

# Intellectual Property Rights through the Prism of the Constitution of India

Dr. Suresh Kumar Bhaira<sup>1</sup>

Dr. C.P. Gupta<sup>2</sup>

## I. Introduction:

The law of property comes under substantive law which deals with law of things, law of persons, contractual obligations, torts and crimes. The adjective law on the law of evidence and the law of sanctions and remedies etc. the law of things covers the ownership, pledge various kinds of bailments and such other rights over things as are not included in either of these heads. According to Halsbury's law<sup>3</sup> of England property is that which belongs to a person exclusively of others and can be subject to bargain and sale. It includes goodwill trademarks licences to use a patent look debts options to purchase, life policies and other rights under a contract. Property can be classified into two broad categories:

- (i) Intellectual Property
  - (a) Moveable and Immovable Property
  - (b) Real and Personal Property
- (ii) Incorporeal Property
  - (a) Right in re-propria
  - (b) Right in Aliena

## II. Definition :

Merriam Webster says "Intellectual property: property (as an idea, invention, or process) that derives from the work of the mind or intellect: an application, right, or registration relating to this."

Incorporeal property is intangible property. It is also called intellectual property.

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<sup>1</sup> LL.M., Ph.D., Faculty University Law College, University of Rajasthan, Jaipur)

<sup>2</sup> LL.M., Ph.D., Faculty University Law College, University of Rajasthan, Jaipur)

<sup>3</sup> 3<sup>th</sup> Ed., vol 33 para 310.

### III. Meaning of Intellectual Property Rights :

Intellectual property (IP) is a class of property emanating primarily from the activities of the human intellect. Any property, movable or immovable, is legally protected to prevent it from being stolen. Similarly, the rights in an intellectual property created need also to be protected to prevent infringement.

Intellectual Property Rights (IPR) are the privileges given to the owners of works that are created with the help of individual intelligence. These creations can be in the business, technical, fictional and artistic domains and can have various forms comprising, of scripts, inventions, software, a suit or a trade name.

The term “Intellectual property” was introduced in the case of *Davoll et al. v. Brown* in October 1845 in the Massachusetts Circuit Court. In this Justice Charles L. Woodbury held that “only in this way can we protect intellectual property, the labors of the mind, productions and interests as much a man’s own..... as the wheat he cultivates, or the flocks he rears.” Section 1 of the French law of 1791 also stated that “all new discoveries are the property of the author; to assure the inventor the property and temporary enjoyment of his discovery, there shall be delivered to him a patent for five, ten or fifteen years.

The basic purpose of IPR is to guard the right of an author for his work and simultaneously permit the general public to view his creativity. IPR law also puts time limits on the rights given to these authors so that a balance is maintained. Intellectual property, like any other form of property can become a material of trade, can be owned, sold as well as bought. This type of property is gradually becoming important for ensuring competition in a knowledge based economy.

Intellectual property is divided into the following categories :

1. Copyright
2. Patents
3. Trade Marks
4. Design Rights
5. Geographical Indications
6. Confidential Information and Trade Secrets

(1) **Copyright**, are mainly issued for the protection of original expressions of art, literature, music, drama etc. For example Rotomac Pen has a copyright on the phrase “**Likhte – Likhte Love ho jaye**”.

In the case of *Sulamongalam R Jayalakshmi v/s Meta Nusials Chennai*,<sup>4</sup> the court held that the right which a person acquires in a work being the result of his intellectual labor is called his copy right.

(2) **Patents** are the rights granted to the inventor on new inventions which are not common – for example, Graham Bell got a patent on his invention of the telephone.

A patent is an exclusive right granted to a person who has invented a new and useful article or an improvement of an existing article or a new process of making an article. The exclusive right is to manufacture the new article invented or manufacture an article according to the invented process for a limited period. During the term of the patent the owner of the patent, i.e. the patentee can prevent any other person from using the patented invention. After the expiry of the duration of the patent anybody can make use of the invention. The invention then becomes part of the public domain.

#### **Definition of patent:**

“The word ‘Patent’ as used in this title denotes a monopoly right in respect of an invention.<sup>5</sup> In Words and Phrases Legally Defined, 3<sup>rd</sup> Ed., Vol. 3, K-Q edited by John. B. Saunders (1969) the word ‘Patent’ is defined as : “The truth is that letters patent do not give any right to use the invention – they do not confer upon him a right to manufacture according to his invention. That is a right which he would have equally effectually if there were no letters patent at all, only in that case, all the world equally have the right ‘what the letters patent confer is the right to exclude others from manufacturing a particular way, and using a particular invention.’”

