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# CONSTITUTIONAL ASPECTS OF INTELLECTUAL PROPERTY RIGHTS IN INDIA

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## Abstract

The word intellectual property refers to man's creations and the man's intellect. Right can be provided to the creator to prevent others from using their inventions, literature creation, designs, or other works and use that right to negotiate payment in return for allowing others to use them. They are Intellectual Property Rights. Famous Copy Right, Patent, Trademark, Geographical Indications etc. The creation of Intellectual Property Rights (IPR) is fast being realized in global economy and society. Intellectual Property Rights are fast becoming the backbone of each economy including India, and their protection is paramount for long term growth of a nation. The Intellectual Property Rights are not only being utilized as a tool to guard the creativity and create revenue but also to create strategic alliance For the socio-economic and technological development. So crucial are the Intellectual Property Rights to the economy of India that it became necessary to learn about the Constitutional aspects of Intellectual Property Rights in India. The question arises that, whether in the Indian Constitution Intellectual Property Rights are protected as fundamental rights or anything else? In this article/Research paper, "This paper explores whether the Constitution of India contains specific provisions to safeguard Intellectual Property Rights." and whether Intellectual Property Rights stand on par with the fundamental rights guaranteed in part III of the Constitution? and whether there can be a balance between Intellectual Property Rights and fundamental rights?

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

## Introduction

Intellectual Property (IP) are the products of human intellect, including inventions, artistic creations, designs, or innovations. It often takes considerable time, labour, capital, and expertise to develop something innovative. The law provides these efforts with special protections in the form of Intellectual Property Rights (IPRs), which provide the creator with

some degree of control over the use of their work and enable them to receive rewards from it. As Similar to physical property, intellectual property can be licensable, sellable, or purchasable.

IPR facilitates the creation of a secure environment for innovators, scientists, artists, traders, and businesses to turn new ideas into reality. With the current globalized world, IPR has become an integral part of global trade as well as economic development. A fair and well-structured IPR system supports both innovation and the overall growth of the nation.

If individuals are not familiar with IPR, there can be wasted inventions, increased possibilities of copying or misuse, losses in terms of money, and finally reduced creativity and advancements in society.

### **Statement of Problem**

Intellectual Property Rights (IPRs) are significant in India as well as globally. They not only enhance the standard of human life but also contribute to the economic development of countries. IPRs are gifts of human imagination and labour, so they require appropriate legal protection. In India, numerous laws have been enacted to protect these rights, but the Constitution itself does not provide them with clear or direct protection. This paper shall be on the role of Intellectual Property Rights under the Constitution of India.

### **Classification of Intellectual Property Rights**

Intellectual Property Rights (IPRs) are classified on the basis of human creativity, inventions, and their uses. The prime types are:

- **Copyright:** Copyright grants authors the sole right over their literary, artistic, musical, or dramatic work. It allows them to stop others from copying<sup>1</sup> or duplicating their work. It is granted with a view to inspiring authors, artists, designers, filmmakers, and publishers. In India, copyright protection for 60 years<sup>2</sup>.
- **Patent:** A patent is a statutory right given to an inventor for a new invention, which is useful, novel, and industrially applicable. It is a reward for creativity and an encouragement to make more inventions, which contribute to the technological development of the country. Patents in India are for 20 years.

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<sup>1</sup> Indian Copyright Act, 1957

<sup>2</sup> Section 22 to 28 of Copyright Act, 1957

- **Trademark:** A trademark<sup>3</sup> is a distinctive symbol, word, name, design, label, or even style of packaging that helps differentiate one company's products or services from another's. It guards consumers against confusion and defends the goodwill and reputation of the brand owner.
- **Geographical Indication (GI):** GIs specify products that come from a certain region and possess characteristics or reputation associated with the region<sup>4</sup> (e.g., Darjeeling Tea, Banarasi Saree). GIs are registered for 10 years initially, and protection can be renewed.
- **Industrial Designs:** Industrial designs safeguard the look of a product, including shape, pattern, or colour, that gives it an attractiveness and commercial worth. This in India is regulated by the Designs Act, 2000<sup>5</sup>, to ensure originality and non-copying.
- **Trade Secrets:** Trade secrets are confidential business data that provide a business with a competitive edge (such as formulae, procedures, or methods). Unlike all other IPRs, trade secrets are not registered but are protected by law from abuse.
- **Semiconductor Integrated Circuit Layout Designs (SICLD):** Electronic devices of today depend on integrated circuits, and these take enormous investments and talent to create. The SICLD Act, 2000 safeguards the designs to enable their authors to use, license, and protect their layouts against unauthorized use.
- **Protection of Biological Diversity:** The Biological Diversity Act, 2002 provides protection to traditional knowledge and biological resources. It ensures that local communities, which conserve and utilize these resources, receive equitable recognition and benefits.

