

**CHAPTER II**  
**MEANING, CONCEPT AND**  
**FORMS OF IPR**

## 2.1 INTRODUCTION

The WTO is established in the year 1995 based on the principle of Non-Discrimination, Transparency and Reciprocity served the above purpose aptly and encompassed several agreements to which its member countries had consented on various agreements are established/covered WTO. Some of them are as follows.

- General Agreements on Trade in Services [ GATS]
- Agreement on Agriculture. [AOA]
- Agreement on Trade Related Aspects of Intellectual Property Rights [ TRIPS]
- Agreement of Trade Related Measures [ TRIMS]

From the above agreements, TRIPS, was an agreement under WTO, it requires all its members to provide a minimum norms and standard of protection for a wide range of IPR.

In the world economy that will dominate to whom was been dependent on military power of the country and it was replaced by Monetary or we may sat to it as capital during past century. While current and future period, need access of knowledge will very important to become superpower in the world economy. The age-old levers of competition-labour, capital and land are being supplemented by knowledge, and the most successful companies in future will those that learn how to exploit knowledge [about customer behavior, markets, economics and technology] to renew to the way they define them selves, think and operate.

In the 21<sup>st</sup> century, efficient utilization of knowledge alone can create comprehensive wealth for the nation in the form of better health, education,

infrastructure and other social indicators. It is innovation and not the quality that builds market leaders in an environment where high quality and low cost are taken for granted by the customer. The ability to create and maintain the knowledge infrastructure develops knowledge workers and enhances their productivity through creation. And nurturing and exploitation of new knowledge [patent like production through IPRS] will be the key factors in nation becoming a knowledge superpower <sup>1</sup>

## 2.2 WHAT IS AN 'IPRS' ?

Intellectual Property Rights [IPRS] are meant to be rights to think, ideas information specially regarding new invention and processes. Intellectual Property is the creation of human intellect. IPR refers to the legal ownership by a person or business of an invention/ discovery attached to a particular product or process which protects the owner against an ~~otherwise~~ <sup>authorise</sup> copying or imitations. <sup>2</sup>

The effect of IPRS, therefore, is monopoly over commercial exploitation. The state purpose of such rights is to stimulate innovations, by offering higher return than the market would normally offer (Kothari and Anuradha, 1997) IPRS refers to the assurance given by Govt. to reward the innovations by granting the monopoly over production and marketing. <sup>3</sup> IPRs are claimed to have been an important driving force behind the rapid industrial growth in the developed world. Today IPR regimes as enshrined in TRIPs provide for protecting inventive steps without any sharing of benefits with public domain foundations, a process often criticized as bio-piracy (Shiva 1999) Globalization requires co-operation amidst competition for faster economic progress of all those concerns. In this context of ever emerging competition, a need was felt for protecting the

creation of human mind (intellectual Property). The need of hour for most of the firms to improve their quality of competition in the global market. The aim was also to increase their revenues and profits by using the problem was that if the idea moves from person to person, and from country then creator faces risk that at any given point of time he may not be able to claim the ownership of his own idea. There has always a chance of misuse and duplication.

The idea or the thought itself couldn't be protected since it was completely tangible or reversible. However, the end product of human thought, the outcome which is tangible could have been protected, thus the legal concept is created where a capital gets converted in to property. A property concept gives the owner a clear right over his asset and this is recognized by law. Thus, an intellectual capital is converted to an intellectual property when it gets legal acceptance.

### **2.3 Classification**

Most of the intellectual capital is protectable by various forms of intellectual and industrial property rights created over the last 200 years and governed by international treaties and regional and national laws.

IPR is a general term covering;

IPR is a general term covering;

- a. Copyrights and related rights
  - b. Trade marks
  - c. Geographical Indications[GIs]
  - d. Industrial Designs
- @ Patents
- ✦ Layout Designs of Integrated Circuits



## g. Protection of undisclosed information [ Tradesecrets ]

We should explain each of these IPRs in detail as follows:

### 2.3 a) COPYRIGHT

Copyright is given to creations of original works, which come category of literature, dramatics, music, art, etc. since an idea is always intangible, it cannot be copyrighted unless it gets transferred in some form, which is tangible.

e.g. a book, a CD, a music cassette, painting, etc. copyright is valid throughout the life of author.

The statute of Queen Anne, enacted in 1709 in England, was the first true copyright statute and the first recognition of the source of the copyright interest in the creative act of authorship.

