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# Intellectual Property Rights Vis-à-Vis Fundamental Rights and Indian Constitution

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## ABSTRACT

*The Indian Constitution enumerated various rights including fundamental rights, freedom and also laid down economic, social, and political justice to every citizen in the country. All the provisions of directive principles of state policy direct the state policies in the direction of the business and other economic and social activities. The Intellectual Property right is not expressly recognized as a property right by the Indian Constitution but at the same time, the property right under Indian Constitution does not expressly exclude the Intellectual Property Rights. Right to life includes the right to medical care at an affordable cost, in case any lifesaving medicine was not affordable, then it is imperative for the state to grant a compulsory license for making such drug available at an affordable cost is the part of the obligation under the Indian constitution and in consonance, the patent act was enacted with a provision for granting compulsory licensing. The Individuals are granted the liberty to write a book, and publishing the same is now protected under the Indian Constitution. Any copyright infringement comes within the purview of the restriction under morality as laid down under Article 19(2) of the Constitution. The right to trade or business includes the right to protection of the business from usurping their trade name and goodwill gained in the course of trade or business. Trademark, geographical Indications also protects the right to know the consumers about the goods, its origin and services. Indian Constitution provides protection for the property including Intellectual property rights, and it also equally safeguards the fundamental rights as envisaged under Part III and Part IV of the Indian Constitution.*

**Keywords:** IPR, Indian Constitution, fundamental rights.

## I. INTRODUCTION

Indian Constitution enumerated various rights including fundamental rights<sup>3</sup> to its citizens and the persons in India, i.e., some rights are granted exclusively to their citizens alone and some rights are granted to any person in India without any bar to the status of citizenship or residence

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<sup>3</sup> Part III of Indian Constitution

or status. The rights under the Constitution can be classified as a constitutional right, and fundamental right, and the right to enforce the fundamental right is also a fundamental right in case of any violation of such guarantee by the Indian Constitution<sup>4</sup>. The first and foremost fundamental right is the right to life and personal liberty<sup>5</sup> and the right to life has been expanded into many rights by the Supreme Court of India after *Maneka Gandhi*<sup>6</sup>, who had given authority to interpret the constitution. At present we have many rights which are not expressly provided under the Indian constitution were originated by way of purposive interpretation and which includes the right to health<sup>7</sup>, privacy, livelihood, access to emergency healthcare and clean environment, and also right to equality<sup>8</sup> and non-discrimination based on gender, descent, race, caste, religion, etc. Also, the Constitution had provided several freedoms<sup>9</sup> includes freedom of speech and expression, freedom to form an association, freedom of movement and the right to business, trade, commerce, and such freedom were not absolute and are subjected to reasonable restrictions as provided under the Indian constitution and enactments in consonance with restrictions provided by the Constitution.

## **II. ECONOMY AND INDIAN CONSTITUTION**

The Indian Constitution laid down economic, social, and political justice to every citizen in the country. It is, thus, the duty of the business establishments to deliver social, economic, and political justice to every citizen with Economic Justice. The directive principles of the State policy as enumerated under part IV of the Constitution laid down principles to regulate the economic system of the nation that it does not lead to concentration of wealth and means of production to one particular. All the provisions of directive principles of state policy direct the state policies in the direction of the business and other economic and social activities. The basis of the limited period of protection and rights in IP assets is based on these Constitutional guidelines. The government also enacted IP laws, policies, and rules in view of the directive principles, which are directly related to the commercial operations and economic vision under Part IV of the Indian Constitution. The Preamble of the Indian constitution authorizes a mixed economy system in India and upheld economic liberty amongst the most important liberty under the Indian Constitution. Economic liberty can only be safeguarded by the property system. The reference to the property under Indian Constitution has a general connotation with

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<sup>4</sup> Art. 32 of the Indian Constitution

<sup>5</sup> Art. 21 of the Indian Constitution

<sup>6</sup> *Maneka Gandhi v. Union of India*, 1978 AIR 597, 1978 SCR (2) 621

<sup>7</sup> *Paschim Bangal Khet Mazdoor Samity & Others V State of West Bengal & Others* AIR 1996 SC 2426

<sup>8</sup> Art. 14 of the Indian Constitution

<sup>9</sup> Art. 19 of the Indian Constitution

respect to tangible property but the term property is having broad scope to include includes intellectual property but indirectly.

