

# Intellectual Property: Need in Technological Society

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## INTRODUCTION

Property means collection of rights and obligation which shows ownership and gives privilege and liberty to use the property in any manner they want. Property deals with movables, immovable's, tangible and intangible. With the changing nature of the society, the people enlarge the area of contemplation, and by this they create many types of articles. Copyright and trademark are part of it, they are intellectual property and it comes under the ambit of intangible property. In our modern society, every person who have their creative ideas, artistic works, etc. they want to use it in every way and want to control it and prevents others to use it without their permission and they want to use their intellectual property for their beneficial purpose and control over them. In this type of property, the owner cannot possess their property but have enlarged the area. There are many types of intellectual properties like copyright trademark, patents, geological indications, designs, etc.

Earlier there are mainly four types intellectual property i.e., Copyright, Patent, Trademark, Designs but after many International Conventions and mainly the agreement on Trade Related Intellectual Property Rights i.e., TRIPS which resulted in the emergence of new additional rights like geological indications, right of plant breeders and farmers; semiconductor integrated circuit layout designs and protection of undisclosed information. By the help of Intellectual Property Rights provides the privacy on the large scale and also contributes in the economic interest of society.

### Intellectual Property Rights and Indian Constitution:

The constitution of India not mainly focuses on the Intellectual Property Rights but there is only one place where the Constitution of India talks about to preserve the Intellectual Property Rights i.e., Union List or List-1 Entry 49<sup>1</sup> and other than this Indian Constitution is not much aware about the Intellectual Property Rights. These rights are comes under Right to Freedom. It is not expressly given under Article 19 but somewhere impliedly. All the freedom provided in Article 19(1) of constitution of India have some reasonable restrictions also in which the Intellectual Property Rights are also implied in freedom of speech and expression as reasonable restrictions given in Article 19(2) like copyright has reasonable restriction on freedom of speech and expression i.e., No person will get the advantage from the work done by the other person in the name of freedom of speech and expression. So, impliedly the Article 19(2) imposes reasonable restrictions on them. The Article 19(2) of constitution is not exhaustive in nature rather they are illustrative.

In the case of Sakal Newspaper (P) Ltd. V. Union of India<sup>2</sup>, it was interpreted by the Supreme Court that the Article 19(2) of Indian Constitution is exhaustive in nature for the purpose of reasonable restriction on Article 19(1)(a). But this is not justified because exclusion of those rights which are important to be included in it are not allowed in Article 19(2). Our fundamental rights in Indian constitution were based on USA but USA is fully aware of these types of rights as also specified in their constitution in Section 8<sup>3</sup> of Article 1. But India is not much aware about the intellectual property rights and they only talk about the tangible properties when constitution drafted and because of its India doesn't borrow the provision related to Intellectual Property Rights in constitution of USA.

### Meaning of Intellectual Property:

Intellectual Property is the creation of mind of the human which means they are created by the help of human brain. Basically, Intellectual Property refers to and includes creation of new or unique concepts by using their one's own ideas, concepts, techniques, etc. "The World Intellectual Property Organization (WIPO) held in Stockholm on July 14, 1967 which states that Intellectual Property include rights which relates to-

- a) Literary, artistic and scientific works,
- b) Performance of performing artists, phonograms and broadcasts,
- c) Inventions in all fields of human endeavor,

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<sup>1</sup> Entry 49: Patents; Inventions and Designs; Copyright; Trademarks and Merchandise marks;

<sup>2</sup> AIR1962SC305

<sup>3</sup> To promote the progress of science and useful arts, by securing for limited times to authors and inventors, the exclusive right to their respective writing and discoveries."

- d) Scientific discoveries,
- e) Industrial designs,
- f) Trademarks, service marks and commercial names and designations,
- g) Protection against unfair competition,

And all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.” Intellectual Property Rights inspire the creators by providing protection the intellectual activity and to exclude others to interfere in it for the certain time period.

The Universal Declaration of Human Rights, 1948 talks about protecting the Intellectual Property and materials made by the innovator<sup>4</sup>. And also, in Article 1 Section 8 of Constitution of America talks about the Intellectual Property and makes provisions relating that.

## **DIVISION OF INTELLECTUAL PROPERTY**

**Copyright:** Copyright is the part of intellectual property which helps the creator to exclude others to reprint, scatter, exhibit the creator's work which is for a certain limited period of time. Copyright includes the scientific, literary, artistic works, music, painting, books, etc. As the copyright is only for a limited period of time so when the time lapses the other person can reuse or reprint it. The government grants the copyright to exclusively use their own ideas. It is in the interest of creator.

