



Intellectual Property Rights : Indian Perspectives & Legal Provisions

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Abstract-Man gives birth to many inventions and new creations with his intelligence. He also has full rights over those special inventions, but the protection of this right has always been a matter of concern. This is where the debate of intellectual property and intellectual property rights begins. If we make a creation originally and this creation is used by someone else for their own benefit in an illegal way, then it is a clear violation of the rights of the creator. The World Intellectual Property Organization (WIPO), an agency of the United Nations, was established when the debate intensified in the world on how to protect intellectual property rights. Due to the efforts of this organization, the importance of intellectual property rights gained prominence. In this article, an attempt has been made to discuss about Intellectual Property Rights, its types, India's approach in the context of Intellectual Property and World Intellectual Property Organization.

Keywords- Intellectual Property Rights, Human Capital, Education, Copyright

"Provision of strict enforcement and action against violations is the need of the hour" Justice N.V. Ramana
Introduction-Intellectual property rights (IPR) are rights associated with intangible assets owned by a person/company and protected against use without consent. Thus, the rights relating to the ownership of intellectual property are called intellectual property rights. These rights aim to protect intellectual property (a creation of human intelligence) by allowing the creators of trademarked, patented, or copyrighted works to benefit from their creations.

In other words, we can say that the legal rights prohibit all others from using the Intellectual Property for commercial purposes without the prior consent of the IP rights holder. IP rights include trade secrets, utility models, patents, trademarks, geographical indications, industrial design, layout design of integrated circuits, copyright and related rights, and new varieties of plants. It is very well settled that IP plays an important role in the modern economy.

IPR is a strong tool, to protect the investment, time, money, and effort invested by the inventor/creator of the IP, as it gives the inventor/creator an exclusive right for a certain period of time for the use of its invention/creation. Thus, IPR affects the economic development of a country by promoting healthy competition and encouraging industrial growth and economic growth.

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What is Intellectual Property Rights?- Intellectual Property can be defined as inventions of the mind, innovations, literary and artistic work, symbols, names and images used in commerce. The objective of intellectual property protection is to encourage the creativity of the human mind for the benefit of all and to ensure that the benefits arising from exploiting a creation benefit the creator. This will encourage creative activity and give investors a reasonable return on their investment in research and development.

The rights granted to individuals in the context of their intellectual creation are called intellectual property rights. In fact, it is understood that if a person does any kind of intellectual creation (such as creation of a literary work, research, invention etc.), then first of all that person should have exclusive rights over it. Since this right is given only for intellectual creation, it is called intellectual property right.

According to Article 2 of the WIPO (World Intellectual Property Organisation) – Central Organisations for the protection of Intellectual Property Laws and the expert organization of the UN, “Intellectual Property shall include the rights relating to literary, artistic and scientific works, inventions in all fields of human endeavor, scientific discoveries, industrial designs, trademarks, service marks and commercial names and designations, protection against unfair competition, and all the other rights resulting from intellectual activity in the industrial, scientific, literary or scientific fields”

Intellectual property refers to morally and commercially valuable intellectual creation. Granting of intellectual property rights should not be taken to mean that only and only its creator will have the right forever and ever. It is necessary to mention here that intellectual property rights are given in view of a fixed time period and a fixed geographical area.

The basic purpose of granting intellectual property rights is to encourage human intellectual creativity. Due to the wide scope of intellectual property rights, it was considered necessary to make arrangements for its relevant rights and related rules etc. for the particular sector.

Type of Intellectual Property Rights

Copyright

Copyright is a legal term describing rights given to creators on their literary and artistic works. Copyright rights cover books, paintings, sculptures, movies, music, computer programs, databases, advertisements, maps and technical drawings. Two types of rights are given under copyright -

(a) **Economic rights:** Under this, a person is given financial reward in exchange for the use of his work by another person.

(b) **Moral rights:** Under this, the non-economic interests of the author/creator are protected.

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Patent - A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. When an invention is made, the exclusive right given to the inventor is called a patent. Once the patent right is granted, its term is for 20 years from the date of patent filing. The invention should not have been made public anywhere in the world, the invention should not indicate an improvement in any product or process already available and the invention should be capable of practical application, all these criteria are necessary to get a patent.

