

Intellectual Property Rights (I. P. R.)



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Summary

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- **Objectives of IPRs**
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INTELLECTUAL PROPERTY RIGHTS

Intellectual Property - Intellectual Property is an idea, a design, an invention, a manuscript etc. which can ultimately give rise to a useful product and application.

Intellectual Property Rights - Right of an inventor to derive economic benefits from his intellectual property; this right is called as Intellectual Property Rights (IPR).

OR

Intellectual Property Rights (IPRs) are legal rights that protect creations and/or inventions resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

OBJECTIVES OF GRANTING IPR

1. It helps in protecting the ownership and originality of the individuals' creation.
2. It provides recognition to the concerned person or authority.
3. It allows owners of intellectual property to have financial benefits from the property they have created.
4. They are provided financial incentive for the creation of and also to incur the cost of investment in intellectual property.

5. Such rights motivate individuals' creativity and thus also contribute to economic growth.
6. It can also offer some economic aid to the holder of the right, through the monopoly of their creations.
7. It improves the financial status of the individual as well as of the economy of the country.
8. To enhance the performance levels of institutions.
9. To create competition among the researchers and institutions for quality of research.

HISTORY OF INTELLECTUAL PROPERTY RIGHTS

The first law on patent was passed in Venice in 1474 which gave monopoly rights to artisans for their inventions.

Legislations covering IPRs in India

- **Patents:** The Patents Act, 1970 and was amended in 1999 and 2002. The amended Act after the amendments made in 2002 came in to force on May 20, 2003.
- **Design:** A new Design Act 2000 has been enacted superseding the earlier Designs Act 1911.

- **Trade Mark:** A new Trademarks Act, 1999 has been enacted superseding the earlier Trade and Merchandise Marks Act, 1958. The Act came in force from September 15, 2003.
- **Copyright:** The Copyright Act, 1957 as amended in 1983, 1984 and 1992, 1994, 1999 and the Copyright Rules, 1958.
- **Protection of Undisclosed Information:** No exclusive legislation exists but the matter would be generally covered under the Contract Act, 1872.

- **Geographical Indications:** The Geographical Indication of Goods (Registration and Protection) Act 1999.
- **Protection of Plant Varieties and Farmers' Rights Act 2001 (PPV&FR - 2001):** Sui generis system of plant varieties protection.
- **National Biological Diversity Act 2002:** It shall provide legal protection to our bio-diversity.

TRADE SECRET

When an individual organization owning and intellectual property does not disclose the property to anyone and keep it as a closely guarded secret, it is called a **Trade Secret**. Trade secret may relate to formulae, processes or materials. The best guarded secret of the modern time concern the formulation of **Coca Cola**. (Merchandise 7X, the "secret ingredient" or "secret formula" in Coca-Cola) **[NFL Exam 2021]**. The ingredient has remained a secret since its invention in 1886 by John Pemberton.

TRADE SECRETS OFFER FOLLOWING ADVANTAGES

- They are for unlimited duration.
- It is not necessary to satisfy the rather stringent requirement for protection under patents.
- The cost of filing, contesting and enforcing patent is saved.
- The risk of someone improving upon the product, process etc is minimised.

DRAWBACKS OF TRADE SECRET

- Maintaining a trade secret itself a costly affair.
- It offers no protection from independent innovation invention.
- Non disclosure of the invention, innovation does not give others a chance to improve upon the original invention.
- It cannot be applied to many inventions example equipment designs, plant varieties, books etc.

TRADE MARK

A “Trade Mark” [TM] is defined under **Section 2(zb)** of the Indian Trademarks Act, 1999 as *“Mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include a **shape of goods, their packaging, and combination of colors.**”*

Simply put, a trademark may include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or combination of colors or any such combinations. The only qualification for a trademark being its capacity to distinguish the goods or services of one person from that of another.

For example, one can identify the products of **Reebok/LG/Whirlpool/Godrej** through their logo, which is embossed on their products. Another example can be the logo of **NGO's** like **WHO, UNICEF** and so on which differentiates these institutions with each other.

INDUSTRIAL DESIGN

These aesthetic aspects can be hugely important in the **modern economy**. Nowadays consumers face an enormous choice of products, including many that offer the same basic functionality. So they will tend to choose the one with the design they find most attractive within their price range.

Industrial designs are applied to a wide variety of **industrial products** and **handmade goods**: cars, telephones, computers, packaging and containers, technical and medical instruments, watches, jewelry, electrical appliances, textile designs, and many other types of goods.

What designs can be protected

Industrial design law only protects those aspects of a product that are **ornamental**; its technical features may be protected by patent, if they meet the requirements for **patent protection**. A design may consist of **three-dimensional features**, such as the **shape** or **surface** of an article, or **two dimensional features** such as **patterns**, **lines** or **colour**.

INDUSTRIAL DESIGN RIGHTS

Industrial design rights entitle the right holder to control the commercial production, importation and sale of products with the protected design.