**Patent:** Patent is a type of intellectual property which is granted by the government to have monopoly status in the market over the product and to protect the technique or process uses by them and to preserve that right for over 20 years and no person for that time period can manufacture, make use of, received advantage by selling without the authority or permission of the holder of patent. This right is related to new innovations. New innovation means that which is not earlier used by anyone. When the patent given to patent holder than it is known to public so that people can know and this has to be registered in the official register with the name mentioned of patent holder.

**Industrial Design:** Industrial design is the design which attract the public at large and which helps in the economic development of the industry and helps the industry to increase their turnover and profit and also it does not create anti-competitive agreement but there are skills used by the person and which prompt the competition in the general market that how other design their products.

**Trademark:** Trademark is a sign or symbol which indicates a certain industry and it differentiates with the other, so people can easily accessible the product of that undertaken by taking its mark and can differentiate the local goods from the original one. Trademark also include the packaging of goods, shape of product or mixture of colors in the product etc. The sign or symbol indicates identification, stamp, mark, label, packaging of goods, physique or body of product, etc. Trademark is a shield to which help the public to separate products from the other one. And Trademark gives the exclusive right to the owner to use the symbol, goods etc. by which people can easily identify the goods. After taking trademark no person can illegally use that mark to deceive other people and make benefit from it.

**Trade Secrets:** Trade secrets are the secrets of any organization which are confidential in nature and cannot be disclosed the techniques which they use in making or producing of the goods. Even if trade secrets are more register, they are to be protected without following any type of formalities and they are protected for an unlimited time period.

**Geographical Indications:** The geographical indication shows that where the goods are manufactured or produced. It is also defined in TRIPS Agreement under Article 22 of the Indian Constitution. Any sign which shows the indication where the goods are manufactured is a geographical indication. And it also shows the feature of goods because sometimes it is need of people that certain goods are originated in some specified area. And these are granted for 10 years and can be renewed from time to time.

**Character of Intellectual Property:** The intellectual property covers wide areas of creation like designs, symbols, names, packaging of products, sign, artistic works, dramatic, musical lyrics, etc. The intellectual property comes under the ambit of intangible property. The intellectual properties protects the new innovations of the creators and encourage them to make or invent the new ideas by applying human minds. The intellectual property helps the creators to make the right use of technology and expand it but not retain to oneself. It also helps the country in economic development.

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<sup>4</sup>Article 27(2), of Universal Declaration of Human Rights, 1948-“Everyone has right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”

Article 7<sup>5</sup> of TRIPS Agreement and Article 27 of UDHR, 1948 deals with certain intellectual property. The intellectual property is sectional rights excluding copyright. The intellectual property is protected to certain time period and can be renewed time to time and encourages creators or inventors to use their minds and state provide protection to them and safeguard their interest and no one is permitted to use the work of creator without their consent and if any person done so then he shall be punished or penalty will be imposed on them. These rights are the assets of the creators, so that's why the creator can buy or sell his intellectual property and have control over them. The intellectual property government by many acts like patent governed by the Patents Act, 1970, Copyright with the Copyright Act, 1957, Trademark with the Trademarks Act, 1999, Designs with the Design Act, 2000, and many more. In these Acts it defined the meaning, how the registered, how creator can use, the time limit to use the invention, the penalty in case of infringement of any right of creator, etc. All the things are to be mentioned in these Acts and can be applied in the manner provided in it.

### **Role of Intellectual Property in Economic Development**

The intellectual property affects the economy in the larger scale. It helps in development of the country by using their creative minds to earn money which helps in raising the economy of the nation. The people are now concern or aware about intellectual property rights and which helps the youth to better use of their minds. It also increases the competition in the market there are many economies goal like to spread the new innovations and encourage creators to use their ideas and please it in front of people and which helps in the rise of economy. And when people aware about the intellectual property rights they can invest in them in terms of money, knowledge, advancement and it have to explain the business and raise the capital of the business by using new technology and innovations.

### **IMPORTANCE OF INTELLECTUAL PROPERTY**

Intellectual property provides bundle of rights to create a new society. The intellectual property plays a very important role because now the people became aware about these concepts and that's why our legal system also develops according to advancement in our society. So, intellectual property is very important and beneficial for us and many reasons are behind that and some of them are:

**Protection:** The intellectual property protects the rights of creators safeguarding their interest and make provisions regarding protection of the rights of innovators. And it also explain others to interfere with it and provide the owners to have control over their intellectual property and use it as they want to and owner can also have the power to sell their intellectual property and also can allow occurs to use it.

**Development:** the intellectual property helps in the development and growth of society in the field of economic, social and cultural. By the proper utilization of the intellectual property, a person can earn more money which helps in raising the economy of the country and also improves the standard of living and also grow our nation. Intellectual property is asset of the creator that he can buy, sell his property and have the foremost control over it.