Copyrights are rights given by law to the creators of literary, dramatic, music and artistic works and producers of cinematographic films and sound recordings. The creators and producers are called ' authors' and their products 'works'. Literary works, Dramatic work, musical work, artistic works are coming under copy right protection

- Literary works:

Include computer programmes. It is not necessary that a literary work should have high literary quality to be entitled for copyright protection.

- Dramatic work

Includes any piece for recitation, choreographic work or even entertainment in a dumb show, form of, which is fixed in writing or otherwise.

- Musical work:

Includes any graphical notation of a musical work.

- Artistic work:

Includes painting, sculpture, drawing including diagram, map charter or plan engraving or a photograph, irrespective of their artistic quality, a work of architecture and any other work of artistic craftsmanship.

### **2.3 a i) Features of copyright:**

- 1) Copyright protection extends to expression and not to ideas, producers, methods of operation or mathematical concepts.
- 2) ~~Is~~ Neither publication nor registration, nor other formality or action required to secure copyright. ~~It~~ begins automatically as soon as a work is created ~~i.e.~~ when a work is fixed in a copy for the first time.
- 3) It is an exclusive right to reproduce an original work of authorship fixed in any tangible medium of expression. The right covers a wide variety of creations, viz. Novels poems, plays, reference works, newspapers, computer programmes, databases, films, musical compositions, choreography, paintings, drawings, photographs and sculpture, architecture, advertisements, maps and technical drawings.
- 4) In order to enjoy copyright, the work must be original and must be fixed on any tangible medium of expressions. It requires that the work is result of the author's skill, labour, judgement, howsoever small. The work may not have copied from someone else.

- 5) In order to enjoy copyright, the work must be original and must be fixed on any tangible medium of expressions. It requires that work is the result of author's skill, labor, judgement, howsoever small. The work may not have copied from someone else.
- 6) The TRIPs Agreement provides a minimum standard of duration of copyright protection in case of person, the term is the life of author plus 50 years. While in case of corporate entity it is 50 years from the end of calendar year of authorized publication or in absence of publication, from the need of calendar year of making (TRIPs Article 12).

Indian unilaterally amended its Copyright Act to extent the copyright from 50 to 60 years.

### **2.3 a (ii) INTERNATIONAL TREATIES REGARDING COPYRIGHT PROTECTION**

The following are main treaties related to copyright protection.

1. Berne Convention for Protection of Literary and Artistic works [1886]  
(Administered by WIPO)
2. Rome Convention for the Protection of Performers, Producers of Phonograms and Broad casting Organizations [1961] (Administered jointly by WIPO. The International Labour Organization [ILO] and United Nations Educational, Scientific and Cultural Organization.[UNESCO]).
3. Geneva Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms[1971](Administred by WIPO in co-operation with ILO and UNESCO)

4. Brussels Convention relating to the Distribution of Programme carrying Signals Transmitted by Satellite [1974].
5. WIPO Copy Right Treaty [WCT](1996).
6. WIPO Performance and Phonograms Treaty (WPPT)[1996].<sup>4</sup>

### **"Related " Rights**

Related rights are the rights that belong to the performers and broadcasting organizations in relation to their performances and broadcasts. Related rights differ from copyright in that they belong to owners regarded as intermediaries in the production recording or diffusion of works. Related rights are rights of performers and broadcasting organizations, who communicate works of authors to the public through performance or broadcasting. During continuous of performer's right which last for 50 years, no person without the consent of performer can make a sound or visual recording of performance or broadcast that performance. However, once a performer has consented to the incorporation of his performance in a cinematographic film is ceases to have performer's right in that performance. The broadcast reproduction right last for 25 years old during that period no person without the license of the owner of the right can broadcast or communicate to the public or make a sound or visual recording of broadcast. In many countries,, rights of sound recording producers are treated as part of related rights and not as copyright, unlike the case in India.

From above discussion, we can find that the programme of copyright awareness among the general people and training for specialization in this area is need of hour, because India is emerging as a leader in the field of knowledge industry. Appropriate copyright Act can repay full benefits at global level.<sup>5</sup>



### 2.3 b. TRADEMARKS

Trademarks are distinctive signs, which identify a particular product of particular company or manufacturer. Trademarks are words, names, brands, symbols, labels, etc. used to create a unique identity for their product. It may include shape of goods, their packaging and combination of colours <sup>6</sup>

#### 2.3 b (i) Benefits of Trademarks

- 1) It is very beneficial for industries operating in a monopolistic market where customers have high brand loyalty and product differentiation is very important to operate.
- 2) A certification trademark can be obtained to goods for from one firms product from that of another in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics.
- 3) This right last for 10 years and can be renewed from time of time for an ultimate period by payment of renewal fees
- 4) A trademark is represented by sign "TM". This is the symbol **R** as soon as the registration is confirmed officially.
- 5) It gives exclusive right to the owner to use it to unauthorized persons is punishable.

