

UNIT - I

<p style="text-align: center;">PART - I</p> <p style="text-align: center;">INTELLECTUAL PROPERTY</p>
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<p style="text-align: center;">1. CHARACTERISTICS, GROWTH, IMPORTANCE, KINDS TERM AND REMEDIES OF INTELLECTUAL PROPERTY</p>
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(MOST IMPORTANT)

SYNOPSIS:

- A. Introduction**
- B. Intellectual property**
- C. Characteristics/Nature/System of intellectual property**
- D. Growth/Expansion of intellectual property**
- E. Importance/Purpose/Need for Protection of intellectual property**
- F. Intellectual property rights**
- G. Term of protection of intellectual property**
- H. Remedies/Exploitation/Infringement/Abuse of intellectual property**
- I. Consumer Rights and Intellectual Property**

A. INTRODUCTION:

The term 'property' includes both animate (living) or inanimate (non-living) things belonging to a person. It includes legal rights also. Further it includes personal rights like person's life, liberty, reputation, status etc.,

In narrower sense, property means only proprietary (corporeal) right. E.g., Land, chattels, goods, cargo, shares, debts, Intellectual Property rights like copyrights, Patent rights etc.,

Property is divided into two types namely:

- (a) Tangible Property (b) Intangible property

a. TANGIBLE PROPERTY:

Tangible property is the right of ownership on material things or tangible things, i.e., things that can be touched and seen.

b. INTANGIBLE PROPERTY:

Intangible property is the right of ownership on immaterial things. i.e., except over material things. Intangible property cannot be seen or touched and includes valuable interests in respect of non material things which law has recognised and gives special protection. E.g., trade marks, copyrights, good will, etc.

B. INTELLECTUAL PROPERTY:

Intellectual property is an intangible, incorporeal property. It cannot be seen or touched. It consists of a **bundle of rights** in relation to certain material objects created by the owner.

Whatever is produced or originated by the human skill, intelligence, labour and efforts are called the intellectual property.

The intellectual property law confers on the owner the proprietary right over his products and authorizes him to take action against third parties for their acts of infringement of his rights over the intellectual property.

The justification for protection of intellectual property law is that 'a man should own what he produces, that is, what he brings into being'.

So the main objective of this branch of law is the protection of the private person's rights over the intellectual property.

The term 'intellectual property' is used to refer the copyrights, trademarks, patents, industrial designs and confidential information.

C. CHARACTERISTICS / NATURE / SYSTEM OF INTELLECTUAL PROPERTY:

1. The basic concept of intellectual property law is novelty and originality.
2. Intellectual property is an intangible and incorporeal property.
3. It is a bundle of rights in relation to the material object created or invented by its owner.
4. By virtue of the intellectual property rights, the owner has the exclusive right to use the property for a particular period of time and he can take action against the infringement of his rights over the property. He can also assign his rights, grant licences, sell the rights to third parties. For this, the intellectual property has to be registered with the competent authority.
5. Intellectual property creates rights and duties. The object behind intellectual property is that a person who creates a work or has a good idea and when he develops that idea, he has a moral and legal right to control its use and exploitation and he must be able to prevent others from taking unfair advantage of his efforts.

6. The method of acquisition of intellectual property is either by transfer or transmission.
7. After expiry of the period of exclusive rights, it becomes a public property where anybody can use them.
8. Intellectual Property covers patents, industrial designs, copyrights, trademarks, know-how and confidential information.
9. Strictly speaking - the Patents, Designs and Trademarks are called 'industrial property'. The Copyright and Confidential information are called 'intellectual property'. However, except trademark, the patents, designs and copyright are the products of intellectual effort.
10. Since there are many similarities in the law relating to the rights of above properties, they are collectively termed as intellectual property.
11. The intellectual property has to be registered with the competent authority and only then protection of such rights is given to the inventor, author or originator for a certain prescribed duration.
12. The modes of acquisition of intellectual property may be by transfer or by transmission. Transfer includes

- licensing, assignment, etc., Transmission arises by operation of law like inheritance, insolvency, etc.,
13. The law of intellectual property is territorial in operation. The domestic laws confer on the owner a right to prevent competition by exclusive use and enjoyment for a specific period.
 14. The intellectual property rights are statutory rights governed by Copy Right Act 1999, Trade Marks Act 1999, Designs Act, 2000, Patents Amendment Act, 2002, the Semiconductor Integrated Circuits Layout Design Act 2000, the Geographical Indications of Goods (Registration and Protection) Act 1999, the Protection of Plant Varieties and Farmer's Rights Bill 1999 and the Information Technology Act 2000.

