

## INTELLECTUAL PROPERTY AND ITS PROTECTION UNDER INDIAN LAWS

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### ABSTRACT

*“That ideas should freely spread from one to another over the globe, for the moral and mutual instruction of man, and improvement of his condition, seems to have been peculiarly and benevolently designed by nature, when she made them, like fire, expansible over all space, without lessening their density in any point, and like the air in which we breathe, move, and have our physical being, incapable of confinement or exclusive appropriation. Inventions then cannot, in nature, be a subject of property. Society may give an exclusive right to the profits arising from them, as an encouragement to men to pursue ideas which may produce utility, but this may or may not be done, according to the will and convenience of the society, without claim or complaint from anybody...”<sup>1</sup> Intellectual property plays vital role in scientific and economic development of the world. It paves the way in promoting innovation and creativity. “Intellectual property rights” (IPR) refers to the legal rights granted to the inventor or manufacturer to protect their invention or manufactured product. Its relevance has been increasing day by day. This Article highlights the crucial role of protecting intellectual property rights for encouraging innovation and creativity. It is also necessary to focus on opportunity to promote public understanding of intellectual property rights and its importance for social, scientific, and economic development.*

**Keywords-** Intellectual Property Rights, IPR, Trademark, Copy right, Patent, Indian Law, remedies etc.

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<sup>1</sup> Thomas Jefferson, 1813

## I. INTRODUCTION

Ronald Reagan who was an American politician and served as the 40th President of the United States rightly express that “There are no great limits to growth because there are no limits of human intelligence, imagination, and wonder. Intellectual Property Rights (IPR) plays a crucial role in protecting and promoting innovation, creativity, and economic growth in India. This Article provides a comprehensive understanding of IPR in India, covering key aspects such as patents, trademarks, copyrights, and geographical indications. This article provides a comprehensive and insightful analysis of IPR in India, shedding light on its legal framework, types of intellectual property, enforcement mechanisms, and the impact on innovation and economic development. It serves as a valuable resource for researchers, policymakers, legal professionals, and anyone interested in understanding the intricacies of IPR in the Indian context. This Article concludes by emphasizing the importance of IPR in facilitating technological advancement, fostering innovation-driven economies, and safeguarding the rights of creators and innovators in India.

### ***Meaning of intellectual property rights:***

Any original thought or an idea which has transformed into a creative work such as literature, music or an invention etc. can thus be referred to an “Intellectual Property” or IP. There are some laws enacted in India to protecting legal rights of the person or an entity to protect its intellectual work from being misused or exploited. Intellectual property rights are kind of intangible property as it arises from human intellect and a product of human creation.

According to Article 2 of the WIPO (World Intellectual Property Organisation) – Central Organization 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.”

### ***Nature and Characteristic of Intellectual Property rights:***

The nature of IPR is such that they are intangible assets and do not exist in physical form, unlike other forms of property rights such as real estate or personal property. Intellectual Property Right provides the creators or owners of intellectual property with exclusive rights

over the use and exploitation of their creations for a certain period of time. These exclusive rights allow the owners to prevent others from using or copying their intellectual property without their permission. In this way, IPR enables innovation and creativity by providing incentives to inventors and creators to continue producing new and original works. There are several types of IPR, including patents, trademarks, copyrights, trade secrets, and industrial designs, each with their own specific scope and protection. While the specific nature of IPR varies depending on the type of intellectual property being protected, all IPR share the common goal of protecting the rights of creators and incentivizing innovation and creativity.

### ***Intangible Rights over Tangible Property:***

The main property that distinguishes IP from other forms of property is its intangibility. While there are many important differences between various forms of IP, one factor they share is they establish property protection over intangible things such as ideas, inventions, signs and information whereas intangible assets and close relationships are a tangible object. In which they are embedded. It allows creators or owners to benefit from their works when they are used commercially.

## **II. TYPES OF INTELLECTUAL PROPERTY**

Types of intellectual property are patents, trademarks, copyrights, and trade secrets.

IP Laws in India mainly protect Intellect + Property + Rights i.e. Intellectual property right.

1. Ideas and expression are protected under the head of Copyright,
2. Idea, Innovation, Invention protected under the head of Patent,
3. Idea, Quality, Identity protected under the head of Trademark,
4. Idea, Appearance protected under the head of Design,
5. Idea, Confidentiality, non-disclosure protected under the head of Trade Secrets

So, the concept of protection of intellectual property rights is to encourage human being to think away from the set box and generate ideas and own them.