### Indian Constitution and Fundamental Rights

The Indian Constitution gives fundamental rights to Indian citizens, and certain of these rights are also given to non-citizens<sup>6</sup>. They are termed "fundamental" because they are basic for a person's intellectual, moral, and spiritual development. The primary reason for including the rights in the Constitution was to have a government that would be governed by the rule of law, not by personal discretion.

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<sup>3</sup> Section 2 (1) (zb) Trademark Act, 1970

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

<sup>5</sup> Section 22 Design Act, 2000

<sup>6</sup> Part-III Constitution of India

In the case of **Maneka Gandhi**, the Supreme Court noted that fundamental rights are the epitome of those highest values that Indians held in esteem ever since ancient times. These rights are intended to safeguard human dignity and establish conditions for individuals to realize their personalities to the fullest extent<sup>7</sup>. They constitute the very basis of human rights in India and function as limitations on the state, so that the state may not encroach upon individual freedom.

The Court also reiterated that the provisions contained in Part III of the Constitution (Fundamental Rights) must be interpreted in their widest possible sense. Justice Bhagwati said that it was the duty of the judiciary to widen the ambit and scope and meaning of fundamental rights rather than to narrow it down.

Due to this judgment, the scope of basic rights, especially the right to life, has been largely enhanced. In the present time, it covers rights like the right to health, the right to a healthy environment, and the right to food, among others.

### **Indian Constitution and Intellectual Property Rights**

Indian Constitution provides basic rights, but Intellectual Property Rights (IPRs) are not expressly stated under any of these. They are not excluded as well. Right to property was a basic right under Article 19(1)(f) by origin, but it was reduced to a constitutional right under Article 300A by the 44th Constitutional Amendment Act of 1978.

Though there isn't a particular constitutional article on IPRs, there is a mention of reference in Entry 49 of List I in the Seventh Schedule, mentioning patents, inventions, designs, copyrights, trademarks, and merchandise marks. But traditional knowledge, biodiversity, and geographical indications are not mentioned by name. These can be interpreted as under Entry 49 because IPRs are not entered in the State List (List II) or the Concurrent List (List III). Moreover, Article 248 grants an exclusive authority to Parliament to enact laws on matters not dealt with in these lists.

The Preamble to the Constitution supports a mixed economy and identifies economic freedom as a fundamental freedom. In order to facilitate this, Article 300A provides that "no person shall

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<sup>7</sup> Maneka Gandhi v. Union of India AIR 1978 SC 597

be deprived of his property except by authority of law<sup>8</sup>." The Supreme Court also held that the phrase "property" in Articles 31 and 300A should be interpreted expansively so as to encompass not only physical property but also intangible property like copyrights and other IPRs<sup>9</sup>.

In *K.T. Plantation Pvt. Ltd. v. State of Karnataka*<sup>10</sup>, the Court made it clear that property under Article 300A encompasses intangible property such as IPRs. Thus, IPRs are protected by the Constitution as property, although not as a basic right. This implies infringement of IPRs can be challenged legally but not under Article 32 in the Supreme Court directly, as basic rights can.

Simultaneously, the lack of a special constitutional status for IPRs also implies there are no constitutional limitations on Parliament's powers to legislate over them. Protection against arbitrary deprivation of property is given by Article 300A, but protection of IPR is primarily based on statutes.

In addition, Article 253 further permits Parliament to pass laws for the execution of international agreements and conventions. This has facilitated India to implement provisions of international agreements like WIPO (World Intellectual Property Organization) and TRIPS (Trade-Related Aspects of Intellectual Property Rights).