D. GROWTH/EXPANSION OF INTELLECTUAL PROPERTY:

1. The scope of intellectual property is fast expanding. The statutory laws relating to intellectual property in India is undergoing changes to harmonize with the agreements on GATT (General Agreement on Trade and Tariff), TRIPS (Trade Related Aspects of Intellectual Property Rights) and Biological Diversity Act, 2002.

2. The development of transport and communications has resulted in globalization. This has its impact on intellectual property.
3. The international character of intellectual property is recognized in the various international conventions. For e.g., Berne Copyright Convention.
4. Now, many new enactments/statutes have come into existence to protect semiconductor integrated circuits, layout designs, plant varieties and foreigners' rights, information technologies, cyber regulations, etc.,
5. Intellectual property law is thus one of the fastest growing branches of law today all over the world. Now Broadcasting, Cable casting, Telecasting rights, Internet websites and Cyber space facilities have become part of intellectual property.

E. IMPORTANCE/PURPOSE/NEED AND BENEFITS OF PROTECTION OF INTELLECTUAL PROPERTY:

1. The intellectual property has contributed to the economic development of the country.
2. The protection of plant varieties, prevention of various forms of unfair competitions, prevention of

- misappropriation of goodwill, protection of reputation or trade values have become important in global business and trade.
3. The outcome of the hard and the sustained intellectual labour of inventors, authors and first adapters have created wealth directly and indirectly among nations. The intellectual property right is the philosophy for the protection of the enjoyment of the fruits of such intellectual labour of such inventors, authors and originators.
 4. By granting patent rights to an inventor, the competitors are forced to make new inventions thus paving the way for quality improvement in process, products and machineries.
 5. Since the invention specifications are disclosed to get patent rights, the technological information is received and kept by the patent issuing authority and in the process, the invention specifications are available to the public even after the death of the inventor.
 6. The protection of industrial designs and inventions encourage its owner to develop and invent new designs and products, as he can commercially use for exclusive benefits.

7. Intellectual property rights prevent copying of well known trademarks, inventions, etc., and thus inferior quality goods are prevented from coming to the market for sale.
8. The entertainments like cinema, television, radio, etc., depend on copyrights for their very existence and survival.

F. INTELLECTUAL PROPERTY RIGHTS:

As Article 2 (vii) of the Convention Establishing the World Intellectual Property Organisation (WIPO) reads -

‘Intellectual Property rights include the rights relating to:

- literacy, artistic and scientific works;
- performances of performing artists, phonograms and broadcasts;
- inventions in all fields of human endeavour;
- scientific discoveries;
- industrial designs;

- trademarks, service marks and commercial names and designations;
- protection against unfair competition

and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

KINDS / CATEGORIES OF INTELLECTUAL PROPERTY RIGHTS: (PROTECTION AGAINST UNFAIR COMPETITION)

The major types of Intellectual property rights are copy right, patent right, right to industrial designs, right to trade mark, etc., In all these cases, there is protection to the holder of intellectual property rights against unfair competition.

i. Copyright:

‘Copyright’, in simple terms, means the exclusive right to copy or reproduce the work for which the author has got the Copyright. It is the right to do or authorizing others to do certain acts in literary, dramatic, musical, artistic works, cinema film and sound recording.

Copyright is the product of human skill and his mental capacity of some creative and original work. The rules regarding copy rights are governed by Copy Right Act, 1957.

ii. Patent right:

In the case of patent rights, the patentee has the exclusive right to use the invention patented, to grant licences to others or to sell that right to a third person. The invention may be a new product or a new process of manufacturing or improvement in an existing product. The rules regarding patent rights are governed by Patent Act, 1970.

iii. Right to industrial designs:

It is the exclusive right of the person who has developed the design to use and reap its benefits, he can also grant licence for use by third parties or assign the rights to third parties. The rules regarding design rights are governed by Designs Act, 2000.

iv. Right to trade mark:

By registering a trade mark, the proprietor of the registered trade mark gets the right to prevent others from using the trademark or to have a trademark which is deceptively similar to the registered trade mark. The rules regarding Trade mark are governed by Trademarks Act, 1999.

v. Lay-out Designs of Integrated circuits:

‘Layout - design’ means the three-dimensional disposition, prepared for an integrated circuit intended for manufacture.

‘Integrated Circuit’ means a product integrally formed and intended to perform an electronic function.

In ‘layout designs of integrated circuits’ the designer has the exclusive right to apply for the registration of the layout-design and also he can grant licence for use by third party or assign to any person.

vi. Right to Confidential Information:

Confidential information and know-how can be protected by the owner to keep them secret and he can take action against the unlawful use of such information by others by an action for breach of confidence or contract.

