

# Discourses on Intellectual Property Right

**Dr. Krishnendu Roy**

As a result of Industrial Revolution and rapid developments made in the fields of science and technology and culture, new kind of property apart from the traditional property came into existence. The concept of property has undergone as sea change especially after the second world war. New rights and properties like Patents, copyrights, and industrial designs which came to be known as Intellectual Property Rights (IPR) received attention due to their unique characteristics and possibility of their violation easily.

The unique and fragile nature of these rights and their possible exploitation the world over made the industrially and scientifically developed and developing countries take note of the necessity to protect this rights by international cooperation treaties, and agreements have been entered into and the states also passed necessary legislation.

The main objective of IPR law is to import the fundamentals of IPRs, nature, classification evolution at international and national levels.

TRIPS was one of the difficult issues in Uruguay Round agenda both politically and technically. The issues were not merely new to GATT but they involved a north-south confrontation. Industrial countries led by US sought ambitious and comprehensive agreement on standards for protection of intellectual property. They pleaded for negotiation to consider a wide range of intellectual property issues and suggested settlement of issues through WTO dispute resolving system as well as through forum founded on domestic law and customs.

"Intellectual Property" includes patents, Designs,, Trade Marks, copyright confidential information and industrial known how. Patents give temporary protection to technological inventions and design rights to the appearance of mass-produced goods; copyright give longer lasting rights in literary, artistic and musical creations; trademarks are protected against imitation so long at least as they continue to be employed in trade. There is no single generic term that satisfactorily covers them all. " industrial properly " is not uncommonly used in the common law world, but many hold this to exclude copyright, particularly if they want to replaces the special importance and vulnerability of the creative artist. The title intellectual property has acquired a degree of international acceptance.

Intellectual property protects applications of ideas and information that are of commercial value. The subject is growing importance to the advanced industrial countries in particular, as the fund of exploitable ideas become more sophisticated and as theirs hopes for successful economic future come to depend increasingly upon their superior corpus of near knowledge and fashionable conceits.

Intellectual property of whatever species is in the nature of intangible incorporate property in each case it consists of a bundle of rights in relation to certain mental objects created by the owner.

In the case of patent the property consists of the exclusive right to use the inventions patented, to grant license to others to exercise that right or sell that right to a third person. Patent rights are created by statute and are governed by the patents Act. The invention may relate to a new product or an improvement of an existing

product or a new process of manufacturing an existing or a new product. The acquisition of this monopoly, the conditions to be satisfied for acquisition, its duration, the licensing of this monopoly rights or their assignment to others are strictly governed by the patent Act. After the expiry of the term of the patent (which is fourteen years for all products; except in the case of drugs and food patents seven years) it becomes public property when anybody can use the patented invention.

In the case of industrial designs the property consists in the exclusive right to apply the designed registered under the Designs Act, 1911 now replaced by the Designs Act 2000, in relation to the class of Goods for which it is registered for the maximum period of fifteen years subject to the payment of renewal fees prescribed by the rules. This right can also be licensed for use by third parties or assigned to any person on expiry of the term of registration anybody can use the design.

In the case of trademark there are two types of trade rights; one conferred by registration under the Trade and Merchandise Marks Act, 1958 now replaced by the Trade Marks Act 1999 and the other acquired in relation to some product or service. The rights conferred by the registrations are confined to the use of the mark in relation to the actual goods or services for which it is registered. The exclusive rights granted by the registration enables the proprietors of the registered mark to prevent other from not only using the mark as registered but also marks which are deceptively similar to the registered mark i.e. mark as to be likely to deceive or cause confusion among the customers of the goods or services covered by registration.

The Trademark Act, 1999 has introduced many important changes in the law. In the case of unregistered trademark the right to protection of the good will continues to indefinitely provided the owner of the good uses the mark lawfully and prevent other persons from infringing those rights by appropriate timely action (passing off) in courts of law against the infringer.

Copyright like patents and industrial design is purely a creation of the state, the Copyright Act, 1957 as amended from time to time. But there is no formality required for the acquisitions of the right. Copyright subsists in any original work specified in the Act from the moment of its publication during the life time of the author plus sixty years. The works specified in the Act are:

- (1) Literary, dramatic and musical or artistic work.
- (2) a cinematograph film and
- (3) a sound recording.

Literary work included computer programmes, tables and compilations including computer databases. The licensing and assignment of the copyright in any work is governed by the provisions of the Act. The Copyright (Amendment) Act, has effected certain changes in the law.

Know-how and confidential information can be protected only so long as the owner is able to keep them secret and takes action against unlawful use of such information by others by an action for breach of confidence or contract.

The law of patents, designs and trademarks are territorial in its operation. As regard copyright, by virtue of international convention such as Berne convention and the Universal copyright convention, Copyright acquired in one country extends to other countries which are members of these conventions. India is a member of both the conventions.

Although the relevant statute defines the rights conferred on a particular species of intellectual property as the exclusive right to use the patent, apply the design, use the trademarks or commercially exploit the work in certain forms (as in copyright), in practice what the statute conferred is the right to prevent competitors from commercially exploiting the respective rights to the detriment of the owner of that property.

Therefore, the intellectual property is to be understood as a result of mental labour contradiction with purely physical labour. It is mostly intangible in nature. It is a new form of property which got greater recognition only in the 18th century. In fact the intellectual property is of increasing importance for three compelling reasons.

Firstly the composition of world trade is changing currently, commerce in intellectual property has become an even greater component of trade between nations. The value of information products has been enhanced greatly by the new technologies of semi-conductor chip, computer software and biotechnology.

Secondly the world commerce has become even more inter dependent, establishing need for international co-operation.

Thirdly new reprographic and information storage technologies permit unauthorized copying to take place faster and more efficiently than ever, undermining the creators work.

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