



UNVEILING THE ROLE OF THE FAMILY FOR AWARENESS OF INTELLECTUAL PROPERTY (IP) RIGHTS

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Abstract

This paper identifies family as a social institution for promoting awareness of Intellectual Property Rights. This paper argues that the National Intellectual Property policy and Cell should propose and customize scheme for the role of the family in promoting awareness of the IP rights and identify their role as a stakeholder and beneficiary of IP rights. This paper is first of its kind to adopt a sociological perspective and social planning theory argument for the awareness of Intellectual property right.

Keywords

Intellectual Property Rights, Policy, Sociological perspective, social planning theory, social institution, Family, stakeholder, beneficiary.

I. INTRODUCTION

The National Intellectual Property Rights Policy adopted in the year 2016 is 'the first conscious step that India took towards creating an environment that enthusiastically

promotes innovations and creativity.'¹ The policy aims to set symmetry in an Intellectual Property right system by promoting awareness about the importance of Intellectual Property Rights as marketable financial assets and economic tools² and ensure implementation of IP rights in India. The policy lays down seven objectives.³ This first objective laid down in the policy is the Outreach and Promotion of the Intellectual Property Rights (IPRs), to create public awareness about the economic social and cultural benefits of IPRs among all sections of society.⁴ The Policy also emphasizes on the necessity to reach to less visible IP generator and holders, in rural areas.⁵

For this purpose, the Cell for IPR Promotion and Management, under the Department for Promotion of Industry and Internal Trade (DPIT), aims to create awareness of Intellectual Property to the stakeholders. The function of the Cell is to create public awareness on the economic, social and cultural benefits of Intellectual property rights among different sections of society.⁶ The Cell focuses on major institutions and government departments as the stakeholders, such as School, Colleges, Skill Development Centers and Industry, Police and judiciary for the enforcement of Intellectual Property Right.⁷ The Cell promotes awareness to these institutions through campaigns, educate through the course materials for school and

¹ Shri Som Prakash, Minister of State Commerce & Industry India, message on National IPR Policy 2016

² National Intellectual Property Policy, Executive Summary, page 13

³ Seven Objective of the National Intellectual Property Policy are IPR awareness outreach and promotion, generating of IPRs, Legal Legislative framework, Administration and Management, commercialization of IPR, Enforcement and Adjudication and Human Capital Development.

⁴ National Intellectual Property Policy, Executive Summary, page 13

⁵ National Intellectual Property Policy, Executive Summary, page 13

⁶ The National Intellectual Property Rights Policy 2016-2020 <http://cipam.gov.in/about/national-ipr-policy/> ; <http://cipam.gov.in/about/cipam/> (revisited on 18.11.2019)

⁷ ibid



higher education level, introduce online and distance learning programs and curriculum at School, Colleges and Skill development Center.⁸ Nonetheless, the absence of the family as a social institution and absence of the customized scheme for family's participation in promoting awareness of the Intellectual Property Rights raises the question. Is family an appropriate institution for promoting Intellectual Property Rights in India? This paper claims to unveil the possibilities and role of family to create awareness of the IP right. For this purpose, the paper adopts a sociological perspective on the role and function of the family, which support the society and Indian economy, thereby creating a safe haven for promoting IP rights by families.

This paper proceeds in five chapters. The Introductory section I, describes the aims and objective of the National IPR policy and function of the Cell for promotions of IP rights. Section II discusses the role and function of family from a sociological perspective. Section III describes the nature of IP rights, social planning theory and correlation of IP in every spectrum of the lives of the families and Section IV proposes consonance between the IP rights and the role of the family as a social institution, stakeholder and beneficiary of the IP rights. This paper identifies the key possibilities on the role of the family to promote awareness of the IP rights. The proposition in this paper aims to set a new paradigm for promoting awareness of IP rights.

