CHAPTER – 2

AN OVERVIEW OF THE EVOLUTION AND DEVELOPMENT OF INTELLECTUAL PROPERTY RIGHTS FROM EARLY TIMES TO THE PRESENT

2.1 - EVOLUTION OF INTELLECTUAL PROPERTY RIGHTS:

In the knowledge economy, intellectual capital is recognized as the most important asset of many of the world’s largest and powerful companies, it is the foundation for the market dominance and continuing profitability of leading corporations. It is said that the knowledge system which pre-supposes the whole body of awareness about human life, environment and universe, cultural creations, literature and practices of industrial production or economic activities. The knowledge may have very soothing effect to the human society and also can be harsh on some of the drug consumers at large; it’s however knowledge and scientific development is an important key for the so-called development.

Knowledge is neither an end in itself nor a qualification, but is a means of attaining true life. The former President of India and a visionary, Shrii. A.P.J Abdul Kalam’s vision, on economic dimension of knowledge is quoted as below:

“Knowledge has always been the prime mover of prosperity and power.

The knowledge society has two very important components driven by societal transformation and wealth generation. The societal transformation is in respect of education, healthcare, agriculture and governance. These will lead to

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11Prof. Ishwar Bhat. P Historical Evolution And Development of Intellectual property rights: A Focus on some themes, Kare Law Journal no 1, 2005 November, pp. 2-3
employment generation, high productivity and rural prosperity. In order to generate wealth, which is the second component for establishing a knowledge society, the third dimension of knowledge is superpower, according to him, is the tremendous responsibility towards knowledge protection through strong intellectual property law.

Property possesses different applications having different degrees of generality. The term property in its widest sense includes, all a person’s legal rights, of whatever description. A person’s property is all that is his in law. In the second and narrower sense, property includes not all a person’s rights, but only his proprietary as opposed to his personal rights. In a third application, the term includes only corporeal property, i.e. the right of ownership in material things. Incorporeal property is any other property other than proprietary right. It’s of two types, namely jura in re aliena, such as leases, mortgages and servitudes and jura in re propria over immaterial things such as patents, copy rights trade-marks, etc. This second category of incorporeal property is popularly described as the intellectual property rights. The intellectual property is of one’s own thought which is expressed to the world in various manners and the value for invention such intellectual is a process by itself; further the intellect may be evaluated to be property in a particular form.

The Creation of human mind value addition and human intellect is an ongoing concept and a traditional concept of property which has undergone a drastic change in its various forms for the requirement of the society at large. The lack of property rights or a situation where a person’s property can be used by anyone can be economically harm fulland hence protection of property rights has come into existence and this has led to economic need to protect property rights legally. The legal right gives enough scope for each person to claim with their property and what others cannot do with regard to the same

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property. Legal rights also endows on those person who possesses property, if their rights are violated by legal remedies. The treating of creations, innovative things, and new products as property has become the order of the modern millennium. These emerging changes can be due to factors like Modernization, Industrial Revolution, Green Revolution, Information and Technology Revolution etc. Discoveries and new inventions take place in every society from time to time. All that which is produced or originated by labour, skill, judgment and efforts of man is called the intellectual property. Intellectual property of whatever species is in the nature of intangible incorporeal property.

In each case it consists of a bundle of rights in relation to certain material object created by the owner. Intellectual property is therefore ‘a property created by human brain’ the legal regime is developed to recognize certain kinds of intellectual labour as property and granted certain rights in protecting such property. IPR’s \(^{13}\) are the legal expression of the privileges granted by the State to the inventors for the use of their creations. The Intellectual Property broadly relates to both Commercial and Industrial activities of a person and includes the activities of Industrial and commercial interests. They may be called inventions, creations, new products, process of manufacture, new designs or model and a distinctive mark for goods etc. These rights are negative rights; they are rights to stop others doing certain things.\(^{14}\) The Intellectual Property Rights, which include Industrial Property Rights and rights, are in the form of Patents, Copyright, Trademarks, New Designs, viz., the rights granted to any new inventive solutions. This exclusive grant privilege for inventors is for the encouragement of invention.

\(^{13}\) Intellectual Property Rights
\(^{14}\) W.R. Cornish, Intellectual Property Third Edition, 2\(^{ND}\) Indian reprint, universal law publishing co. pvt ltd, pp no5-6
Intellectual Property Rights are statutory rights once granted allows the creator(s) or owner(s) of the intellectual property to exclude others from exploiting the same commercially for a given period of time. It allows the creator(s)/owner(s) to have the benefits from their work when these are exploited commercially. Intellectual property (IP) is a collective term used to describe new ideas, inventions, designs, writings, films etc. that are protected by patents, copyright, trademarks, industrial designs etc. IPR are granted to an inventor or creator, designer in lieu of the discloser of his/her knowledge.

The objectives of intellectual property rights are traditionally justified by the public policy interests of nation states. In the olden days intellectual property regulation has been a territorial matter both as to subject matter and the scope of rights recognized. There was great confidence on the axiomatic international law principle of sovereignty and its concomitant attributes, most notably the right to make laws and exercise authority over Nationals, as a starting point to assess conditions under which domestic laws could be extended extraterritorially. Even such assessments, however, were generally directed at accomplishing domestic interests reflected in the national law at issue.