Such inventions (which provoke aggressive, immoral or anti-social image and such inventions which are used to know the symptoms of diseases in humans or animals) will not get the status of patent.

Trademark - A trademark is a distinctive sign which identifies certain goods or services as those produced or provided by a specific person or enterprise. A mark by which the goods and services of one enterprise can be distinguished from the goods and services of another enterprise is called a trademark. A trademark may be in the form of a word or a group of words, letters or numbers. It can be in the form of a picture, a sign, a three-dimensional symbol such as a musical sound, or a specific type of color.

Industrial Design - An industrial design is the ornamental or aesthetic aspect of an article which must appeal to the eye. The design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color. According to the Designs Act, 2000 in India, 'design' means any combination of shape, sequence, arrangement, pattern or ornamentation, lines or characters applied to any object which may be represented either in two dimensions or in three dimensions. Or be in both.

Geographical Indication - Geographical Indication is an indication which identifies goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin. These products have a specific geographical place of origin and have a special quality associated with that place of origin. Various agricultural products, food items, alcoholic beverages, handicrafts are given the status of Geographical Indication. Tirupati Laddoos, Kashmiri Saffron, Kashmiri Pashmina etc. are some examples of Geographical Indications.

The Geographical Indications of Goods Act, 1999 has been enacted in India. This act came into force from the year 2003. By virtue of this act, the Geographical Indication tag ensures that no one other than the registered user can use that prevalent product name.

The traditional skills of craftsmen will be upgraded through the 'Ustad Yojana' launched by the Government of India in the year 2015. For example, Banarasi saree is a Geographical Indication. Therefore, socio-economic empowerment of Banarasi saree craftsmen associated with the Ustad Yojana can be expected.

International Convention for the Protection of Intellectual Property - Intellectual property rights are outlined in Article 27 of the Universal Declaration of Human Rights, which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions. The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Both treaties are administered by the World Intellectual Property Organization (WIPO).

Paris Convention Relating to the Protection of Industrial Property (1883): includes trademarks, patents for industrial design inventions.

Berne Convention for the Protection of Literary and Artistic Works (1886): This includes novels, short stories, plays, songs, operas, music, drawings, paintings, sculptures and architecture.

Marrakesh Treaty (2013): Marrakesh Treaty (2013): According to this treaty, if a book is printed in Braille script, it will not be considered as a violation of intellectual property. India is the first country to adopt this treaty.

World Intellectual Property Organization (WIPO) According to Article 2 of the WIPO (World Intellectual Property Organisation) – Central Organisation for the protection of Intellectual Property Laws and the expert organization of the UN, “Intellectual Property shall include the rights relating to literary, artistic and scientific works, inventions in all fields of human endeavour, scientific discoveries, industrial designs, trademarks, service marks and commercial names and designations, protection against unfair competition, and all the other rights resulting from intellectual activity in the industrial, scientific, literary or scientific fields.”

- World Intellectual Property Organisation is one of the oldest agencies of the United Nations.
- It was formed in the year 1967 to encourage creative activities and to promote intellectual property protection in the world.
- Its headquarter is in Geneva, Switzerland.
- All member states of the United Nations can become its members, but it is not binding.
- Currently 193 countries are members of this organization.
- India became a member of this organization in the year 1975.

India's position in the protection of intellectual rights - In the Global Intellectual Property Index-2020, India ranked 40 out of 53 countries with a score of 38.46%, while in the year 2019, India was ranked 36 out of 50 countries with a score of 36.04%. The two new countries included in the index, Greece and the Dominican Republic, have better scores than India. Significantly, countries like Philippines and Ukraine are also ahead of India. Although at a slower pace, India has registered an overall increase in its ranking compared to any other country.

