

CONSTITUTIONAL ASPECTS OF INTELLECTUAL PROPERTY RIGHTS IN INDIA

Dr. Mahendra Kumar Jangir*
Mr. Vivek Kumar Meena**
Dr. (Prof.) Mahendra Tiwari***

ABSTRACT

The term intellectual property relates to the creations of human minds and human intellect. Creator can be given the right to refrain others from using their inventions, literature work, designs, or other creations and to use that right to negotiate payment in return for others using them. These are Intellectual Property Rights. Known Copy Right, Patent, Trademark, Geographical Indications etc. The creation of Intellectual Property Rights (IPR) is increasingly being recognized in global economy and society. Intellectual Property Rights are becoming the backbone of every economy including India and their protection is essential for sustained growth of a nation. The Intellectual Property Rights are not only being used as a tool to protect the creativity and generate revenue but also to build strategic alliance for the socio-economic and technological growth. So important are the Intellectual Property Rights for the economy of India, it become imperative to know the Constitutional aspects of Intellectual Property Rights in India. The question arises as to, whether under the Indian Constitution Intellectual Property Rights are protected as fundamental rights or something else? In this article/Research paper, the author likes to highlight whether the Constitution of India contains specific Constitutional provisions for the protection of Intellectual Property Rights? and whether the Intellectual Property Rights are at par with the fundamental rights guaranteed in part III of the Constitution? and whether a balance can be maintained between Intellectual Property Rights and fundamental rights?

Keywords: Intellectual Property Rights, Constitutional Protection, Fundamental Rights, Trademark.

Introduction

Intellectual Property is related to human mind applied for creativity and inventions. Various efforts in terms of manpower, time, energy, skill, and money are required to invent or create something new. As per law, legal rights or monopoly rights are given to creator or inventor to harvest the economic benefits on their invention or creation. These intellectual property rights (IPRs) are territorial rights that can be registered with legal authority in some presentable or tangible form which can be sold or bought or licensed, like physical property.

IPR provides a secure environment for investors, scientists, artists, designers, traders etc. to foster innovation and scientific temper. In the present scenario of Globalisation, IPR is the focal point in global trade practices and livelihood across the world. A balanced IPR System is one of the key mechanisms to support country's innovation and development objectives.

The development of any society directly depends on IPR and its policy framework. Lack of IPR awareness results in the death of inventions, high risk of infringement, economic loss and decline of an intellectual era in the country.

Statement of Problem

Intellectual Property Rights are recognized both at national and global level. IPRs are making human life qualitative and provide economic empowerment to the nations. They are result of creative human minds and constant efforts. Such creation and innovations need to be legally protected. In India, to promote and protect the intellectual property rights, various related laws have been passed but even today they lacked express protection in the Constitution of India. The paper will highlight the Constitution position of Intellectual Property Rights in India.

* Associate Professor, Jaipur School of Law, Maharaj Vinayak Global University, Jaipur, Rajasthan, India.

** Assistant Professor, Seth Moti Lal Law College, Jhunjhunu, Rajasthan, India.

*** Dean & Head, Jaipur School of Law, Maharaj Vinayak Global University, Jaipur, Rajasthan, India.

Classification of Intellectual Property Rights

Based on type of invention and creation of human mind and their application, the IPRs are classified as follows:

- **Copyright:** Copyright is the exclusive right or monopoly right given to the creators for their literary, dramatic and artistic works. It is negative right which means the right of the copyright owner to prevent all others from copying or reproducing his work. The copyright law¹ is developed by the nations to encourage and reward authors, composers, artists, designers, and other creative people as well as the publishers and film producers. This is done by giving to the author certain exclusive rights to enjoy the benefits of the created subject matter for a limited period of sixty years².
- **Patent:** Patent means monopoly right granted to a person by the patent office to exploit his invention for a limited period. An invention is patentable only when it is new, involves inventive steps and is capable of industrial application. The grant of patent not only recognizes and rewards the creativity of the inventor but also acts as an inspiration or catalyst for further inventions which ultimately contributes to the technological development of the country. In India patent is granted for 20 years.
- **Trademarks:** A trademark includes any device, brand, label, ticket, name, signature, word, letter, shape of goods, packaging, or combination of colours. A trademark should be capable of being represented graphically and should also be capable of distinguishing the goods or services of one manufacturer from those of another.³ A trademark law firstly protects the public from confusion and deception by identifying the source or origin of product as distinguished from other similar products and secondly it protects the trademark owner's trade and business as well as goodwill which are attached to the trademark.
- **Geographic Indication (GI):** Geographical Indications firstly identify goods as originating in a particular territory, or a region or locality in that territory, secondly, they suggest the consumers that the goods come from an area where a given quality, reputation or other characteristics of the goods essentially attributable to their geographic origin and thirdly they promote the goods of producers of a particular area⁴. Initially, GIs are registered for 10 years which can be renewed after every 10 years.⁵
- **Industrial Designs:** Design means only the features of shape, configuration, pattern or composition of lines or colours applied to any article by industrial process. The legal protection of Industrial design is necessary as it adds commercial value to the article by making it attractive. The creative originality of a design needs legal protection against copying. For this purpose, Design Act, 2000 has been passed in India which provides registration of designs and also provides remedies⁶ to the design holder against proliferation.
- **Trade Secrets:** Trade secrets are the confidential information's of a trade, business or profession. A trade secret is any information that may be used in the operation of a business and may have economic advantages over business competitors. If any person unauthorized use such information's, it is regarded as unfair practice and violation of trade secrets and protected without registration.
- **Semiconductor Integrated Circuit of Layout Designs (SICLD):** All electronic gadgets are very compact nowadays due to their integrated circuits. These designs of circuits are creation of human mind as a consequence of enormous investments and efforts of highly qualified experts. The SICLD Act of 2000 empowers the registered proprietor of the layout-design an in the right to use the layout-design, commercially exploit it and obtain relief in respect of any infringement.
- **Protection of Biological Diversity:** The Biological Diversity Act covers the traditional knowledge in the preamble itself. It also provides for issues related to traditional knowledge under the umbrella of associated knowledge within various provisions of the Biological Diversity Act, 2002.¹² The benefit claimers are conservers of biological resources, creators and holders of knowledge and information relating to the uses of biological resources.