Industrial design rights last for a limited period. This varies among countries, but the maximum period of protection in a country will be at least ten years. In many countries, owners need to renew their registration every few years if they want to keep the design protected for the maximum possible period.

PATENTS

Patents are rights related to new discoveries. Patents are used to protect new product, process and apparatus.

A patent is the right granted by a government to an inventor to exclude others from **imitating, manufacturing, using or selling the invention** in question for commercial use during the specific period.

PATENTS ARE GRANTED FOR

1. An invention (including a product),
2. Innovation/improvement in an invention,
3. Process/product of an invention,
4. A concept.

PATENTS REQUIREMENT

The chief requirement for the grant of a patent are follows.

1. Novelty
2. Inventiveness
3. Industrial Application and Usefulness
4. Patentability
5. Discloser

Novelty - The invention must be new and should not be already known to the public.

Inventiveness- The invention should not be obvious to a person skilled in the art, and should represent an innovation

Industrial Application and Usefulness - The subject matter of the patent must have an industrial application, either immediate or in the future that is useful to the society/nation.

Patentability - The subject matter of a patent must be patentable under the existing law and its current interpretation. For example, **The Indian patent act of 1970** **did not** allow product patents in **pharmaceutical foods and agro chemicals**. But this act has now been amended as **Indian patent act 1999** and the new act **allows** product patents except for some specified **medicine drugs**.

Disclosure - The inventor is required to describe his invention in sufficient detail so that a person of normal skill is able to reproduce it.

THE PROPERTY WHICH CANNOT BE PATENTED

- A scientific principle or an abstract theory.
- A discovery of new property or new use for known substance.
- A method of agriculture or horticulture.
- Inventions relating to Atomic Energy are not patentable.

A FAMOUS EXAMPLE OF PATENT

A patent entitled **BASMATI RICE** line and grain for a novel, high yielding, medium dwarf, photo insensitive rice having all the desirable features of basmati rice was awarded to **RiceTech Texas (USA)** in USA on September 2, 1997. These claims were challenged by India and the request for re-examination of the patent was filed on April 28, 2000.

Limitations of a Patent

There are 2 basic limitations of patent.

- 1. Limitation of time** - A patent is valid for a specific period i.e. 15-20 years.
- 2. Limitation of space** - A patent is valid only in the country of its award and not in other countries.



Copyright

COPYRIGHT

It provides protection for specified period and only from reproduction of the copyright material. It, however does not prevent another person from using either **the idea** or **the information contained** in a Copyright material. **Biotechnology Copyright protection is available for DNA sequences.**

It is a right that is provided to the owner of a literary or artistic work. It is an exclusive right to control the publication, distribution and adaptation of creative works.

❖ Duration / Term of Copyright

The right lies with the owner cum copyright holder for a certain period of time. As time lapses, the work can be republished or reproduced by others. In the case of **original literary, dramatic, musical and artistic works**, the duration of copyright is the lifetime of the author or artist, and **60 years** counted from the year following the death of the author.

In case of anonymous works, the right lasts for **95 years** after publication or **120 years** after the creation.



✓ What can be protected?

1. Literary or dramatic work.
2. A musical work.
3. An artistic work.
4. A cinematograph film.
5. A sound recording.
6. A photograph.
7. A computer generated work.

PLANT VARIETY PROTECTION

Plant varieties and animal breeds should be regarded as intellectual properties of the breeders who have developed them. It may be argued that these entities are essentially derived from naturally occurring **lines**, but they usually represent a considerable reorganization of the existing **gene combinations** and **skilful** selection work.

In **USA** the following **3** different system of protection are available for IPR related to plants.

Cont...

1. **The plant patents act 1930:** covers varieties of asexually Propagated crops, example ornamental and fruit trees.
2. **The plant variety protection act of 1970:** is US version of the Plant breeder's rights system followed by European Union and several other countries, including India. **[PPV&FR – 2001]**
3. **The utility patent act 1985:** was originally meant to cover men made industrial inventions and process.

GEOGRAPHICAL INDICATION (G I)



A geographical indication is a **sign used on products that have a specific geographical origin** and possess qualities or a reputation that are due to that origin.

- Geographical indications are “indications which identify a good as originating **the territory of a member, or a region or a locality in that territory**, where given quality, reputation or characteristics of the good is essentially attributable to its geographical origin.
- GI covers **Agricultural goods, Natural products, Manufactured products, Goods of Handicraft, and even Food products**, but **they do not apply to intellectual properties.**

India has invented the Geographical Indications of Goods Act (1999) which came into force on September 15, 2003. **Darjeeling tea** was the **first product to be tagged with GI** in **2004-05** and 132 products including **Bikaneri bhujia from Rajasthan, Banarasi brocades** and **sarees** had become GI tagged upto September 2010.

Duration of GIs

The registration of a GI shall be for a period of **Ten years** but may be renewed from time to time for an unlimited period by payment of the renewal fees.

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