Efforts Made by the Government of India for the Protection of Intellectual Property

Patent Act 1970 and Patent (Amendment) Act, 2005:

The Indian Patent and Design Act was first enacted in India in the year 1911. After independence, the Patent Act was enacted in the year 1970 and it was implemented from the year 1972. The Act was amended by the Patents (Amendment) Act, 2002 and the Patents (Amendment) Act, 2005. As per this amendment, 'Product Patent' was extended to all areas of technology. For example, it was expanded in the field of food, drug manufacturing etc.

Trademark Act, 1999: The Trademark Act, 1999 has been made for trademarks in India. The trade mark act includes the word, sign, sound, color, shape of the article, etc.

Copyright Act, 1957: By enacting the Copyright Act in the year 1957, this law was implemented across the country to protect intellectual property rights.

The Geographical Indications of Goods (Registration and Protection) Act, 1999: This law ensures that no one other than the registered user can use that popular product name. **Designs Act, 2000:** Provides protection to all types of industrial designs.

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National Intellectual Property Rights Policy, 2016: On May 12, 2016, the Government of India approved the National Intellectual Property Rights Policy. Through this rights policy, intellectual property is protected and promoted in India. Seven goals have been set under this policy -

To create awareness among all sections of the society about the economic, social and cultural benefits of Intellectual Property Rights. To promote the creation of intellectual property rights.

Strong and effective intellectual property rights regulations. Adoption so that a balance can be maintained between the owner of intellectual property and the public interest. To modernize and strengthen service based IPR administration. Valuation of intellectual property rights through commercialization.

Strengthen enforcement and judicial system to combat violations of intellectual property rights. Strengthening teaching, training, research capabilities of human resources institutions and skill building in intellectual property rights.

Drawbacks of the Indian Intellectual Property Rights System – Chief Justice of India NV Ramana at the National Seminar on Adjudicating Intellectual Property Rights (IPR) Claims in India said on 25 February 2022 that there is a need for strict action against acts of infringement of corporate rights.

In general, many experts believe that India's intellectual property rights system is responsible for the lack of expected progress in Indo-US trade. Although there is not enough truth in this matter, but on this pretext, we have a suitable opportunity to see the intellectual property rights system of India.

Due to lack of adequate information with the farmers in rural areas, they do not know which variety is covered under patent and which is not. In such a situation, there is often a clash between the farmers and the corporates. Getting a patent in India is a complicated task. Our patent offices lack information related to research. Before approving the patent of any research, it is very important to know whether that research is better than the already existing research or not. In this sense, getting the patent granted within the stipulated time is a challenging task. Present time is of artificial intelligence.

Now machines have also started thinking like humans. In such a situation, if we make art or technical skill the basis of obtaining intellectual property rights, then in the coming time, these machines will be patented in their own name. Not being able to attract the private sector to promote research is also a big challenge.

Conclusions- Intellectual property rights are monopoly rights that grant their holders temporary privileges for the exclusive exploitation of cultural expressions and income rights from inventions. Society must have good reasons for granting such privileges to some of its individuals, and so advocates of these rights give us three widely accepted justifications for the inter-global intellectual property rights protections of today.

It is clear that managing IP and IPR is a multi-disciplinary task and demands a number of different actions and strategies that need to be aligned with national laws and international treaties and practices. It is no longer driven solely from a national perspective.

Different forms of IPR demand different treatment, management, planning and strategies, and involve individuals with different domain knowledge such as science, engineering, medicine, law, finance, marketing and economics. Intellectual property rights (IPR) have social, economic, technological and political implications.

Rapid technology, globalization and fierce competition leading to protection from infringement of innovations with the help of IPRs like patents, trademarks, service marks, industrial design registrations, copyrights and trade secrets. But there is still a violation of intellectual property rights. The government is also taking measures to stop them. There are laws regarding the prevention of infringement of intellectual property rights.

For India to sustain this growth, India still needs to do more to bring about transformational changes in its overall intellectual property structure. Not only this, serious steps are also needed to be taken for the continuous implementation of strong intellectual property standards. The Industrial Development Organization of the United Nations has proved through one of its studies that economic development has taken place faster in countries where the intellectual property rights system is well organized. Therefore, there is an urgent need for improvement here. India needs to streamline the 'Controller General of Patents, Designs, Trademarks and Geographical Indications.

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