### **III. INTELLECTUAL PROPERTY RIGHT AND CONSTITUTION**

The Intellectual Property right is not expressly recognized as a property right by the Indian Constitution but at the same time, the property right under Indian Constitution does not expressly exclude the Intellectual Property Rights. Property rights once a fundamental right under the Indian Constitution but it was now downgraded just as a constitutional right<sup>10</sup>. Supreme Court in the *K.T. Plantation & Another Vs State of Karnataka*<sup>11</sup>, a constitutional bench held that the expression 'Property' in Art.300A is confined not to land alone, it also includes intangibles like copyrights and other intellectual property and embraces every possible interest recognized by law and expanded the scope of the right to property as a constitutional right. Hence protection under Article 300A of the Indian constitution is squarely applicable to Intellectual property also. In the background of Article 300A that the Government or executive cannot interfere with the right of the individual relating to the IP rights unless a specific provision of law which authorizes to restrict their rights. Article 300A, therefore, protects Intellectual property against executive action. Any Deprivation of property including intellectual property such as copyright and patent is within the meaning of Art.300A, commonly for a public purpose or public interest.

### **IV. PATENT AND FUNDAMENTAL RIGHTS**

#### **(A) Right to Affordable Medicine**

The fundamental rights enshrined under Part III of the Indian constitution are to complement and supplement various inherent human rights as recognized under international law under the UDHR and other Covenants and conventions on Human rights. The human right is sacrosanct with respect to the right to life and personal liberty<sup>12</sup>. The Fundamental rights also include a healthy environment which impliedly ensures human rights. Any violation of any such human rights, the individual can seek remedy in the top court of the country directly. A Patient has the right to receive timely medical treatment under the patient's right to life<sup>13</sup>. As per Article 21<sup>14</sup>,

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<sup>10</sup> The Forty-Fourth Constitutional Amendment, 1978, deleted Articles 19(1)(f) and 31 from Part III, the chapter on Fundamental Rights in the Constitution. Instead, it inserted Article 300A in a new chapter IV of Part XII of the Constitution.

<sup>11</sup> <https://indiankanoon.org/doc/1524072/> accessed on 31.08.2020 at 10. A.M

<sup>12</sup> Article 21 of the Indian Constitution

<sup>13</sup> *Paschim Banga Khet Mazdoor Samity v. State of West Bengal* (AIR 1996 SC 2426 at 2429 para 9).

<sup>14</sup> No person shall be deprived of his life or personal liberty except according to a procedure established by law.

right to life includes the right to medical care at an affordable cost<sup>15</sup>, in case any lifesaving medicine was not affordable, then it is imperative for the state to grant a compulsory license for making such drug available at an affordable cost is the part of the obligation under the Indian constitution and in consonance, the patent act was enacted with a provision for granting compulsory licensing. Wherein section 84 of the patent act laid down 3 grounds for the grant of compulsory license that the reasonable requirements of the public with respect to the patented invention which is not satisfied, or that the patented invention is not affordable at a reasonable price to the public, or that the patented invention is not worked in the territory of India. This provision enables the state to impose compulsory license for the lifesaving drug easily available in India at an affordable price and workable in India and if the public requirement is not satisfied in India under the Constitutional mandate of Article 21. Public interest is the basis of compulsory licensing as in the case of patent Section 84 of the Patent Act.

### **(B) Right of Patentee**

On the other hand, the right of the patentee is also safeguarded under Article 14, and for the citizens who are having patent rights<sup>16</sup>, they are further protected with Article 19(1)(g) of the constitution and whereas the others who are infringing the patentee rights were prohibited with reasonable restrictions under Article 19(6). Thus, the infringers shall not be permitted to claim to carry out trade or business with the patent-protected products and process under their right under 19(1)(g). The statutory right granted to the patentee under the Patent Act is protected under the reasonable restrictions imposed under Article 19(6). Though these were not expressly mentioned under Indian Constitution, the same can be inferred and any such question that arose with the right of the patentee and the right of the Infringer to carry out business under Article 19(1)(g) is tested and the above judicial inference can be made from the express provision. The right of the patentee is the statutory right and this statutory right is not violative of Article 19(1)(g) of the Indian Constitution and the same shall fall under the reasonable restrictions imposed under Article 19(6).