¹ Indian Copyright Act, 1957

² Section 22 to 28 of Copyright Act, 1957

³ Section 2 (1) (zb) Trademark Act, 1970

⁴ Section 2 (1) (e) Geographical Indications of Goods (Registration and Protection) Act, 1999

⁵ Section Geographical Indications of Goods (Registration and Protection) Act, 1999

⁶ Section 22 Design Act, 2000

Indian Constitution and Fundamental Rights

The Constitution of India guarantees fundamental rights to its citizens and some of the fundamental rights also available to non-citizens¹. These rights are regarded as Fundamental because they are most essential for the attainment by the individual of his intellectual, moral and spiritual status. The object behind the inclusion fundamental rights in Indian constitution was to establish a government of law and not of man.

In Maneka Gandhi case Supreme Court observed that “These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a pattern of guarantee on the basic structure of human rights and imposed negative obligations on the state to encroach on individual liberty in its various dimensions.”² The Court further held that the provisions of Part III should be given widest possible interpretation. Bhagwati, J., said “the correct way of interpreting the provisions of Part III is that attempt of the court should be to expand the reach and ambit of the fundamental rights rather than to attenuate their meaning and content.”

The effect of the Maneka Gandhi case is that the scope of the fundamental rights has been widened and expanded and specifically the fundamental right, the right to life has been widened to include rights like right to health, right to clean environment, right to food, etc.

Indian Constitution and Intellectual Property Rights

The Indian Constitution provides for fundamental rights but Intellectual Property rights neither expressly find place in any of the fundamental rights nor have been expressly excluded by any constitutional provision from the purview of the fundamental rights. At the commencement of the Constitution, right to property was a fundamental right under article 19 (1) (f) but it was degraded to a mere Constitutional right in 1978 by the 44th Constitutional Amendment by inserting article 300A.

There is no specific provision in the Constitution regarding the Intellectual Property right. We get some clue about Intellectual Property right in Entry 49 of List 1 of 7th Schedule of Indian Constitution. Entry 49 specifically recognizes intellectual property rights as it mentions “Patents, inventions and designs; copyright; trade-marks and merchandise marks”.

Entry 49 does not specifically recognize the concept of traditional knowledge, biodiversity, geographical indications. But it can be assumed that such IPRs would also include in Entry 49 as IPRs are not enumerated in List I and List III. Further Article 248 confers exclusive power to parliament to make law on any matter not listed in State List (List-II) and Concurrent List (List III).

The Indian constitution in its preamble permits mixed economy system and recognizes the economic liberty as one of the most important liberties. For this purpose, the Constitution has ensured property right to the citizens of India as “no person shall be deprived of his property save by authority of law”.³ The Supreme Courts said that the term ‘property’ under Articles 31 and 300A should be given a liberal interpretation and should be extended to all those well recognized interests which have characteristics of property rights.⁴ It should include both corporeal and incorporeal right.⁵

In K.T. Plantation Pvt. Ltd v. State of Karnataka⁶ the Supreme Court held that “the expression property in Article 300A is confined not only to land alone. It includes intangibles like copy rights and other intellectual property and embraces every possible interest recognized by law”. So now it can be said that the intellectual property rights are included in the ‘property’ in Article 300A though not directly but through judicial interpretations. Right to property in Article 300A is not a fundamental right so it does not have the protection as given to the fundamental rights. If intellectual property rights are violated, they have legal protection being a constitutional right but like fundamental right can be directly challenged in the Supreme Court under Article 32 of the 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.