### ***Need of protection of intellectual property rights:***

Legal protection of IP rights safeguard and reward intellectual work and encourages and motivates creativity and innovations in the country. It also provides a safe and secure environment where the creator needs not to worry that his idea may be copied or imitated. As

one invested a considerable amount of money and time in developing innovative products and earn higher returns on investment through exclusive IP rights.

***Scientific significance of Intellectual Property rights:***

In this modern era in our day-to-day life, we are always dealing with intellectual property like latest mobile phone, Apps, Technology, software and so on. IP rights allow scientists, inventors, or organizations to earn the proper recognition and also optimum financial benefits from such inventions. Discoveries made through scientific research can have great value to researchers in advancing knowledge, to governments in setting public policy, and to industry in developing new products. Researchers should be aware of this potential value and of the interest and benefiting from a new idea may require establishing intellectual property rights through patents and copyrights, or by treating the idea as a trade secret. Intellectual property is a legal right to control the application of an idea in a specific context (through a patent) or to control the expression of an idea (through a copyright). Patent and copyright protections are legal mechanisms that seek to strike a balance between private gains and public benefits. They give researchers, non-profit organizations, and company the right to profit from a new idea. In return, the property owner must make the new idea public, which enables others to build on the idea.

***Economic significance of intellectual property rights:***

IP contributes enormously to our national and State economics. Lots of industries across our economy rely on the adequate enforcement of their patents, trademark, and copyrights, while consumers use IP to ensure they are purchasing safe, guaranteed products. IP industries also provide good job opportunities. Risk and occasional failure are the lifeblood of the innovative economy. IP rights facilitate the free flow of information by sharing the protected know how through assignment and licensing. This process leads to new innovations and improvements on existing ones. All lifesaving drugs come from pharmaceutical industry that depends on patent protection. Agricultural companies also earn good profit from farmer products. IP green technology helps to improve quality and climate change.

***Social significance of intellectual property rights:***

The intellectual property has a very important role both in economic and social development of the mankind. It allows humans as consumers to improve and develop a better lifestyle by providing a technical solution to their existing problems or simply satisfying needs.

### III. INTELLECTUAL PROPERTY LAW IN INDIA

Intellectual Property and India has a long history dating back to the ancient years of Indus Valley Civilization. Evidence shows that in the Ancient Era, especially during the Indus Valley Civilization period, activities of town planning, entertainment industries, music industry and others were highly prevailing, and trademarks were used to differentiate the products of the producers from one to another. If we take a look at the present scenario, Intellectual Property like trademarks, are used mainly by every market competitor to differentiate products from one to another. So it is safe to say that the idea to protect one's product or service from another has been prevailing since the ancient times in India. Intellectual Property Law was first brought to mainstream in India by the British Empire by implementing the British Patent Act, 1852 when an applicant named George A. De Pennings made the first application for a patent in India in the year of 1856, which subsequently gave effect in the making of the Act VI of 1856. The recognition of Intellectual Property as a property by the Indian Constitution is vague and unambiguous. The Constitution of India does not openly declare an Intellectual Property as a property but at the same time it does not reject the same too.

The Indian constitution in its preamble permits mixed economy system and recognizes the economic liberty as one of the most important liberties. This has been ensured through property system. If the term "property" used in the Indian Constitution is analyzed, it may mean any tangible property but in reality it has a wider concept. Though, it absolutely includes intellectual property, but indirectly. There was a time when "Right to Property" was a fundamental right enshrined in the Indian Constitution under Article 19 (f) but later it was substituted through the 44th amendment. However, the substitution of Article 19 (f) didn't mean the end of "Right to Property", the insertion of another Article i.e. Article 300A through the 44th Amendment, changed it to a Constitutional right from fundamental right. However, Intellectual Property as a form of property can be put under Article 300A dealing with property and be entitled to a legal right. Unlike the Indian Constitution, the United States Constitution specifically protects the Intellectual Property Article 1(8) of the U.S. Constitutions which provides "To promote the progress of science and useful arts, by securing for limited time to the authors and inventors the exclusive right to their respective writings and discoveries".

However, there is no such intellectual property clause in the Indian Constitution. While this means that Intellectual Property does not have special Constitutional status, it also means that there are no Constitutional restrictions on the power to make laws on intellectual property.