⁸ *ibid*

⁹ *Infra* note 10

¹⁰ National Intellectual Property Policy, Executive Summary, page 15

¹¹ India Family Business Survey, 2019
<https://www.pwc.in/assets/pdfs/research-insights/fbs/2019/pwc-india-family-business-survey->

II. ROLE OF FAMILY A SOCIAL PERSPECTIVE

The National Intellectual Property Rights policy further aims to weave in the strength of the government, research and development, organization, educational institution, corporate entities, including MSME, startups and other stakeholders in the creation of an innovation in a conducive environment⁹. This paper claims that the 'other stakeholders'¹⁰ in the policy could be interpreted as family, which comprises of producers and generators of Intellectual Property.

The Family has an eminent role in a society, Indian economy and one of the important sources of Intellectual Property. The Startup, farmers, Rural Artisan and weavers are the works and crafts majorly undertaken by a family; the rich cultural heritage, knowledge, skills and entrepreneurship that are recognized and protected under different intellectual property law are part of family's generations to generation's rich culture and knowledge. Families are also the major contributor in the Indian economy.¹¹ Family not only creates and earns a tangible property in form of land and houses they as well creates and generates an intangible asset, popularly known as an IP asset. IP assets create an IP right that has origin in families. Sociologist has articulated the role of the family. Horwitz observes that the market and the State do not exhaust the role of the family and describes family under the subject knowledge and incentives.¹² Horwitz argues

2019.pdf (revisited on 15.10.2019) [The report suggests up to 70 % contribution to Indian economy by the family business and entrepreneurship.]

¹² Steven Horwitz, The functions of the family in the great society, Cambridge Journal of Economics 2005, 29, 669-684



that families are social institutions that perform certain irreplaceable function in society.¹³ These functions changes as economic, political and social function circumstances change, and family form adapts accordingly and starts the next wave of developments in social structure.¹⁴

Functionalism sociological perspective views family as the initial, essential, bedrock of social integration in any given society.¹⁵ This perspective imbibes the idea in people that they belong to the society they were born and act in a way that reflects the belief that they have something in common. This brings us to the two major role of the family is a social structure that is Rule learning and Rule following. In the role of rule learning, the family is an institution where children learn social rules in an environment that is generally supportive; rewards and punishment for conforming and deviant behaviors can be individualize to the greatest degree possible because of the intimate, face-to-face, relationship between parents and children.¹⁶ In the role of rule following, Horwitz argues it is within the secure base of the family that children can learn both explicitly through instructions and implicitly through experimentation, the rules that do and should govern behavior in the broader social world. Horwitz argues the family is a superior site for learning these rules of behavior for three reasons: Intimacy, Incentives and subconscious learning.¹⁷ Marxists notes another role of the family and

argues that family group has historically, moved from being active producers of good and services to passive consumers. They have to buy the things that make profits for a ruling class and the family with all its expenses and expectation, represent an increasingly important source of consumption.

Families consume the commercialized IP protected products. IP awareness to these families will cure the anomalies and threat on the brand product imposed by the counterfeit products. The knowledge about the prospects and registration of intangible property, which dwell in tangible property are the core rules to reach families for awareness of IP rights. Fletcher defines three-core function of the family.¹⁸ Fetters also argue that family performs certain peripheral functions, which provide linkages with the wider social structure that are Consumption of goods and services, basic education, health care (both physical and psychological) and recreation (family plays together and stays together).¹⁹ The peripheral functions performed by family are currently a startup business facilitating living standards of people. Parson, rightly mention and argues that the Modern family has become increasingly specialized. He argues it performs two essential functions. Primary socialization and provides stabilization of adult personalities.²⁰ Further, the Neo functionalist perspective, elaborates on the functions of the family, as representing a Micro-Macro Bridge. Neo functionalist

¹³ ibid

¹⁴ Hayek's Modern Family, Classical Liberalism and the Evolution of Social Institution, Horwitz, Steven Published by Palgrave Macmillan US, 2015, ISBN 978-1-349-56247-3

¹⁵ As Sociology for AQA, Chris. Liveset and Tony Lawson, 2nd Edition, Unit 1 at Page 40

¹⁶ ibid

¹⁷ Supra note 9

¹⁸ Supra note 15 [Procreation and Child rearing, provision of home both physical home and emotional home for physiological well-being of the child and regulation of sexual behavior.]