**Encouragement:** The people are now aware about the intellectual property and also government make provisions for safeguarding them from and violation. This encourages and expand or enlarge the area of the intellectual property and make beneficial use of them.

**Beneficial:** Intellectual property are now become a part of the society and by which we derive many beneficial interests like we raise the economic development, use new type of techniques by applying our human mind. So, now it is very beneficial for our society and people uses their mind and make unique products and then registered them so that no one can interfere with their property and make beneficial use of their property.

**Knowledge:** By using the new techniques and technology, one can gain knowledge and know about some new and unique process and can also raise our human mind. The intellectual property improves the knowledge of person by gaining information through many medium. The intellectual property has covered a very large scale so it is also very important to know about it.

**Enhance Competition:** The intellectual property helps to increase the competition in the market which is fair and honest competition by making some new technology, new innovations, new processes and many more which helps in raising the competition in the market and grow our nation at the world-wide level. The intellectual property is a new type of asset and now people are aware of the better use of products and equipment.

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<sup>5</sup>The protection and enforcement of Intellectual Property Rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner and conducive to social and economic welfare, and to a balance of rights and obligations.”

## **IMPLEMENTATION OF INTELLECTUAL PROPERTY RIGHTS**

The TRIPS Agreement impose the minimum condition for implementation Intellectual Property Rights. It also provides remedies in case of infringement is civil remedies which are according to civil procedure code and penal remedies according to Indian Penal Code. There are many types of remedies affect the infringement. These are discussed below:

**Civil Remedies:** The civil remedies are those remedies in which the plaintiff can claim damages, compensation, injunction, and confinement or infringing copies, etc. which is to be governed according to the civil procedure code, 1908.

**Criminal Remedies:** The criminal remedies are those remedies in which the penal remedies are to be provided. The penal remedies like imprisonment, fine, seizure, etc. the criminal remedies are providing as according to Indian penal code and the procedure which has to be followed for providing remedies is given in Criminal Procedure Code.

**Administrative Remedies:** The administrative remedies are those remedies are non - judicial in nature as it is not provided by the courts but in this a person can move to any board, commission, agency or any other which is of similar nature. These types of remedies are provided outside the court.

The remedies are provided in the specific Acts which are containing provision regarding infringement like in case of infringement of copyright, the remedy is to be provided as according to the Copyright Act and so on. So, the remedies are provided in the special Acts and governed according to those provisions.

### **Enactment of Law in India Relating To Copyright and Trademark:**

As in our India, our legal system in mostly based on United Kingdom. And after participating in many conventions India created laws relating to the Intellectual Property Rights. In the year 1957, the India created the Copyright Act which is based on the Act of 1956 of United Kingdom. And in the Act the provisions related to copyright is mentioned therein like the provisions relating to registration of Copyright, provisions related to infringement, that how to registered, where registration made, the time period of copyright, and many more provision are to be mentioned in the Act and according to the society these provisions are also amended time to time if necessary and in case of copyright use refers the Copyright Act, 1957 to remove over doubts.

Then in the year of 1999, the Trademark Act created and adopted in India and also the rules related to Trademark in 2002 replaced the Act of 1958 i.e., Trademark and Merchandise Marks Act and also rules regarding this act need in 1959 replaced. And the act of 1999 borrowed some provision from the act of 1958 but not all of them. This is the Act in which for the first time the appellate body has been made and if any party aggrieved from the decision of registrar can file appeal in the appellate board and the appellate board has the similar power as that of civil court and also has the power to fix the time and place for hearing. The appellate board is also the body for dealing cases in appeal under the Patents Act, 1970 and also the Geographical Indications Act, 1999.

### **Registration of Intellectual Property Rights:**

Registration of intellectual property rights is very important to secure the intellectual property and protect the property from any type of infringement. The registration can be done through the creator or owner of the intellectual property. In the case of copyright and trademark registration is not compulsory but as we know people are now aware so for protection, we have to registered our intellectual property so that in case of infringement we have not to face any difficulty for proving the ownership over the intellectual property. And also, to protect the property because now the competition between the industries day by day. So, we have to registered trademark to protect the public from any deception because identical things can be made and if we registered our trademark, we can easily prove the identical things but if not registered then we have to face some problems for proving it so for additional protection we have to registered the copyright and trademark and it also helps in litigation in case of infringement.

## **CONCLUSION**

The Intellectual Property is the creation of human mind and it is very beneficial from today's perspective so we need to protect it from any kind of infringement in the rights of creators. Now the people are very much connected through social media and have many different opinions and skills and make content by using their skills but also there are many doubts in the minds of creators that their content is not copied and they want to secure it. That's why the intellectual property rights came into existence to fulfill the needs of society.