2.3 b (ii) The Madrid Agreement was adopted on April 14, 1891 to facilitate protection of a trademark or service mark in several countries by means of a single international registration. As on July 15, 1999 54 country are partly to this Agreement mainly belonging to Europe, countries of Africa, and Koriea , Mongolia, Vietnam China [Far East countries]. The U.K. U.S.A ,Japan and India are not signatories of this agreement .A trademark is used in connection

with services , it may be called 'service marks which are used by hostels, laundries and cleaners.

Illustrative examples of trademarks are KODAK – for photographic goods; Apple for—computers; CAMEL for cigarettes.

'Commercial names and designations' constitute another category of elements of intellectual property. Trade names are generally names, terms or designations which serve to identify and distinguish an enterprise and its business activities from those of other enterprise, a trade name identifies the entire enterprise and symbolizes the goodwill and reputation of the business as a whole.<sup>7</sup>

### **2.3 c) Industrial Designs:**

Industrial designs are the external features of a product. It deals with features, shapes, patterns. etc. applied to an article by an industrial process, manual or mechanical.

Ex. Chair is a utility item. However, chair itself does not qualify for IPR, but if special carving, embossing etc. is done which increases the value of chair through it's utility remains same, it becomes eligible for IPR under design act. The owner of a registered design gets a copyright in the same for 10 years , which can be extended for 5 years more.

According to the Design Act 2000, the term 'Design' means only the features of shape , configuration , pattern , ornament or composition of lines or in both forms , by any industrial process or means ,whether manual, mechanical or chemical ,separate or combined , which in the finished article appeal to and are judged solely by the eye ;but doesnot include any mode or principle of construction or anything which is in substance a mere mechanical device.

It is clear that design means the features of shape etc. applied to an article and not the article itself. The features are conceived in the author's intellect. He gives those ideas conceived by him a material (visual form as a pictorial illustration, or as a specimen, prototype or model.

### **2.3 c (i) Criteria for Registration of Design:**

To qualify for registration the design;

- (i) must be a new or original design,
- (ii) It must not have been previously published in India;

Ex. Distinctive shape of Coca-Cola bottle, Textile design etc. <sup>8</sup>

### **2.3 d) Know-How:-**

Know-how is another important form of intellectual property generated by R and D institutions that does not have the benefit of patent protection. This could be in the form of an aggregation of know-how is often transferred together with licensing of patents and under transfer of technology arrangements.<sup>9</sup>

### **2.3 e) Layout Designs and Integrated Circuits:-**

Layout Designs is a layout of transistors and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in a semiconductor integrated circuits (IC). Semiconductor integrated circuits means a product having transistors and other circuitry elements which are inseparable formed on a semiconductor material and designed to perform electronic circuitry function. The registered layout design enjoys protection for 10 years from the date of filing.<sup>10</sup>

According to Semiconductor Integrated Circuits Lay out Design Act 2000, Reproducing, importing selling distributing the IC layout design for

commercial purposes only constitutes infringement. A person who creates another layout design on the basis of scientific evaluation of a registered layout design shall not be causing any infringement.<sup>11</sup>

### 2.3 (f) Patents:-

A patent is a government granted and secured legal right to prevent others from practicing i.e. making, using or selling the inventions covered by the patent. A patent is an personal property which can be licensed or sold like any other property.<sup>12</sup> It is a monopoly right exclusively granted to an inventor over his invention for a limited period of time by the government of a country. This is the right of creator. However, if the invention or creator assigns any other person or any organisation under a contract to get the benefit of his creation, then the patent is granted to the organisation / person assigned. For instance, if a scientist or group of scientist are working on new drug development in Dr. Reddy Laboratory for a wage or any other monetary benefit, the individuals. There can be many patents or IPRS on the same product, Ex. The grip of the pen free flow ink roller tip etc. are patentable and patented.

A patent can be granted to a product or a process providing a new way of doing or a technical solution to a problem.