¹⁹ Supra note 12

²⁰ Supra note 12



explains that the family is an institution that connects the micro world of the individual with the macro world of wider society, which includes social institutions such as government, the education system that develop in complex and large scale.²¹ Horwitz suggests that the family group plays a crucial party in linking the individual to wider society that accounts for its historical persistence and the family has survived because it provided social benefits to both the individual and society.

From the above discussion on the role of the family observed by Horwitz, functionalism, Neo functionalist, Marxist and Fetchers, it is clear that the role of family is not isolated. The exuberant role of family is in coherence with the generation of property, which projects their role as the stakeholder, beneficiary in Intellectual property assets. This possibility should be unveiled through the new national IP policy and customized scheme directly focusing on the role of the family and their role to contribute to the outreach and awareness of IP rights is still under a veil. There is a need to customize the schemes to take forward the National IPR policy with the role of the family in society and Indian economy. A sociological perspective to introduce family directly as a stakeholder would achieve the objectives of outreach and promotion of IP right. The aim to enhance creativity, innovation, competitiveness and economic growth

cannot be effective, if the larger part of the promoters and the contributors are in ignorance about the avenues to create revenues from the IP assets.

III. AWARENESS OF THE INTELLECTUAL PROPERTY (IP) RIGHTS

An IP right does not cover the physical object, but retains the conceptual development behind the physical object.²² IP rights protect a person's ability to produce new ideas and commercialize it.²³ The core IP right grants the proprietor exclusive right to exclude. It provides an exclusive right to produce copy and market the work and duties to abide by the statutory law that protect IP rights.²⁴ The main feature that distinguishes Intellectual Property from other types of the property is its intangibility.²⁵

The nature of Intellectual Property rights is statutory rights. The Statutory law related to IP rights provides right, duties, exception and remedies for using protected invention and creation. The IP right includes the Patent rights, which is recognition for an invention, which satisfies the criteria of global novelty, non-obviousness and industrial application.²⁶

Copyright is a collection of rights that automatically vest to someone who creates an original work of authorship. These rights include the right to reproduce the work to

²¹ Supra note 12

²² Chidi Oguamanam, Beyond Theories: Intellectual; property Dynamics in the Global Knowledge Economy, Wake Forest Intellectual Property Law Journal, Volume 9, 2008-2009, Number 2, <http://ipjournal.law.wfu.edu/files/2009/09/article.9.104.pdf>

²³ Esteban Burrone, 'Intellectual property Rights and Innovations in SMEs in OECD Countries, Journal of

Intellectual Property Rights, Volume10, January 2005, p 34-43

²⁴ ibid

²⁵ ibid

²⁶ The patentee has a right to prevent others from making, using, offering for sale, selling or importing the patented product in India directly obtaining by the process. The Patent Act , 1970



prepare derivative works to distribute copies and to perform and display work publicly.²⁷ Trademark is a sign capable of distinguishing the goods or services of one enterprise from those of another enterprises protection of the product symbol, signs and logo. Trademark not only protects the owner's right, but also instills on the consumer to have confidence in the product purchased by him.²⁸ Designs qualify for protection if its novel and original should be applicable to a functional article, it should be visible on a finished article and there should be no prior publication or disclosure of the design. The design registration gives a monopolistic right to the Proprietor by which he/she can legally exclude others from reproducing, manufacturing, selling or dealing in the said registration design without his/ her prior consent.²⁹

Unawareness on Geographical Indication, Traditional Knowledge, and Protection of Plant varieties and framers right and Bio diversity³⁰ leaves a major gap and vacuum in outreach and awareness about the IP rights. These IP rights relate to the geographical region and traditional knowledge of the

family/community from generation to generations. GI (Geographical indication) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin.³¹ Under the statutory protection of plant varieties and Farmer's rights³² A farmer who has evolved or developed a new variety is entitled to registration and protection as a breeder of a variety. The farmer's variety is registered as an extant variety and a farmer can save, use, sow, re-sow, exchange, share or sell his farm produce including seed of a variety protected under the Act.³³

The Biological Diversity Act³⁴ requires that a person/ entity obtain prior approval from the National Biological Diversity Authority to access biological resources or traditional knowledge associated with it for the purpose of research, bio-survey, bio-utilization or commercial utilization, make any application for any intellectual property rights and transfer any result of research.³⁵ Intellectual Property rights cover all sector and institution and awareness of IP rights has been fundamental for their better functioning and