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<sup>4</sup> (2000) PTC 681 (Med)

<sup>5</sup> See Halsbury’s Laws of England, 4<sup>th</sup> Ed., vol 35 para 303.

In Black's Law Dictionary,<sup>6</sup> 'Patent right' has been defined as a right secured by a patent, usually meaning a right to the exclusive manufacture, use and sale of an invention or patented article.

In the New Shorter Oxford English Dictionary edited by Leslie Brown, Vol. 2, N-Z (1993) at p. 2121 and 2130, 'Patent' is defined as a document constituting letters patent especially a licence from a Government to an individual or organization conferring for a set period, the sole right to make, use or sell some product or invention, a right conferred in this way.

Object of Patent Laws : The object of patent laws is to encourage scientific research, new technology and industrial progress by rewarding innovation with a temporary monopoly. In *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries*,<sup>7</sup> the court observed that Grant of exclusive privilege to own, use or sell the method of the product patented for a limited period stimulates new inventions of commercial utility. The price of the grant of the monopoly is the disclosure of the invention at the monopoly, passes into the public domain. In *Festo Corpn v. Shoketsu Kinzoku Kogyo Kabushiki Co Ltd.*,<sup>8</sup> the court said that Patent laws require inventors to describe their work in full clear, concise and exact terms as a part of the delicate balance the law attempts to maintain between inventors who rely on the promise of the law to bring the inventions forth, and the public, which must be encouraged to pursue innovations, creations, and new ideas beyond the inventor's exclusive rights.

**Patent and Inventions :-** It is not mandatory to obtain a patent in order to protect a new invention, the inventor may instead choose to keep the details secret. Moreover, not all technical developments are patentable.

**Definition of Invention. Section 2(1)(j) :** 'Invention' means a new product or process involving an inventive step and capable of industrial application.

**Section 2(1)(ja) :** 'Inventive step' means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art.

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<sup>6</sup> 8<sup>th</sup> Ed. 2004 at p. 1348,

<sup>7</sup> AIR 1982 SC 1444, (1983) IPR 1, PTC Supp (1) 731 (SC).

<sup>8</sup> (2002) Ahuja's Intellectual Property Cases.

**Section 2(1)(I)** : ‘New invention’ means any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of patent application with complete specification, i.e. the subject-matter has not fallen in public domain or that it does not form part of the state or the art.

Main elements of invention :

- New or novelty
- Improvement : (i) Improvement in skill; or (ii) Improvement in Efforts
- Useful and economic
- Not previously published

**(3) Trade marks :-** Trade marks are mainly issued for protection of the make or the brand name and symbol that may be used by the brand owner-for example, the name Pepsi is a sheltered trademark and only the makers can use it.

No man is entitled to carry on his business in such a way as to represent that it is the business of another or is in any way connected with the business of another. The exception relates to a man carrying on his business in his own name, so long as he does not do anything more to cause confusion with the business of another and so long as he does it honestly. The court cannot stop a man from carrying on his business in his own name, although it may be the name of a better-known manufacturer, when he does nothing at all in any way to try and represent that he is that better-known and successful manufacturer. This exception only entitles a man to use his personal name, it does not entitle him to use his name in combination with something else such as the words & company.

In *Kuldip Singh Trading as Saini Spares v. SK Auto Industries*,<sup>9</sup> the court observed that A man of the name Pears is entitled to carry on the business of the manufacture of soap, but he cannot sell his soap as ‘Pear’s soap’. The second principle is that no man is entitled to describe or mark his goods as to represent that the goods are the goods of another. There is no exception to this rule.

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<sup>9</sup> (1996) PTR 65 (Del.)

In *Bajaj Electrical Ltd. V. Metals & Allied Products*,<sup>10</sup> the court said that a particular name is part of the name of the defendant, injunction cannot be refused in favour of the plaintiff who had been using the name prior to the defendant and had established itself by that name in the trade.

(4) **Industrial Designs** : Designs in issued for the protection of artistic or visual features in products – for example, a toothbrush with large bristles can get a legal protection for its unique design.