Also, Article 372 provides that pre-constitutional laws are in force until they are repealed or amended by a competent legislature. This enabled India to follow colonial IPR legislations even after independence, like the Patents Act of 1911, until they were substituted by new legislations like the Patents Act, 1970.

### **Intellectual Property Rights as Fundamental Rights**

The Constitution of India guarantees fundamental rights to its citizens and, in certain cases, to non-citizens too. The human rights acknowledged under international conventions are supplemented by these rights. Even though Intellectual Property Rights (IPRs) are not explicitly stated as fundamental rights, they may at times come under them—especially under the right to life, as most patented products, like lifesaving medicines, are directly associated with human

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<sup>8</sup> Article 300A inserted by the 44th Constitutional Amendment in 1978

<sup>9</sup> *Commr. Hindu Religious Endowment v Swamiar*, AIR 1954 SC 252

<sup>10</sup> AIR 2011 SC 3430

existence.

- **Patent and fundamental Rights**

Over time, the Indian judiciary has given a broader interpretation to fundamental rights, especially the right to life under Article 21. The right now encompasses access to health and a healthy environment, which constitute basic human rights. Violation of these provisions is construed as a violation of a fundamental right, and relief can be obtained under Articles 32 and 226 of the Constitution.

For instance, if an individual or a company invents a lifesaving medication but does not make it accessible to the general population at a fair price, the Patent Act<sup>11</sup> gives power to the State to intervene. In order to protect the right to life, the State can give a compulsory license so that the drug is distributed among people at reasonable prices<sup>12</sup>. Besides, Article 19(1)(g) provides all citizens with the right to carry on any profession, trade, or business. Though this right can be subjected to reasonable restriction, a patentee, after being granted a patent by following legal process, has the monopoly right to prevent others from making, using, selling, or importing the patented article in India<sup>13</sup>.

Even though IPRs are not expressly referred to in Article 19(1)(g), the judicial interpretation of such rights is that the rights of a patentee also can be protected under this provision. But the legislative right of the patentee cannot prevail over the constitutional provisions. Similarly, if a person violates a patent, he cannot invoke protection under Article 19(1)(g) because this right itself can be subjected to reasonable restrictions.

- **Copyright and Basic Rights**

Freedom of speech and expression<sup>14</sup> is one of the most basic rights under the Constitution. This right gives people the freedom to express their opinions, views, and thoughts freely in words, writing, printing, pictures, or even electronic media. It is the very base of a democratic and robust society<sup>15</sup>.

Freedom of speech also encompasses the right to write and publish books. In State of

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<sup>11</sup> Section 84 of Patent Act 1970

<sup>12</sup> State of Punjab v. Mohinder Singh Chawla (1997) 2 SCC 83

<sup>13</sup> Section 48, Patent Act 1970

<sup>14</sup> Article 19 (1) (a) of Constitution of India

<sup>15</sup> Romesh Thaper v. State of Madras AIR 1950 SC 124

Maharashtra v. Prabhakar Pandurang<sup>16</sup>, an individual under preventive detention laws in prison composed a book and requested permission to publish it, but the government denied this request. The Supreme Court held that such denial was a violation of his personal liberty under Article 21 since he was entitled to write and publish. Therefore, whenever an individual writes a book, he is automatically protected by copyright law, which is protected by both the Copyright Act and by the basic right of freedom of speech and expression. But the right is reasonable under Article 19(2). The Court also made it clear that freedom of speech and expression are not restricted geographically<sup>17</sup>. Secondly, when a holder of a copyright declines to republish or disseminate his work to the public, a compulsory license<sup>18</sup> can be granted by the Copyright Board. This is attributed to the right of the public to know as provided under Article 19(1)(a) of the Constitution.

- **Trademark and Fundamental Rights**

Article 19(1)(g) gives the citizens the right to engage in any profession, trade, or business, but subject to reasonable restrictions under Article 19(6). In contemporary commerce, a trademark is important because it is the identifier and goodwill of a business. Where a trademark that has been registered is infringed, the rights of the holder may be safeguarded under the Trademark Act as well as Article 19(1)(g).