G. TERM OF PROTECTION OF INTELLECTUAL PROPERTY:

The following are the period/term of protection of intellectual property:

1. Copy right:

Literary or Art works, Drammatic works, rights in performance - Protected for author's/performer's **life plus 50 years.**

2. Patent right:

From the priority date (after registration of patent, priority date is fixed) - upto a maximum of **20 years.**

3. Trademarks:

- i. The registration of the trademark is valid for a period of **10 years.** It may be renewed from time to time.
- ii. The trademark may be renewed for a period of **further 10 years** from the date of expiration of the original registration or of the last renewal of registration on payment of prescribed fee.

4. Designs Act:

The proprietor of the design shall have the copyright of design from **10 years** from the date of registration and if renewed in time, then for **another 5 years.**

H. REMEDIES/EXPLOITATION/INFRINGEMENT/ ABUSE OF INTELLECTUAL PROPERTY:

1. Exploitation/Abuse/Infringement of intellectual property means unauthorised use of the intellectual property by other person/s leading to commercial exploitation. Sometimes, even the owner of the intellectual property can commercially exploit by charging high price for the product (this is prevented by issuing compulsory licences to others)
2. Since commercial exploitation of the intellectual property by others is illegal, the aggrieved person has got legal remedies under different statutes.
3. Intellectual property rights are enforced by an action for infringement before a District Court or High Court. Criminal prosecution is available in trade mark and copyright infringements.
4. The civil remedies available against infringement of the intellectual property rights are injunction, damages, account of profits and the delivery up of the infringing articles for erasure or destruction.
5. The criminal remedy against an infringer of intellectual property is that he is punished with imprisonment or fine or both.

6. The piracy of intellectual property has become international in character and it has both civil remedy and criminal punishment.

I. CONSUMER RIGHTS AND INTELLECTUAL PROPERTY:

As per the Consumer Protection Act (Amendment) Act, 2002, the following are the rights of the Consumer.

- a. the right to be protected against marketing of goods which are hazardous to life and property;
- b. the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;
- c. the right to be assured, wherever possible, access to an authority of goods at competitive prices;
- d. the right to be heard and to be assured that consumers interests receive due consideration at appropriate forums;
- e. the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and
- f. right to consumer education.

UNIVERSITY QUESTIONS FOR REVIEW:

1. *Explain the term 'intellectual property'. What are its characteristics?*
2. *Explain the importance of intellectual property. What are all included under intellectual property?*
3. *Intellectual property is an expanding one – Comment and illustrate.*
4. *Intellectual property is a valuable asset which may be exploited in a number of ways. Discuss.*
5. *What is intellectual property? Explain the system of intellectual property.*
6. *Write short notes on:*
 - (a) *Characteristics of intellectual property*
 - (b) *Importance of intellectual property*
 - (c) *Intellectual property rights*
 - (d) *Need to protect intellectual property*



2. GROUNDLESS THREAT IN INTELLECTUAL PROPERTY

[PATENTS, TRADE MARKS AND DESIGN RIGHTS]

Patents, trade marks and design rights are most important intellectual property rights for economic growth of a nation.

The patent and design rights for innovations and new designs are to be rewarded and encouraged.

For this purpose, different laws have been enacted to protect these rights from infringements.

Sometimes, these rights can be misused by threatening to sue those persons who venture to develop new ideas and attempt new innovations.

Here, even the genuine practices of new inventions and ideas are aimed to be tarnished or curbed as if they are infringing acts and persons engaged in such innovative practices are threatened with adverse legal proceedings.

These threats of infringement proceedings against new idea developers and innovators also cause significant commercial damage to a business by preventing the entry of new players in it. This is mainly because of the fear and threats of intellectual property litigations against them by the IP rights holders.

REMEDIES AGAINST GROUNDLESS THREATS:

The Intellectual property laws provide remedy against threat provisions. If there has been no infringement or if the IP right of the right holder is invalid, then the threat is said to be groundless.

The Copyright Act, 1957, Patents Act, 1970, Trade Marks Act, 1999, Designs Act, 2000 and the Geographical Indications of Goods (Registration and Protection) Act, 1999 vide sections 60, 106, 142, 23 and 73 respectively aim at providing remedy to victims who receive groundless threats of infringement proceedings from the IP right holders or any other persons.

COMMON LAW REMEDIES:

- i) declaration by a court that the threats are unjustifiable,
- ii) damages for losses if any, sustained by the victim,
- iii) injunction against the IP right holder or any other person to restrain him from sending such threats.

COMPARISON OF GROUNDLESS THREAT PROVISIONS: (In Copyright, Patent & Trade Mark, Designs and Geographical Indications Acts):

1) REMEDIES IN THE ACTS

- a. **Copyright Act, 1957** - Chapter XII - Sec. 60 deals with Civil Remedies.
- b. **Trade Marks Act, 1999** - Chapter XIII- Miscellaneous Sec. 142 deals with Civil Remedies.