



An Analysis of India's Constitutional Framework For Intellectual Property Rights

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Abstract

Intellectual Property is the application of the human mind to novel creations, imaginative concepts and artistic manifestations. Copyright, Trademarks, Patents, Geographical indications, Designs and other intangible assets are all protected by law under intellectual property rights. The Intellectual Property Right is neither expressly recognized as a property right by the Indian Constitution nor excluded. Initially, Right to Property was a fundamental right under Article 19(1)(f) of the Indian Constitution but it was amended to a Constitutional Right in 1978 by the 44th Constitutional Amendment by inclusion of Article 300A of the Indian Constitution. But there is no such clear mention as to the status of intellectual property in the Indian Constitution even after the amendment. As the contribution of intellectual property is sine qua non for the industrial and development of a nation so important is the protection of these rights. Therefore, there arises a need to clarify the position of IPR in constitutional context. Through this paper the author endeavours to throw some light on the relationship between IPR and the Indian Constitution emphasizing on the directives provided with regard to the protection of IPR and the role of judiciary in the realm of IPR.

Keywords: *Intellectual Property Rights, Relationship between IPR and Indian Constitution. Role of Judiciary*

Introduction

Intellectual Property is the creative work of human intellect and the right to intellectual property is an invisible/intangible right to a product of a man's brain, such as a new invented product. The main motivation of its protection is to promote the progress of science and technology, arts, literature and other creative works and to encourage and reward creativity. Nations give statutory expression to the economic rights of creators and to the rights of public in assessing those creators. This is instrumental in promoting creativity and dissemination and application of its results. The economic and technological development of a nation will come to halt if no protection is given to intellectual property rights.

Every creation requires time, energy and effort. The time involved varies greatly between projects. It may vary from a few minutes to a few years. In addition, any creative work also requires certain amount of real capital and of course the education or knowledge. All these things add up to a huge investment on the part of any creative professional. IPR helps build a strategic alliance and foster international trade, promoting technological advancement, which is vital for facilitating trade, encouraging collaboration, and enhancing

cultural development on a global scale. Thus, it is necessary to recognize and respect the intellectual creations of a creator.

. 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

An systematic and balanced Intellectual Property system can help the countries to realize the prospects of Intellectual Property as a catalyst for economic, social and cultural development. Also it can help to maintain an equitable position between the interests of innovators and the public at large, by furnishing an environment in which creativity and invention can flourish, for the betterment of all. International and national recognition of intellectual property rights exist. IPRs are improving the quality of human existence and giving countries economic empowerment. This paper tries to study the interrelationship between the IPR and the Indian Constitution.

Research Methodology

The methodology adopted in this research paper is purely doctrinal in nature with the use of both primary and secondary sources.

Indian Constitution and Intellectual Property Rights

The Indian Constitution endorses a mixed economy. The economic liberty is acknowledged as one of the most significant liberties by the framers of the constitution in the preamble. Hence, as far as IP is concerned economic liberty can only be protected by a strong property system. In the Indian constitution, "property" has a broader definition. Therefore, a robust property system is the only way to safeguard economic liberty in terms of intellectual property.

Since the definition of "property" is more expansive than just tangible property, intellectual property (IP) can be indirectly brought under the purview of Articles 31 and 300A of the Indian Constitution. These provisions should be liberally interpreted to include all recognized interests that may exhibit features of property rights.

IPR is not expressly protected under fundamental rights in the Indian Constitution. They haven't been specifically left out, though. The Indian Constitution's Article 19(1)(f) declared the right to private property to be a basic right. However, in 1978, the 44th Constitutional Amendment added Article 300A, making the right to private property a constitutional right.

The Indian Constitution does not define intellectual property explicitly, however Entry 49 of List 1 of Schedule VII provides an understanding of what it means to be "patents, inventions and designs; copyright; trademarks and merchandise marks." In light of this, the Central Government is now empowered to enact laws pertaining to the subject in accordance with Article 246 of the Indian Constitution.