Simultaneously, the public also has the right to know about trademarks and products under Article 19(1)(a). This protects consumers from being deceived by misleading or false information. Thus, even though trademarks are not specifically mentioned as fundamental rights, they acquire constitutional protection based on an interpretive approach.

- **Geographical Indications and Fundamental Rights**

Geographical Indications (GIs) guarantee that a product is from a specific area and possesses qualities or characteristics that are peculiar to the area. Producers who employ GIs are safeguarded by Article 19(1)(g), while the right of consumers is guaranteed to know if the goods they purchase indeed have the specified qualities. The protection against both the producers and consumers is also enshrined by the Geographical

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<sup>16</sup> AIR 1966 SC 424

<sup>17</sup> Maneka Gandhi v. Union of India, 1978 AIR 597, 1978 SCR (2) 621

<sup>18</sup> Section 31 of Copyright Act 1957

Indications of Goods (Registration and Protection) Act, 1999.

- **Traditional Knowledge and the Constitution**

The Constitution of India instructs the State to safeguard the economic interests of Scheduled Tribes and keep them free from exploitation and injustice. To this end, the Biological Diversity Act came into being, which protects indigenous knowledge and biological resources so that indigenous people gain economically from their inheritance. Therefore, traditional knowledge is also safeguarded under both the Biodiversity Act and the Constitutional provisions that guarantee the rights of tribal and indigenous communities.

### **Important Case Laws on Constitutional Aspects of IPR in India**

#### **1. Entertainment Network (India) Ltd. v. Super Cassette Industries Ltd. (2008)**

- Issue: The case involved balance between Copyright and Right to Freedom of Speech and Expression under Article 19(1)(a).
- Judgement: The Supreme Court ruled that copyright protection has to be weighed against the public interest in accessing information. It underlined the fact that IPRs are susceptible to reasonable restrictions in the interest of society.

#### **2. Eastern Book Company v. D.B. Modak (2008)**

- Issue: Whether copyright can be asserted over Supreme Court judgments containing editorial inputs.
- Judgement: The Court opined that the judicial decisions themselves cannot be copyrighted because they belong to the public domain. Yet, the value added by publishers (headnotes, formatting, etc.) might attract limited copyright protection.

#### **3. Novartis AG v. Union of India (2013)**

- Issue: Patentability of medicinal products under Section 3(d) of the Patents Act and its connection to the Right to Health under Article 21.
- Judgment: The Supreme Court dismissed Novartis's patent application for "evergreening," emphasizing that public health and cheap medicine are more important than excessive monopolies by way of patents.

#### 4. **University of Delhi v. Kamal Singh (1969)**

- Issue: Whether schools and colleges can hold a copyright over question papers of examinations.
- Judgment: The Court ruled that such materials would come under the purview of copyright, thus demonstrating judicial acceptance of IPRs as property.

#### 5. **Bennett Coleman & Co. v. Union of India (1973)**

- Although not a direct IPR case, it established the doctrine that property rights (including intellectual property) can be associated with freedom of trade and expression under Articles 19(1)(a) and 19(1)(g).

### **Conclusion**

The Indian Constitution has no specific provision explicitly mentioning Intellectual Property Rights (IPRs). They are not clearly recognized as fundamental rights nor expressly stated as constitutional rights. Yet, a few constitutional provisions are indirectly associated with IPRs. For example, Entry 49 of List I of the Seventh Schedule authorizes Parliament to enact legislations on patents, trademarks, copyrights, and associated issues, whereas Article 253 legitimizes Parliament to enact international treaties and agreements dealing with IPRs.

Over recent years, the Indian judiciary has interpreted and enhanced the coverage of fundamental rights so that areas of IPRs have come within their purview. Thus, for instance, patented drugs which are crucial to public health are associated with the right to health, as a component of right to life under Article 21. In a similar manner, the copyright of a book is connected with the fundamental right to freedom of speech and expression, along with the right to liberty.

Therefore, though IPRs are not expressly safeguarded under Part III of the Constitution, they could be said to be protected at the level of fundamental rights by judicial interpretation. Furthermore, under Article 300A, IPRs are constitutionally safeguarded as a form of property. Different IPRs—patents, trademarks, and copyrights—derive protection from broader fundamental rights, like freedom of speech and expression, the right to trade, and the 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.

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