### **(C) Right to Information vs. Patent disclosure**

The citizens are provided with the right to information, if the patentee wish to protect his patentable invention for the statutory period of 20 years, the patentee shall disclose the same and the description of the patented invention should be made clear, complete, certain, without

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<sup>15</sup> State of Punjab v. Mohinder Singh Chawla (1997) 2 SCC 83

<sup>16</sup> Section 48 of the Patent Act 1970

any ambiguity, in concise form, and must sufficient for any person in India who is possessing an average skill and average knowledge of the art, skilled in such art to the disclosure of the invention relates, to work the invention, and can be able to reproduce the invention from the disclosure without any assistance from the inventor. Thus, the description of the Invention provided by the patentee must be the 'best method to perform the invention or to reproduce the invention with proper illustrations, explanations, examples, and even to provide models with a prototype at the time of filing the patent application. In reward for the full disclosure of the patented invention, if the said invention satisfied with other statutory requirements, the patentee must be provided with statutory protection for the limited period of 20 years<sup>17</sup> under the patent act. In case any concealment and non-disclosure of the invention with clear terms and if any person in India who is possessing an average skill and average knowledge of the art, skilled in such art to the disclosure of the invention relates, not able to work the invention, and not able to reproduce the invention from the disclosure made, it violates the citizen right to information and therefore the patent can be revoked.<sup>18</sup>.

## **V. COPYRIGHT AND FUNDAMENTAL RIGHTS**

### **(A) Right of the Author and the copyright owner**

In the State of Maharashtra v. Prabhakar Pandurang,<sup>19</sup> the Supreme Court held that the detenu in preventive detention is also having the right to write a book and the right to publish the book and any prohibition without any legal sanction, would be violative of the Personal liberty protected under Article 21 of the Constitution. In Menaka Gandhi<sup>20</sup>, Supreme Court held that there are no geographical limitations or boundaries to freedom of speech and expression enshrined under Article 19(1) (a) and the freedom is also extra-territorial in the application and such right is not only exercisable in India but also outside the territory of India. Any Indian author who is expressing his view as an article or publishing a book is only subjected to the reasonable restrictions under Article 19(2) of the Constitution and he has the right to publish the book. Thus, in addition to the freedom of speech and expression as provided under Article 19(1)(a) of the Indian Constitution, the Individuals are granted the liberty to write a book, and publishing the same is now protected under the Indian Constitution. Any copyright infringement comes within the purview of the restriction under morality as laid down under Article 19(2) of the Constitution, since, it is immoral to claim authorship right of another and

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<sup>17</sup> Section 53 of the Patent Act 1970

<sup>18</sup> Section 64(h) of the Patent Act 1970

<sup>19</sup> AIR 1966 SC 424

<sup>20</sup> Maneka Gandhi v. Union of India, 1978 AIR 597, 1978 SCR (2) 621

expressing the same without the permission of the author or the owner of the license would be under the purview of morality under the reasonable restrictions laid down under the Article 19(2) of the Constitution. Thus, copyright violation or infringement is restricted under Article 19(2) of the Constitution.

### **(B) Right to know and right to information vs. compulsory licensing**

Right to know and right to information is an integral part of freedom of right to speech and expression<sup>21</sup>, and the Right to Know is now recognized as a basic right which the citizens of a free country like India should aspire in the broader horizon of Article 21<sup>22</sup> and it is a necessary ingredient of participatory democracy. By virtue of the right to know, the citizens in the country pave the way to the grant of compulsory license in case of copyrighted work was not available in India.<sup>23</sup>