¹ Part-III Constitution of India

² Maneka Gandhi v. Union of India AIR 1978 SC 597

³ Article 300A inserted by the 44th Constitutional Amendment in 1978

⁴ Commr. Hindu Religious Endowment v Swamiar, AIR 1954 SC 252

⁵ Dwaraka Das Srinivas v Sholapur Spg. & Wvg Co. Ltd. AIR 1954 SC 112

⁶ AIR 2011 SC 3430

Article 253 empowers the parliament to make law for the whole or any part of the territory of India for implementing treaties and international agreements and conventions with any other countries or any decision made at any international conference, association, or other body. This article is very important of implementation of international treaties and conventions related to Intellectual Property rights. The parliament has implemented provisions of WIPO (World Intellectual Property Organization) and TRIP (Trade-Related Aspects of Intellectual Property Rights) exercising the powers under Article 253.

Further, certain provision in Article 372 also validates the pre-constitutional law subject to certain condition laid down in the provisions. Article 372 (1) states that: "Notwithstanding the repeal by this Constitution of the enactment, 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, the article 372 make it possible for the pre-constitutional intellectual property laws to be remain in force in India and Indian legislation can adopt the various international agreement or conventions on intellectual property rights. Article 372 (1) of the Indian Constitution, for example, authorized the legislature or any competent authority to repeal, alter, or amend pre-constitutional statutes, resulting in the repeal of the 1911 Patent Act and the introduction of the current Patent Act, 1970.

Intellectual Property Rights as Fundamental Rights

The Constitution of India ensures fundamental rights to the citizens and non-citizens as well. The fundamental rights so guaranteed are also include and supplement the human rights recognized under international conventions on human rights. Intellectual Property Rights are not part of the any of the fundamental rights, but it can be covered under the fundamental right like right to life as some patented drugs and inventions became life saver.

- **Patent and Fundamental Rights**

Now the judiciary in India has widened the scope fundamental rights especially right to life in Article 21. The right to life also includes health, a healthy environment which impliedly ensures human rights. Violation of these rights is amount to violation of fundamental right and any individual can seek remedy under article 32 and 226 of the Constitution. If any person or company has invented a lifesaving drug or medicine and gets it patent and he is not making available the medicine to the public at affordable price, the Patent Act¹ gives powers to the state to make available that lifesaving medicine to the public as the fundamental right of right to life include medical treatment at affordable cost². The state ensures this fundamental right to the public by granting compulsory license if the public requirement are not satisfied.

Article 19 (1) (g) guarantees to the citizens of India the right to practice any profession, or trade or business. However, this right is subject to reasonable restrictions imposed by authority of law. If a citizen is granted patent after due procedure, the patentee has the right to be protected under the Patent Act. The patentee has the exclusive right to prevent the third parties from making, using, selling, or importing the patented product in India.³

Though the intellectual property rights are expressly given in Article 19 (1) (g), it can be assumed by judicial interpretation that the patentee also has the right to be protected under Article 19 (1) (g) if his rights are infringed as right of patentee under Patent Act is statutory right which cannot be violative of Constitutional provisions of Article 19 (1) (g). Further the person infringing the patentee right cannot claim the protection of Article 19 (1) (g) as there are reasonable restrictions on it.

- **Copyright and Fundamental Rights**

One of the important fundamental rights granted by the Constitution is the right to freedom of speech and expression⁴. Freedom of speech and expression is the right to express one's own ideas, opinion, and thoughts freely by words, writing, printing, representation, pictures, or any other mode like electronic media. This right is the foundation of a healthy and strong democracy.⁵

¹ Section 84 of Patent Act 1970

² State of Punjab v. Mohinder Singh Chawla (1997) 2 SCC 83

³ Section 48, Patent Act 1970

⁴ Article 19 (1) (a) of Constitution of India

⁵ Romesh Thaper v. State of Madras AIR 1950 SC 124

The right to freedom of speech and expression includes expressing his opinion by writing and publishing a book. In *State of Maharashtra v. Prabhakar Pandurang*¹ a person was arrested under preventive detention law. In jail he wrote a book and sought permission for its publication, but the government refused the permission. The Supreme Court held that it was the infringement of his personal liberty under Article 21 of the of the Constitution as he had the right to write and publish the book. Thus, a person has right to copyright if he has written a book and he has the protection under the fundamental right as well as under the Copyright Act, but this right is subject to reasonable restrictions under Article 19 (2) of the Constitution. The Supreme court held that the fundamental right of speech and expression cannot be restricted to geographical boundaries.²

Where the owner of a copyright refuses to republish his work or refuses communication to public, the copyright board me grant compulsory license.³ The compulsory license is granted as a part of right to know or right to information under article 19 (1) (a)of the Constitution.