### 2.3 f (i) Conditions for Patentability:

An invention must satisfy the following three briefly conditions of:

- (i) Novelty (ii) Usefulness (iii) Inventiveness

From the above, three conditions for patent are given as follows;

(i) Novelty:-

An inventor will be considered novel if it does not form a part of the global state of the art. Information appearing in magazines ,technical journals ,books ,newspapers etc. constitute the state of the art . Oral discription of the invention in a seminar/ conference can also spoil novelty. Novelty is assessed in a global context. An invention will cease to be novel if it has been disclosed in the public through any type of publications anywhere in the world before filing date can also destroy novelty.

(ii) Inventiveness :A very simple invention can qualify for a patent .Inventiveness cannot be decided on the material continued in unpublished patents.

(iii) Usefulness: An invention must possess utility for the grant of patent .No valid patent can be granted for an invention devoid of utility.

2.3 f (ii) Steps to obtain a patent:-

- Establish essentiality of protection through patents.
- Decision to file a patent.
- Drafting of original patent Application.

2.3 f (iii) Exploitation of the Patented Invention:

- Exclusive right of the owner of the patent to exclude others from exploiting the patented invention for a limited period.
- Steps to protect against unauthorised exploitation
- Possibility of assigning or licensing the right in part or in total.
- Depending upon whether or not the patent owner wants to collect invention income, licenses and royalty bearing or royalty fee.<sup>13</sup>

What can be patented and what cannot be patented differ from country to country. In India no patent is granted for an invention relating to atomic energy. Intellectual property protection under other laws such as literary work and topography of integrated circuits are not patentable in India.

A patent is given for a period of 20 years, and the patent expires after this due date if not renewed. With about million patents being taken each year the world over, the patents are the largest single body of technological information available anywhere. It is important that inventor first files patent and then makes his invention public.

Example: A Surgical Knife (Patent no. 944 /Del /87).

### **2.3 g) Geographical Indication [GIS] :-**

GIS is an invention of the TRIPS Agreement, which came into force with effect from January 1<sup>st</sup>, 1995. The TRIPS Agreement requires WTO members to provide legal means to prevent the use of GIS that misleads the public as to the geographical origin of goods or constitutes an act of unfair competition.

A geographical indication is a sign used on goods which possess certain qualities or reputation because their geographical origin.<sup>14</sup> It is an indication that originates from a definite geographical territory, which is used to identify natural and manufactured product. GIS is an answer to the continuous marginalization of traditional communities and their claims that we witness in this globalised economic scenario.

Section 2(e) of the [Indian] Geographical Indications of Goods [Registration and Protection] Act, 1999 which defines 'GIS' in relation to goods to mean :

“An indications which identifies such goods as originating or manufactured in the territory of country, or a region or locality in that territory where a given quality , reputation or other characteristics of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory , region or locality, as the case may be.”

### 2.3 g (i) Meaning of Indication:

The word indication has defined as follows;

- (i) any name (including abbreviation of name),
- (ii) geographical or figurative representation, or
- (iii) any combination or suggest the geographical origin or goods to which it applies.

### 2.3 g (ii)Legislative Protection of GIS in India:

Prior of 1999 in India , there was no specific legislation to regulate geographical indication.

1. GIS of Good (Registration and Protection ) Act ,1999.
2. GIS of Good (Registration and Protection ) Act, 2002.

However, the (2) act had not yet been brought into force.

### 2.3 g (iii)Registration of GIS:

The registration of geographical indications shall be for a period of 10 years or for a period till the date on which the registration of GIS in respect of which the authorised users is registered expires, whichever is earlier. The application must be made to the registrar under the act of the Controller General of patents, Designs and Trademark Act , 1999 shall necessary be the registrar of

GIS.(i)Any association of persons, (ii) Producers, (iii) Any organisation or authority established by or under any law representing the interest of the producers of the concerned goods , can apply for registration. <sup>15</sup>

### 2.3 g (iv) GIS and India:

From the above, India is needed to give evidence for additional protection for goods. Because misuse of GIS is the incidence of patenting Basmati rice to Rice Tec in U.S.A. Intellectual protection would also given to Kolhapuri chappals and Kancheepuram silk. Only for eight Indian commodities have stamped with GI tag which are given below;

1. Darjeeling tea
2. Pochmpalli sarees
3. Salem Fabric
4. Pavitra Modiram [Ring] from Payyanur in Kerala
5. Goa Fenny
6. Chanderi Silk
7. Aranmulai Kannadi [Mirror] from Kerala
8. Chanderi Silk. <sup>16</sup>

In case of all IPRS, rights of ownership may be transferred by the owner of the rights to any other individual, group of individuals or organisation. This is done through a legal procedure.