## **VI. TRADEMARK AND FUNDAMENTAL RIGHTS**

### **(A) Right of the Trademark owner**

Article 19 (1)(g) grants the right to practice any profession, or to carry on any occupation, trade, or business and for unfettered commercial practice, it is imminent to protect the trademark and the goodwill acquired by the business entity and in case of non-protection of such mark and goodwill may disrupt the trade and business. Hence the right to trade or business includes the right to protection of the business from usurping their trade name and goodwill gained in the course of trade or business. Therefore, it is imminent to protect the trade name from any illegal encroachment and infringement and also from any illegal gain by way of passing off. Such protection of trademark also protects the interest of the citizen's right to information about the origin and authenticity of the claim about the product which they intend to use. Also, Article 19(1)(g) can be interpreted that the right to business and trade include restrictions to monopoly and hence the constitution also guarantees against the monopoly of business or commerce or trade and in case existence of any monopoly on any trade or commerce or business, then the right to trade or business or commerce shall be a sham and shall only exist in the text. Hence reasonable restrictions on trade and commerce or business also implicit under the Indian Constitution.

### **(B) Consumer's Right to Know**

A trademark not only protects the manufacturer but also has a direct effect on consumer

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<sup>21</sup> Article 19(1)(a) of the Indian Constitution

<sup>22</sup> *Reliance Petrochemicals Ltd vs Proprietors Of Indian Express* 1988 SCR Supp. (3) 212

<sup>23</sup> Section 31 of Copyright Act, 1957

protection from deception and unfair trade practices by passing deceptive goods. The citizens in the country also provided with the right to know<sup>24</sup>, they are entitled that the goods or the service which they intend to utilize is from the seller or the manufacturer of the service provider who they intended and it provides transparency in the market and enables the consumer to be informed. Trademark protection also enables the consumers to distinguish the goods or services with which the consumers were intended and to avoid others, and further, it generally enables the customers to assume a positive level of reliability in the standard of the goods or services. Thus, the trademark also protects the right to know the consumers about the goods and services. Certification marks like ISI, AGAMRK, HALLMARK, etc., provide the users with the information with respect to quality and standards of the various goods and category of goods, and the consumers being informed about the quality and standards.

## **VII. PROTECTION OF PLANT VARIETIES AND FUNDAMENTAL RIGHTS**

Article 43 of the Indian Constitution provides that the State is under obligation to enact suitable legislation to secure living wage to all agricultural workers with better conditions of work ensuring a fair standard of life. By virtue of these directives, the states of India had enacted series of legislations to Organize agriculture on modern and Scientific lines and also for the steps for preserving and improving the breeds and sue generis law on Protection of plant varieties and farmers rights Act. Further, Article 19(1)(g) also provides the right to agriculture as an occupation, and to protect their rights, the sue generis protection of plant varieties was enacted in consonance with Part IV of the Indian Constitution.

## **VIII. GEOGRAPHICAL INDICATIONS AND FUNDAMENTAL RIGHTS**

Also, the Geographical Indications of Goods (Registration and Protection) Act, 1999 protects trade, commerce, and business based on a product based on geographical origin similar to Trademark protection. Geographical Indications also enables the consumers to distinguish the goods enables the customers to assume a positive level of reliability in the standard of the goods based on the geographical origin as enumerated as the right to know under Article 19(1)(a) and similarly the manufacturer of the goods or products based on geographical origin as protected under Article 19(1)(g) and the infringers of the geographical indications were restricted based on Article 19(6) of the Indian Constitution.

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<sup>24</sup> Article 19(1)(a) of the Indian Constitution



## **IX. TRADITIONAL KNOWLEDGE AND CONSTITUTION**

The Constitution of India mandates<sup>25</sup> that the State shall promote economic interests of the Scheduled Tribes, and further mandates that the state shall protect the tribal people from social injustice and all forms of exploitation. To protect the economic exploitation of their traditional knowledge and also to protect the flora and fauna and all other resources from exploitation, the biodiversity act was enacted. The traditional knowledge of the indigenous people also protected under the biodiversity act, where their interest was protected as mandated under the Indian Constitution.

## **X. CONCLUSION**

Though there is no express provision which deals with Intellectual property rights under Indian Constitution, impliedly the Indian Constitution provides protection for the property including Intellectual property rights, and it also equally safeguards the fundamental rights as envisaged under Part III and Part IV of the Indian Constitution in line with international treaties and obligations under TRIPS

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<sup>25</sup> Article 46 of the Indian Constitution