In the case of "**K.T. Plantation Pvt. Ltd. v. State of Karnataka [AIR 2011 SC 3430]**," the Hon'ble. Supreme Court likewise held the same. The Court ruled that: "Article 300A's definition of property is not limited to just

land. Through judicial interpretation and wise legislation, it can be concluded that intellectual property rights (IPRs) are included in the scope of property under Article 300A of the Indian Constitution, even though they are not directly included. This includes intangibles like copy rights and other intellectual property and embraces every possible interest recognized by law.

It was questioned in the recent case whether "intellectual property," such as "clinical trial data," would be covered by Article 300 A's definition of "property." It appeared that there was sufficient evidence to back up the idea that "property" in the sense of Article 300A includes more than just "immovable property." The ruling of the Supreme Court in the "**Entertainment Network India Limited (ENIL) v. Super Cassette Industries Ltd. (SCIL)**" case demonstrates one such authority in the context of intellectual property rights.

Chapter III of the Indian Constitution does not grant protection to IPR because Article 300A of the Indian Constitution is not a Fundamental Right. As a constitutional right, they will have legal protection when IPR are violated. As a result, there is a constitutional protection against the unauthorized taking of intellectual property, which is reinforced by legal protections provided by a number of statutes, including the Patents Act of 1970, the Trademark Act of 1999, the Copyright Act of 1957, and the Geographical Indications of Goods (Registration and Protection) Act of 1999.

Article 253 empowers the parliament to make law for the whole or any part of the territory. The World Intellectual Property Organization (WIPO) and Trade-Related Aspects of Intellectual Property Rights (TRIP) regulations have been put into effect by the parliament, using its authority under Article 253.

Additionally, under certain conditions outlined in the rules, a certain clause in Article 372 also recognizes the pre-constitutional law. According to Article 372 (1), "All the laws in force in the territory of India immediately prior to the commencement of this constitution shall continue in force therein until altered, repealed, or amended by a competent legislature or other competent authority," even if the enactment is repealed by this constitution.

Article 372 (1) declares that all laws enacted in India prior to the constitution's commencement shall remain in effect until they are modified, repealed, or amended by a legislature or other competent authority, "notwithstanding the repeal by this Constitution of the enactment."

Constitutional Implications on Copyright

The right to freedom of speech and expression, which is essentially the freedom to express one's own ideas, thoughts, and opinions by spoken or written words, printed words, or the display of pictures through any media or method, is vital for copyright, according to Article 19(1)(a) of the Indian Constitution. One's freedom to openly express one's thoughts in writing is a component of this fundamental right. Because any restriction on the writing of a book would violate the personal liberty guaranteed by Article 21, the Honorable Supreme Court held in the "**State of Maharashtra v. Prabhakar Pandurang**" [AIR 1966 SC 424] that the detainee in preventive detention would also have the right to write a book and the right to publish the book, free from any legal sanction.

Therefore, with the exception of the justifiable limitations outlined under Article 19(2) of the Indian Constitution, any Indian author who publishes a book or voices their opinions in an article is free to do so. Consequently, people now have the ability to write and publish a book and are safeguarded by Article 19(1)(a) of the Indian Constitution, which guarantees the right to freedom of speech and expression.

Licensing requirements vs the right to information and knowledge

In the larger framework of Article 21 of the Indian Constitution, the Right to Know and the Right to Information are essential components of the freedom of Speech and Expression. The Right to Know is now acknowledged as a fundamental right to which the people of a free nation such as India should strive. It is a component of participatory democracy that is essential. In the event that copyrighted work was unavailable in India, the country's citizens paved the path for the granting of a compulsory license under the Right to Know.

Constitutional Implications on Trademark

Article 19(1)(g) of the Indian Constitution grants the right to engage in any employment, trade, or business, as well as the right to practise any profession. However, the corporate entity must safeguard its trademark and whatever goodwill it has accrued in order to engage in unfettered commercial activity, as failing to do so could negatively impact trade and business.