Article 300A of the Indian Constitution provides constitutional safeguards against unlawful deprivation of property; it is Article 253 that plays an important role in the context of intellectual property rights as it mandates the recognition of the international aspect of laws. Legislations and agreements empower the Indian parliament to enforce the international treaties through law making process. Certain provisions in Article 372 also validate the pre-constitutional law subject to certain conditions laid down in the provisions. For instance, Article 372 (1) states that all the laws in force in the territory of India immediately before the commencement of this constitution shall continue in force therein until altered or repealed or amended by a competent legislature or other competent authority”.

Thus, due to the presence of these Articles it became possible for the pre-constitutional intellectual property right laws to be in force in India and the adoption of various international treaties on intellectual property laws by the Indian legislation. For example, the repealing of 1911 Patent Act and the passage of new Patent Act, 1970 was due to Article 372 (1) of the Indian Constitution that authorizes the legislature or any competent body to repeal, alter or amend the pre-constitutional laws. Also, majority of the present intellectual property laws are influenced by the international laws, such as the present patent laws is the result of various international instruments like Budapest treaty, TRIPS agreement, UN convention on Biodiversity and others.

Article 31A protected the legislations providing for acquisition of estate or any right therein or their modification on the ground that it took away or abridged any of the rights conferred by Part III of the Constitution. Article 31B restricted the scope for challenge on the plea of violation of fundamental rights. Traditionally only a few items were included in the category of intellectual property. At present, generally copyright, designs, patents, and trademark are classified as intellectual property. But, by the development of arts, science and technology, many new items have been included in this category. Further, the mention of Intellectual Property system in the entries of the Indian Constitutional further provide us with clues that Intellectual Property is indeed recognized by the Indian Constitution.

Entry 12, 13, 14 has been rightly included in the List 1 of the 7th Schedule as mentioned below;

12. United Nations Organisation.

13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.

14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

Similarly, Entry 49 of List I of Indian Constitution

49. Patents, inventions and designs; copyright; trademarks and merchandise marks.

Entry 49 recognizes only patents designs, copyright, trademarks and others. However, it does not recognize the concept of traditional knowledge, biodiversity, geographical indications and others but these categories of intellectual property rights can be included within the existing one. If we look into the entry 97 of List I which read as follows “any other matter not enumerated in List II or List III including any tax not mentioned in either of those lists” and Article 248 reads as “parliament has exclusive power to make any law with respect to any matter not enumerated in the concurrent List or State List” (Residuary powers). Thus, it is safe to assume that traditional knowledge can be included among other intellectual properties and are recognized by the Indian Constitution as Intellectual property.

***Existing Indian laws to protect IPR:***

Broadly, the following laws deal with the protection of intellectual property, Trademarks Act, 1999, The Patent Act, 1970 (as amended in 2005) and The Copyright Act, 1957. India has adequate copyright laws, and in July 2018, India acceded to the WIPO Internet treaties, namely the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT). In 2019, India ratified the Lisbon, Nice and Locarno Agreements on classification of various types of IP. In Addition to these laws, the government of India has set up various institutions and bodies for the management of IPR, Including:

- The Office of the Controller General of Patents, Designs, and Trademarks: This is the government body responsible for administering and managing the registration of patents, designs, and trademarks in India.
- The Intellectual Property Appellate Board: This is the appellate body for IPR disputes in India and hears appeals against decisions of the Controller General of Patents, Designs, and Trademarks.
- The National Intellectual Property Rights Policy: This policy outlines the government's vision and strategy for the development and management of IPR in India and aims to create a conducive environment for innovation and The management of IPR in India involves a complex legal and administrative framework, with the aim of promoting

innovation, protecting the rights of creators and inventors, and facilitating economic growth and development.

***Remedies for infringement:***

In India, remedies for infringement of intellectual property rights (IPR) are available under both civil and criminal laws. The remedies available for infringement of IPR are:

- **Civil Remedies:** Civil remedies for infringement of IPR are available under the various IP laws in India, such as the Patents Act, 1970, the Trademarks Act, 1999, the Copyright Act, 1957, and the Geographical Indications of Goods (Registration and Protection) Act, 1999. The civil remedies include:

1. **Injunctions:** The IP owner can seek an injunction from the court to stop the infringing activity.
2. **Damages:** The IP owner can claim damages for losses suffered as a result of the infringement.
3. **Accounts of profits:** The IP owner can claim the profits made by the infringer because of the infringement.
4. **Delivery up or destruction of infringing goods:** The court may order the infringing goods to be delivered up or destroyed.