Design is a special conception of an idea. Industrial Designs refer to the aesthetic aspects of mass-produced goods. Seen as tools for product differentiation, Industrial Designs can exploit consumer psychology that directs purchasing decisions on the visual appeal of a commodity. Besides utility, consumers have started looking for ‘extras’ such as brand prestige and superficial attractiveness of the commodity which they aim to buy. The progress in consumers’ desires from ‘I want a car’ to ‘I want a Mercedes’ to ‘I want a Mercedes twin-eye model’ explains the increasing importance of Industrial Designs, and the need for their protection.

(5) **Geographical Indications** : - Geographical Indications identify goods originating in a particular region where a given quality, reputation or other characteristic of the goods is essentially attributable to its geographical origin. The Paris Convention refers to appellation of origin and indication of source in the concept of geographical indications. ‘Indication of source’ means any expression or sign which is used to indicate that a product or service originates in a country, region or a specific place. ‘Appellation of origin’ means the geographical name of a country, region or specific place which serves to designate a product originating therein, the characteristic qualities of which are due exclusively or essentially to the geo graphical environment, including natural or human factors or both natural and human factors. As per traditional terminology The term ‘indication of source’ comprises all appellations of origin. But in its general use, it has become a designation for indications of source that do not qualify or fulfill the requirements to be appellations of origin.

(6) **Confidential Information and Trade Secrets** : Confidential information and trade secrets can also be protected by imposing restrictions on the physical use of that information and also imposing contractual obligations upon the persons dealing with the information – for

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<sup>10</sup> AIR 1988 Bom 167.

example, the formula for making Coca Cola has been kept secret in this manner. There are various organizations that are working towards the protection of intellectual property

#### **IV. Intellectual property and right to privacy:**

Law is a mean to achieve the end and the end is obviously Justice. In a democratic country every citizen wants to enjoy some basic rights & freedom. India is a democratic state and Indian Judiciary is wedded with the establishment of the rule of law. Right and freedom cannot be enjoyed without the establishment of rule of law. Every citizen wants to enjoy his life with personal liberty and privacy. Privacy may be divided into physical, primary and mental privacy.

The concept of privacy has grown to encompass issues like the public disclosure of private facts, intrusion and publicity. The right to privacy is briefly defined as the right to be let alone without un-consented interference and intrusion of any kind. This gives to an individual the right to choose the time and the manner in which he wishes to disclose information about himself, if at all.

Every author, every director, actor, publisher, owner, scientist want to protect personal gossip and facts from being printed or media publication.

The right to privacy has been consistently derived from the constitutional provisions guaranteeing fundamental rights. This right has been essentially, derived from two sources in the Constitution of India, namely, the Preamble<sup>11</sup> and Part III,<sup>12</sup> guaranteeing certain freedoms in the form of fundamental rights.

- Article 19(1)(a) : Every citizen must have the freedom of speech and expression subject to laws containing reasonable restrictions on the grounds inter alia decency or morality and defamation as laid down in the Constitution of India.
- Article 21 of Constitution of India : No person must be deprived of his life or personal liberty except according to procedure established by law.

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<sup>11</sup> In Preamble to the Constitution of India “ Assure the dignity of individual....”

<sup>12</sup> In Part III of Indian Constitution (Article 19(1)(a) and Article 21.

The Preamble<sup>13</sup> safeguards those cherished human values which from the means of ensuring one's full development and evolution. Privacy primarily concerns the individual and therefore, relates to and overlaps with the concept of liberty. It is also true that the Constitution of India does not expressly declare a right to privacy as a fundamental right, but it is an essential ingredient of personal liberty. The right to privacy is a part of the right to life under Article 21. The right to personal liberty takes in not only a right to be free from restrictions placed on his movements, but also free from encroachments on his private life. Indeed, nothing is more deleterious to a man's physical and mental happiness than a calculated interference with his privacy.

The right to privacy can be recognized as a constitutional right in the sense that the fundamental right of the citizens can be described as contributing to the right to privacy. The rights and freedoms of citizens set forth in the Constitution guarantee that the individual, his personality and those things stamped with his personality should be free from official interference. But this right cannot be absolute and would always be subject to reasonable restrictions on the basis of compelling public interest. Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes.<sup>14</sup>

In the landmark case of *Kaleidoscope (India) v. Phoolan Devi*,<sup>15</sup> the trial court judge prohibited exhibition of a controversial film titled 'Bandit Queen' both in India and abroad. The court in its preliminary opinion held that the film infringed the right to privacy and publicity of Phoolan Devi, notwithstanding that she had assigned her copyright in her writings to the film producers.