²⁷ https://copyrightalliance.org/ca_faq_post/what-is-copyright/; Copyright Act 1957

²⁸ Importance of IP rights; Trademark Act 1999

²⁹ Design registration is particularly useful for entities where the shape of the product has aesthetic value and entity wishes to have exclusivity over the said novel and original design applied to its product or articles. <https://www.mondaq.com/india/patent/758452/industrial-design-protection-in-india-the-designs-act-2000>; Designs Act 2000

³⁰ The National Intellectual Property Rights Policy 2016-2020

³¹ Geographical Indication of Goods (registration and protection) Act 1999 [In order to function as a GI, a sign must be identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link

between the product and its original place of production.]

³² Protection of plant varieties and Farmer's Right Act 2001 [The farmers shall not be entitled to sell branded seed of a variety protected under the PPV& FR Act, 2001. Farmers are eligible for recognition and rewards for the conservation of Plant genetic resources of land races and wild relatives of economic plants. There is also a provision for compensation to the farmers for non-performance of variety under section 39 (2) of the Act, 2001 and Farmer shall not be liable to pay any fee in any proceeding before the Authority or registrar or the Tribunal or the High Court under the Act.]

³³ PPV&FR Act, 2001

³⁴ The Biological Diversity Act 2002

³⁵ National Biodiversity Authority <http://nbaindia.org/>



existence. Likewise, IP rights are important for a social institution family, which is a core foundation of a society and country. An awareness scheme with family as one of the focal point is need of the era. The family needs to be aware of their role as a social institution, stakeholder and beneficiary for promoting awareness on IP rights.

The Social Planning Theory of intellectual property law is important theory that emphasizes on the social well-being and promotion of Intellectual Property. Professor Willian Fisher coined this theory with various components.³⁶ These components and ideas include the consumer welfare. Professor Fisher describes consumer welfare with respect to intellectual property as a guideline that urges to select a combination of rules that will maximize consumer welfare by optimally balancing incentives for creativity with incentives for dissemination and use.³⁷ The theory states that the law ‘can be shaped to help foster the achievements of a just and attractive culture.’³⁸ Social planning theory views law as means to advance the state of society.³⁹ The social justice and public welfare are another related concept that used by the scholars who view

intellectual property law as a mechanism of the social engineering.⁴⁰ The social planning theory is a study of the possibility on the role played by intellectual property works in the process of social dialogue and social change.⁴¹ The Social planning theory channels a platform for IPR that advances a balance among the stakeholders that includes the family.

The social planning theory lays down possibility for the direct involvement of the family as a stakeholder and promoter on awareness of IP rights. A customized scheme under this theory as a means to advance the society could be a possible approach to convey the value and benefits of IP, along with the other stakeholders. This step will involve the families who will reach out to the families of the less visible and silent IP generators and holders especially in the rural and remote areas. These include small businesses framers/ plant variety users, holders of traditional knowledge, traditional cultural expression and folklore, designers and artisans. These stakeholders are family a social institution, which support them and have reason for their very existence and

³⁶ Infra note 37, A cornopia of information and ideas, a rich Artistic Tradition, distributive justice, semiotic democracy, sociability and respect.

³⁷ Fisher III, Leah Chan Grinvald, Making Much Ado about Theory: The Chinese Trademark Law, Michigan Telecommunications and Technology Law Review, Volume 15, Issue 1, <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1068&context=mttlr>

³⁸ Leah Chan grinvald and Ofer Turn Sinai, Intellectual Property Law and the Right to Repair, Fordham Law Review, Volume 88, Issue 1 2019, P.95 <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=5618&context=flr>

Willaim W. Fisher III, Theories of Intellectual Property, Originally published in Stephen Munzer,

ed., New Essays in the Legal and Political Theory of Property (Cambridge Universities Press, 2001) https://cyber.harvard.edu/people/tfisher/IP/Fisher_IP_Theories.pdf

³⁹ *ibid*

⁴⁰ Supra note 10, Steven D. Jamar & Lateef Mtima, A social Justice Perspective on Intellectual Property, Innovation and entrepreneurship in Entrepreneurship and Innovation in Evolving Economies, The Role of Law 78, Megan M Carpenter ed, 2012, Lateef Mitma, Copyright Social utility and Social Justice Interdependence: A paradigm for Intellectual Property Empowerment and Digital entrepreneurship, 112 W. Va .L. review 97 (2009);

⁴¹ *ibid*



functioning in the said ventures as a family business, family practices and tradition.