- **Trademark and Fundamental Rights**

Article 19 (1) (g) guarantees right to practice any profession or to carry on any occupation, trade, or business. The right is not absolute but subject to reasonable restrictions in Article 19(6). Now a days trademark is very important for business and public know about the business by its trademark and therefore, the trademark is the goodwill of the business. If a person's registered trademark is infringed, the trademark holder has the right to be protected under the fundamental right given in Article 19 (1) (g) as well as under the Trademark Act. Similarly public has the right to know or get the information about a business's product or its trademark under Article 19 (1) (a). Citizen has the right to know about the products they intend to use. This right to know or information protects the public against the misleading information and unfair trade practices. Thus, the trademark not directly but by interpretation is a fundamental right.

- **Geographical Indications and Fundamental Rights**

Geographical Indications ensure that the product is from a particular geographical origin ant it has the quality and characteristics of the territory. The manufacturers claiming their products or goods are from a particular territory are protected under article 19 (1) (g) and the consumers also have the right to know whether goods or products have the qualities of a particular origin or not. Thus, the geographical indications are protected under the fundamental rights and Geographical Indications of Goods (Registration and Protection) Act, 1999.

- **Traditional Knowledge and Constitution**

The Indian Constitution requires the state to assist the Scheduled Tribes' economic interests and to safeguard tribal people from social injustice and all forms of exploitation. The Biodiversity Act was passed to protect their traditional knowledge by protecting biological resources and thereby making them economically empowered. Indigenous people's traditional knowledge is likewise protected under the Biodiversity Act, and their interests are safeguarded under the Indian Constitution.

Conclusion

There is no specific provision in the Indian Constitution directly dealing with Intellectual property rights. The Constitution does not ensure direct protection to Intellectual property rights whether as fundamental right or Constitutional right. However, there are some Constitutional provisions dealing with Intellectual property rights. Entry 49 of List I of 7th Schedule gives power to the Parliament to enact law relating to Intellectual property rights. Similarly, under Article 253 the Parliament has power to implement international conventions, agreement and treaties relating to Intellectual property rights.

However, now days the Indian Judiciary has extended the scope of fundamental rights so as to include the Intellectual property rights in fundamental rights. There are some patented drugs and medicines which are part of right to health and ultimately right to life which a fundamental right. Similarly, copyright to an author for writing and publishing a book is also a part of fundamental right of right to life and personal liberty. So, we can conclude that Intellectual property rights though not expressly fundamental rights under Part III of the Constitution, but they can be included in the fundamental by judicial interpretation. Intellectual property rights may have the Constitutional protection under 300A. Patent, trademark, Copyright, and other intellectual property rights have Constitutional protection under

¹ AIR 1966 SC 424

² *Maneka Gandhi v. Union of India*, 1978 AIR 597, 1978 SCR (2) 621

³ Section 31 of Copyright Act 1957

fundamental rights like right to freedom of speech and expression, right to carry on trade or business and fundamental right of right to life and personal liberty. It cannot be said that Intellectual property rights are neither fundamental rights nor have any constitutional protection. Finally, it can be suggested that the express Constitutional protection should be given Intellectual property rights and they should find place in fundamental rights

References

1. V.N. Shukla, Constitution of India, Eastern book Company Lucknow, 13th edition, 2021
2. MP Jain, Indian Constitutional Law, Lexis Nexis, 8th edition, 2018.
3. S.R. Myneni Constitutional Law, Asia Law House, 1st edition 2011.
4. Prof. Kailash Rai, Constitutional law of India, Central Law Publication, 8th edition 2009
5. H.M. Seervai, Constitutional law of India 4th edition, volume 3
6. Acharya, N.K., Textbook on Intellectual Property Laws, Asia Law House, 5th edition 2010.
7. Bhandari Dr. M.K., Law Relating of Intellectual Property Rights, Central Law Publications, 2007.
8. Dr. VK Ahuja, Intellectual Property Rights in India, Lexis Nexis, Vol. 1, 2009
9. J.P. Mishra, Introduction to Intellectual property Rights, Central Law Publication, 3rd edition 2012
10. Dr. S.V. Damodar Reddy, Intellectual Property Rights, Law & Practice, Asia Law House
11. Dr. Durga Das Basu, "Introduction to the Constitution of India," 19th Edition Reprint 2004
12. Dr. J. N. Pandey, "The Constitutional Law of India, Central Law Agency" 58th edition 2021.
13. Prof. G.S. Pandey, The Constitutional Law of India, University Book House (P) Ltd., 13th edition, 2018
14. Article on "Intellectual Property Rights Vis-À-Vis Fundamental Rights and Indian Constitution" International Journal of Law, Management and Humanities (IJLMH), ISSN-2581-5369 Vol. 4, Issue 3.