The court held in *Phoolan Devi v. Shekhar Kapoor*,<sup>16</sup> that for the purpose of a right to privacy action a public figure includes anyone who has arrived at a position where public attention is focused upon him as a person.

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<sup>13</sup> We, the people of India, are having solemnly resolved to constitute India into a **SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC** and to secure to all its citizens:

**JUSTICE**, social, economic and political;

**LIBERTY** of thought, expression, belief, faith and worship;

**EQUALITY** of status and of opportunity; and to promote among them all

**FRATERNITY** assuring the dignity of the individual and the unity and integrity of the Nation;

In our constituent assembly this twenty-sixth day of November, 1949, do hereby adopt, enact and give to ourselves this constitution.

<sup>14</sup> State of Maharashtra v. Madhukar Narayan Mandikar, AIR 1991 SC 207.

<sup>15</sup> AIR 1995 Del. 316.

<sup>16</sup> (1995) PTC 46 (Del.)

There is no doubt that what may be the private lives of public figures becomes a matter of public interest. It is difficult to segregate the private life of the public figures from their public life. It is the burden of holding a public office. There are two competing interests to be balanced as submitted, that of the author to write and publish and the right of an individual against invasion of privacy and the threat of defamation. However, the balancing of these rights would be considered at the stage of the claim of damages for defamation rather than a preventive action for injunction of the publication itself.<sup>17</sup> The plaintiff, for famous or infamous deeds having thrust himself in the arena of publicity cannot escape publicity, criticism and exposure by media, audio and video, merely on the ground of being a public figure. However, the question is whether such persons have no right to defend when someone enters the realm of their private life, depicts, in graphic details, rape, sexual intercourse, exhibits nudity, portrays the living person which brings shame, humiliation and memories of events which haunt and will go on haunting the plaintiff. Individuals need a place of sanctuary where they can be free from societal control. The importance of such a sanctuary is that individuals can drop the mask, desist for a while from projecting on the world the image they want to be accepted of themselves, an image that may reflect the values of their peers rather than the realities of their natures and that is the content and meaning of privacy and right to privacy must encompass and protect the personal intimacies of the home, the family, marriage, motherhood, procreation and child rearing. It is implicit in the right to privacy as to what extent the plaintiff's thoughts, sentiments, emotions, must be communicated to others. Explicit display, graphic details of being paraded nude, raped and gang raped does not only hurt the feelings, mutilate the soul, denigrate the person but reduce the victim to a situation of emotional abandonment which is the very essence of personal freedom and dignity.<sup>18</sup>

In the case of *R Rajagopal v State of Tamil Nadu*,<sup>19</sup> the Supreme Court discussed the law relating to the right to publish an autobiography in detail thereby addressing the issue of freedom of press vis-a-vis the right to privacy of the citizens. Some journalists wanted to publish the autobiography of a condemned prisoner, Auto Shankar in their magazine. This was being interfered with by the prison authorities, who by exerting pressure on the convict had made him withdraw the permission earlier granted to the journalists. In his autobiography he had set out the nexus between himself and several high ranking government officers who

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<sup>17</sup> Khushwant Singh v Maneka Gandhi AIR 2002 Del 58 (DB).

<sup>18</sup> Phoolan Devi v Shekhar Kapoor (1995) PTC 46 (Del).

<sup>19</sup> AIR 1955 SC 264.

were his partners in several crimes. The court held that the right to privacy as an independent and distinctive concept has two aspects which are but two faces of the same coin: (1) the general law of privacy which affords a tort action for damages resulting from an unlawful invasion of privacy; (2) the constitutional recognition given to the right to privacy which protects personal privacy against unlawful governmental invasion.

**Remedy for Breach of Privacy:** The civil law does not recognize any independent right to privacy. Hence, if any one publishes anything which brings an individual into unwanted publicity or exposes to the public his family or other private affairs, he can bring legal action against such person only if he can bring his case under any of the existing causes of action recognized by law, such as, defamation, breach of confidence.