IV. FAMILY A SOCIAL INSTITUTION FOR PROMOTING AWARENESS ON IP RIGHTS

Family is a root for the existences of other institution in a society. Their function associates with institutions such as School, University, Industry, Police and judiciary. This intertwined social institution has a major role and is a foundation pillar of a country. The analysis of National Policy on Intellectual Property Rights lacks the family centric approach for awareness of the IP rights. This part of the paper proposes how the family as a social institution can contribute to promote outreach and awareness of IP rights.

The plausible strategies for a family as a social institution to promote outreach and awareness of IP rights are the strategies that figure out the possibilities of focusing on families as the center for promoting awareness.

Firstly, Families in the role of the Stakeholders, Family business, though their trust, Corporate Social Responsibilities CSR scheme and Philanthropic activities could initiate awareness programme to the other families. Family business covers all the sectors like food, clothing, and construction materials, consumed by the larger family population of India who are beneficiary of their product in the market. The IP rights awareness program by the stakeholder for the beneficiary will be an example of the rule learning and rule following role by a family business for a family.

Secondly, Family is a major financial and emotional support for its member. Where the member of the family pool in finances for the investments, provides land for establishing the business and lends financial support. In this role, the family shows the possibility and competencies to understand the business, market and the value of the IP rights and assets. Further, Awareness of IP right to these families will ensure safety and protection to their business and knowledge about the IP assets ensure fair competition in the market.

Thirdly, Family as a social institution establishes a credible link in a market as guarantor and creditors. In a market of competition, guarantee plays a pivotal role is gaining loyalty of the people. The family functions as a credibility link for marketing for products and services. The family preferred brand for food, clothing, and jewelry often gets credibility stamps of the people such brands often emerges as a popular Trademark and gain recognition for the product and services through social dealings amongst the family.

Fourthly, Family contributes through the arts, craft and traditional knowledge. The age old techniques of preserving the biodiversity and the farming techniques make family a major stakeholder and beneficiary for preserving the environment and fruitful use of the resources of the country. Protection of their knowledge under statutory law and awareness regarding their right can be promoted by the family through face to face interaction and teachings.

Fifthly, Family's function of social integration and socialization will encourage



socialization and education on the benefits of the intellectual property.

The above non-exhaustive and exuberant role of the family highlights the existing necessity of focusing on family as a social institution for awareness of Intellectual Property Rights. Family is a social platform for awareness, a producer of good and services as a stakeholder and beneficiaries as an end consumer utilizing and consuming good and services. The importance of family is evident in the other development scheme in India, where the family imbibes the essence of the scheme and the set stage for efficient outcome.⁴² Further, the advertisement of good and services focuses on such content that involves participation and interest of the members of the family. Since, the major project and the sustainable development scheme include family as the focal point for implementation of the projects. The exuberant roles of the family indicates all the possibilities to play a pivotal role for awareness and promotion of Intellectual Property Rights in India and showcases all possibilities to fill the existing gap of a social institution for promotion of IPR law and rights.

V. CONCLUSION

The paper proposes family as a social institution and stakeholder for promoting awareness of IP rights and questions the underrated role and function of the family in the field of IP awareness and outreach. The role of the family invites research to adopt and multidisciplinary study. This paper adopts the multidisciplinary study on IP rights and the role of the family and argues that the customized scheme focusing only on

institution and organization will not suffice the objective of the outreach and awareness on IP rights. A customized scheme for family and by family for outreach and awareness of IP rights is need of the era. Further, the paper unveils role of the family as a social institution and stakeholder for promoting awareness of IP rights.

⁴² SawchBharat
<https://swachhbharat.mygov.in/>

Abhyan,