By allowing consumers to avoid misleading items, trademarks safeguard consumers from dishonesty and unfair business practices in addition to providing protection to manufacturers. The country's citizens are also granted the Right to Know, which guarantees market transparency and empowers consumers with knowledge. It grants them the right to know that the goods or services they plan to use are from the seller or manufacturer of the service provider they intended.

Furthermore, trademark protection helps consumers distinguish between the products or services they were meant to use, avoid competing products or services, and have a high degree of trust in the caliber of the products or services. Thus, the right of the customer to information about the products and services is likewise protected by the trademark. Agamrk, Hallmark, and other certification marks, among others, inform buyers and users alike about the standards and quality of different commodities and product categories.

In **Pepsi Co. Inc. And Ors. v. Hindustan Coca Cola Ltd. and another**, Pepsi filed a suit against Coca-Cola for wrongful use of their TM in a commercial advertisement. The court held Coca-Cola liable for disparaging and undermining the goodwill of the Plaintiff's products in violation of the TM and Copyright Act because the registered trademark PAPPPI, which is confusingly similar to the TM PEPSI, was being violated by the use of a Globe Device.

Constitutional Implications On Patent

The Indian judiciary has expanded the protection of fundamental rights, particularly the right to life guaranteed by article 21. Health and a healthy environment are integral parts of the right to life, and they implicitly protect human rights. If these rights are violated, it is a fundamental right violation, and under articles 32 and 226 of the Constitution, anybody can seek redress. The Patent Act¹ grants the state the authority to make life-saving

medications available to the public as part of the fundamental right to affordable medical treatment, which includes the right to life. This power applies to anyone or any company that has developed a drug or medicine and received a patent but is not providing it to the public at a reasonable cost. This fundamental right is upheld by the state.

Disclosure of Patents vs. Information Rights

All citizens are granted the right to information. The patent holder is required to disclose his innovation if he wishes to keep it patentable for the full 20 years. The patented invention must be sufficiently described so that any Indian with ordinary ability and knowledge of the relevant field can understand it. This includes being sufficiently clear, full, definite, and brief.

Therefore, at the time the patent application is filed, the Patentee is required to provide the "best way to perform the invention or to replicate the invention with adequate drawings, explanations, examples, and even to give models with a prototype" in their description of the invention. In return for complete disclosure of the claimed invention, the patentee must receive statutory protection under the patent statute for a limited period of 20 years, provided the innovation meets additional statutory requirements.

Constitutional Implications on Geographical Indications

Trade, commerce, and business based on a product having a geographical origin are protected by the Geographical Indications of Products (Registration and Protection) Act, 1999, in a manner similar to trademark protection. Additionally, GI gives customers the ability to differentiate between various products and increase their level of confidence in the quality of those products depending on where they are made. On a similar note, Article 19(1)(g) of the Indian Constitution protects makers of commodities or products based on geographical origin, while Article 19(6) of the Indian Constitution imposes sanctions on violators of GI.

Even though the Indian Constitution makes no explicit mention of IPR protection, jurisprudence has developed to safeguard them nonetheless. Part III and IV of the Indian Constitution have been interpreted in accordance with international treaties and the Indian state's obligation under Trade Related Aspects of Intellectual Property Rights (often known as "TRIPS"). In light of intellectual property rights (IPRs) and their profound economic impact, the judiciary has taken an active role in resolving disputes to preserve IPRs. In 2016, India released its first National Intellectual Property Rights policy, recognizing the value of IPR in the modern economy. The Department for Promotion of Industry and Internal Trade is responsible for overseeing the portfolios of patents, designs, trademarks, copyright, and geographic indicators.

Nonetheless, the Indian judiciary has expanded the definition of fundamental rights in the modern era to include intellectual property rights. Certain medications and prescriptions are patented and belong to the fundamental right to life, which includes the right to health. In a similar vein, an author's copyright for authoring and publishing a book is a component of their fundamental right to life and liberty. We might therefore draw the conclusion that, even though they are not clearly fundamental rights under Part III of the Constitution,

intellectual property rights can nonetheless be deemed essential by a court of law. . Finally, it can be suggested that the express Constitutional protection should be given Intellectual property rights and they should find place in fundamental rights.

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