awareness programs for the Government officials & other responsible authorities can also be fruitful in some kind.
- Time management in courts can be implemented in courts to deal with the matter relating to the intellectual property rights. Speedy trial as our constitution right can also play an important role in delivering the justice in time while saving the interest of the masses. Speedy trials are implemented to a very few number of criminal cases till today, therefore judiciary & lawyers need to take more efforts to apply it to maximum cases & not just to exceptional.
- Education in intellectual property is very necessary aspect for the person who is involved in the matter relating to the intellectual property. Lawyers have already considered the intellectual property as separate field for practice and have all necessary education in that field. The problem arise with the judiciary as while selection of the judges subject of intellectual property is not included in the syllabus of the exam, In spite of the fact that there is separate subject of intellectual property in LL.B course which is too basic as compare to matters coming before the court. Although establishment of National Judicial Academy in Bhopal which provide the various courses to judges in various specialization out of which Intellectual property is also one & is considered to be an initiative to the same regard. Also more efforts needed to be taken to handle all matters relating to the intellectual property rights in most appropriate way. Setting up of Research Support Services Unit to respond to requests from members of the judiciary. Any judge sitting anywhere in the country can fax or e-mail propositions or questions for legal research and reporting to the unit. The research team in NJA under the supervision of a retired judge will do the necessary research with the help of library resources including Internet, draft appropriate memoranda and fax or e-mail it back to the judge within 48 hours. The idea is to give the most modern research services to every member of the subordinate judiciary particularly those located in remote
places where library/internet services are not adequately available. The services will be absolutely free for judges.¹⁰  
- The whole concept of intellectual property rights revolves around the economic factor, which is one of the major challenges in front of the judiciary system in India. Investment is the one of the necessary key for the birth of intellectual property like patents, which bears it fruits after its commercial exploitation. But in case of infringement damages by the courts need to be very high to satisfy the interest of the owner of the patent otherwise it may lead to discouragement to him. As compare to the US courts the damages are given is heavily that even the companies come to shut down their business. Fear to the infringer is very necessary to avoid such kind of infringement & even to protect the interest of the owner of intellectual property. 
- Corporates needed to be fined heavily in case of infringement of intellectual property, as they are economic very sound to easily infringe intellectual property right & pay damages as peanuts & survive the consequences. Imposing heavily fines & compensating the victim may help to protect his interest & it could be a lesson to other corporates to avoid infringement of others properties.

XIV. Conclusion

The judiciary needs to have a wider vision which can comprehend the impact on the global economy vis-à-vis national economy. The issue has a singular significance in the context of India. India has found an ironical benefactor in its population. Over the years, the second most populous country of the world has considered its huge population as one of the impeding features in its growth. But today India is one of the youngest nations in the world. The average age of an Indian national is between 30-45 years. Almost 70% of Indian population is in its working age. With the demand for a global work force increasing day by day, India is also the largest supplier of knowledgeable workforce. The direct implication of this is that these very eligible people shall be the minds that will be used in the creation of the technology of tomorrow. Without the proper system to promote and protect creativity, this window of opportunity may soon close for India. IP provides jobs. It is a large contributor to the economy as well. The onus will come on the judiciary to uphold the effectiveness of any IP system and ensure that creation of IP along with enforcement IPRs is maintained effectively. Any slackness is likely to have an adverse effect on the culture associated with investment; job-creation opportunities and GDP growth¹¹.  

It is said that the road to achievement is always under construction. We have to keep working. I hope this National Seminar on Criminal Justice System- Issues & Challenges in Techno Crimes (Intellectual Property Rights) would prove to be a milestone on the road to achievements for the judiciary. The Indian judiciary has to rise to the occasion as it has always done, and play the role that is expected from it

XV. References

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Biography

Munnazzar Ahmed has completed his graduation in law at the age of 24 from Bharti Vidyapeeth Deemed University, Pune and pursuing his post-graduation in law (Intellectual Property Rights) from Symbiosis Law School, Pune (2011-2013).