- **Criminal Remedies:** Criminal remedies for infringement of IPR are available under the Indian Penal Code, 1860 and under the specific IP laws. The criminal remedies include:

1. **Imprisonment:** The infringer can be sentenced to imprisonment for a term ranging from 6 months to 3 years, depending on the nature and gravity of the offense.
2. **Fine:** The infringer can be fined, with the amount of the fine depending on the nature and gravity of the offense.
3. **Seizure and forfeiture of infringing goods:** The police can seize the infringing goods and they can be forfeited to the government.

It is important to note that the remedies available for infringement of IPR may vary depending on the nature of the IPR involved, the facts of the case, and the jurisdiction where the infringement occurred. IP owners should seek legal advice from a qualified lawyer to determine the appropriate course of action and the remedies available to them in case of any infringement.



### ***Defenses to infringement:***

In some cases, the alleged infringer may have defenses to infringement, such as claiming that the IP in question is not valid or that the use of the IP is covered under a license or fair use exception.

In India, there are various defenses available for infringement of intellectual property (IP) rights. Some of the common defenses for IP infringement are as follows:

#### **Patents:**

- **Non-infringement:** The alleged infringer can claim that their product or process does not fall within the scope of the patent
- **Prior use:** The alleged infringer can claim that they were using the product or process before the patent was granted.
- **Public interest:** The alleged infringer can claim that their use of the product or process is necessary for public interest, such as for healthcare or environmental reasons.

#### **Trademarks:**

- **Non-infringement:** The alleged infringer can claim that their mark is not identical or deceptively similar to the registered trademark.
- **Prior use:** The alleged infringer can claim that they have been using the mark before the registration of the trademark.
- **Fair use:** The alleged infringer can claim that their use of the mark is fair and not likely to cause confusion or deception among the public.

#### **Copyrights:**

- **Fair use:** The alleged infringer can claim that their use of the copyrighted work falls under the doctrine of fair use, such as for educational or research purposes.
- **Public domain:** The alleged infringer can claim that the copyrighted work is in the public domain and can be used without permission.
- **Independent creation:** The alleged infringer can claim that they independently created the work without copying from the copyrighted work.

### Geographical Indications:

- Non-infringement: The alleged infringer can claim that their product does not fall within the scope of the GI.
- Prior use: The alleged infringer can claim that they have been using the GI before it was registered.
- Generic term: The alleged infringer can claim that the GI has become a generic term and is used by others in the trade.

It is important to note that the defenses for infringement of IP can be complex and may vary depending on the specific circumstances of the case. IP owners and alleged infringers should seek legal advice from a qualified lawyer to determine the appropriate course of action.

### Enforcement challenges:

Enforcement of IP rights can be challenging in India due to the large informal sector, lack of awareness among the public and limited resources of the law enforcement agencies.

## IV. CONCLUSION

The Constitution of India provides the necessary safeguard to protect the right to property in general and the agricultural property in particular. For example, The Protection of Plant Varieties and Farmers Right Act, 2001 is framed to make available a number of special safeguard measures to protect and promote the interests of the farmers in order to encourage the accelerated growth of the agricultural sector which will ultimately result into the overall growth of the Indian economy. Also, the Biodiversity Act, 2002 is framed to provide safeguards to various biological resources like “plants, animals and microorganisms and their genetic material and by-products (excluding value added products) with actual or potential use or value, but not human genetic material against being misused and other unfair commercial or non-commercial activities. In general, it is enacted to protect against bio-piracy. A case of such bio-piracy occurred when the US Patent Office granted the patent (Patent No. 5, 401 and 504) for turmeric to two expatriate Indians at University of Mississippi Medical Centre in 1995 which was subsequently challenged by the Indian Council for Scientific and Industrial Research (CSIR) on the ground of “prior art” or “existing public knowledge”. Although, the CSIR won their battle, this incident shows how traditional knowledge is vulnerable to bio-piracy and thus the need to protect it has grown increasingly. In conclusion, while IP protection can have significant economic advantages, it is important to consider the potential

disadvantages and weigh them against the benefits. Policymakers should aim to strike a balance between incentivizing innovation and creativity and ensuring access to essential goods and services for all.

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