## 2.4 The Role of IPRS:-

IPRS confer lots of economic benefits for innovating economies. There has been lot of controversy on the role of intellectual property protection (IPP) regime especially the patent system infostering innovation , technology , and industrial development of a country.

### 1) Technology Transfer:

Countries in Asia and in other regions are have had soften the IPR regimes in the early stages of their development and these regimes have been strengthened as the countries developed and become significant producer of innovation.

Against this backdrop, the ongoing attempt to harmonise and strengthen the IPR regimes worldwide, adversely affecting the technological activities in developing countries. Furthermore, the implementation of the provision of TRIPS Agreement threatens the access and affordability of poor people to life saving drug by pushing up their prices.

### 2) Patterns and Trends in Global Innovative Activity:

The global technology generation of innovative activity is known to be highly concerned in the hands of developed countries. Ninety four percent (94 %) of patents and ninety one percent (91%) technology fees receipts accounted for by just 10 developed countries (like U.S.A., Japan, France, Germany, U.K., Italy, Canada, Netherlands, Sweedan, Swithzerlands) ~~f~~or the strengthening of IPR regime. It will be benefited for these countries and will further permanent their technological domination over the rest of the world.<sup>17</sup>

### 3) IPR and Economic Development:

There are three ways that the strength of the IPR regime could affect economic development indirectly.

- (i) Innovative activity increases – IPR regime may affect the innovative activity that in turn is the source of total factor productivity improvement and thus contribution to growth.
- (ii) Foreign direct investment (FDI) and Technology Transfer- The IPR regime could affect the inflows of FDI and technology transfers and which could impinge upon the growth.
- (iii) Redistribution of income – Changes in IPR regimes may imply some redistribution of income between the countries and between communities within the country.

4) The exports of the innovating country tend to increase in real terms as well as in nominal terms the product in its protection is unique in its own sense.

### 2.5 Conclusion:

IPRS play an important role in national economies today. Industrial advancement is to a great extent dependent on intellectual property rights. Even India is moving from brick and mortar economy to knowledge economy. The wheels of this new economy are intellectual property rights. For exploiting IPRS a user needs permission and such permission ordinarily come by paid for it. By which way a nation will get wealth and greater development of economy takes place.

## References :

1. Bharthi's G., Role of Intellectual Property Rights for the Indian Agriculture in the Post WTO Regime, in pre conference volume Hyderabad, Dec. 2004.
2. Bhat K. Sham, Indian Economy Under Globalization process, page no. 4,5, 2003.
3. Ibid p – 25.
4. Kochhar Sudhir, 'System Perspective for IPR protection, Journal of Intellectual Property Rights,' p – 343, Vol. 1.9, 2004.
5. James T. C., Intellectual Property Rights and Rural Development, Kurukshetra, p-13, April 2004.
6. Ibid p – 13.
7. Gupta V. K., 'Basic concepts of IPRs and their management in R and D', Lecture Notes on Patents, TIFAC publication, 2002.
8. Ibid p – 9.
9. Ibid p – 9, 10.
10. Jame T. C., Intellectual Property Rights and Rural Development Kyrukshetra, p – 15, April 2004.
11. Some Questions and Answers on patents, copyright, Designs Trademarks, IC layout Designs, GIS, PFC, New Delhi, July 2002.
12. Gupta V. K., 'Basic concepts of IPRs and Their Management in R and D', Lecture Notes on Patents, TIFAC publication p – 3,4, 2002.
13. Ibid, p – 5,6.
14. James T. C., Intellectual Property Rights and Rural Development, Kurukshetra, p – 13, April 2004.

15. Some Questions and Answers on patents, copyrights, Designs, Trade marks etc., patent Facilitating centre, New Delhi, July, 2002.
16. [http://www.deepikaglobal.com/ENG3\\_sub.asp? Ccode=ENG3 and news code = 67350](http://www.deepikaglobal.com/ENG3_sub.asp? Ccode=ENG3 and news code = 67350).
17. Kumar Nagesh, 'Intellectual Property Rights', Technology and Economic Development – Experiences of Asian Countries, E.P.W., p – 211,212, Jan., 2003.