The central motivation, even in the earliest efforts to extend trans-border protection for intellectual property rights was the public interest of the nations (both economic and cultural). Exchanges of reciprocal obligations were premised on benefits flowing back to the domestic policy, with any gains to foreigners viewed merely as necessary incidents of an mutually beneficial alliance. IPRs could generate more international economic activity and greater indigenous innovation, but such effects would be conditional on circumstances.

It is in these, Circumstances vary, widely across countries and the positive impacts of IPRs should be stronger in countries with appropriate complementary endowments and policies. Countries face the challenge of ensuring that their new policy regimes become pro-active mechanisms for promoting beneficial technical change, innovation, and consumer gains.\textsuperscript{16} The dynamic benefits countries accrue from IPRs depend on their abilities to develop and absorb technologies and new products. Stronger IPRs alone would help in this context, but so also would development contracts between institutes and enterprises with defined ownership shares and increased flexibility for researchers to form new business concerns. Intellectual property rights also could stimulate acquisition and dissemination of new.

The Different forms of IPRs operate in distinct fashions and it is misleading to group them together. The right to prevent for 20 years the unauthorized making, selling, importing, or using of a product or technology that is recognized in the patent claim and that must demonstrate novelty and industrial utility. The main objective of the patents is to encourage and develop new technology and industry. Patent monopoly stimulates technical progress. It encourages research and invention. The first function of patenting (regardless the system of patent) is to protect invention for a short span of time (today 20 years maximum). Nevertheless, when applying for a patent, the holder gives the exact picture of the invention he has produced. This information will be diffused all over the world through data sets dedicated to patents. In this respect, patent is a clear opposite to secrecy as a means for protecting invention. As a consequence there are grounds for imitation or infringement. Hence effective system of protection is required for proper

working and to secure economic benefits from innovation. Related devices are utility models, or petty patents, which provide exclusive rights for a shorter period for incremental inventions, and industrial designs. In most countries patent applications are made public after a prescribed time period. Thus, patents establish a protected market advantage in return for revealing technical knowledge. Several aspects of patent scope affect the effective strength of protection.

A similar type of industrial property is plant breeders’ rights, which have fixed terms, novelty requirements, and disclosure rules. They are intended to encourage development and use of new seed varieties for agriculture. Geographical Indications of Goods means indications, which identify goods as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin. Thus Geographical Indications of Goods Act provides the rights, to use the geographical indication, to the person(s) of a particular territory wherein the goods are originating, produced, processed, or prepared.

Trademarks protect rights to market goods and services under identified names and symbols. Trademarks and brand names must be sufficiently unique to avoid confusing consumers, thereby playing the important role of reducing consumer search costs. These rights encourage firms to invest in name recognition and product quality. They also induce licensees to protect the

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18Plant breeders rights are protected under upov convention
19Geographical indications are defined under Art.22 (1) as “indications which identify a good as originating in the territory of a member, or a region or locality in the territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.”
20Trademark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colour’s.
value of assets by selling goods of guaranteed quality levels. If trademarks were not protected, rival firms could pass off their lower-quality goods as legitimate versions of those produced by recognized companies. This situation would diminish incentives for maintaining quality and would raise consumer search costs. Economists generally believe that the danger of market dominance through abuse of trademarks is slight in competitive economies but such marks could be accompanied by significant market power in countries with other barriers to entry.

It is that, the most of the times, the Firms develop some technologies that might not be patentable, might not be worth the cost of applying for a patent, or might be more valuable if kept undisclosed. They prefer to keep knowledge of such processes proprietary as trade secrets, or undisclosed information. Trade secrets are protected by legal rules against learning by rivals through dishonest means. Such protection lapses if the technologies are discovered by fair means, such as independent invention or reverse engineering. Protecting trade secrets is beneficial to the extent it encourages the development and commercial use of sub-patentable inventions. Rules protecting trade secrets thus promote adaptive innovation and encourage learning through legal means.

The Copyright\(^\text{21}\) is another major form of intellectual property right, it is set of exclusive rights granted by the law of a jurisdiction to the author or creator of an original work, including the right to copy, distribute and adapt work. The total term of protection for literary work is the author's life plus sixty years.

\(^{21}\)They are protected irrespective of their quality and they include purely technical guides and engineering drawings. The copyright laws protect only the form of expression of ideas and not the ideas themselves. For cinematographic films, records, photographs, posthumous publications, anonymous publication, works of government and international agencies the term is 60 years however for broadcasting, the term is 25 years. The copyright laws generally do not provide an exhaustive list of the types of work that are protected by copyright, practically all national laws provide for protection of the following: Literary works, Musical works, Work of art, Maps and technical drawings, Photographic works, Motion pictures, Multimedia products, Computer programs. Literary and artistic creations and computer software are protected by copyrights, which provide exclusive rights for some period to copy and sell particular expressions of ideas after they are fixed in some medium.
It is like patents, copyrights are limited in scope for various purposes of public policy. The most significant limitation is the fair-use doctrine, under which it is lawful to make limited numbers of copies for research and educational purposes. Several technologies do not fit comfortably into these traditional categories of protection.  

The World Intellectual Property Organization call for stronger protection in certain dimensions. It could be argued that patents generate strong and unwarranted protection in the biotechnology industry, because such inventions may not embody a truly inventive step. However, representatives of biotechnology firms claim that patents are required to encourage investment in these risky technologies. There are significant concerns that providing exclusive rights in seed varieties without significant limitations for farmers’ use and competitive research could raise costs in agriculture and reduce biodiversity over time. A final element of an intellectual property system is its enforcement. Such enforcement entails two opposing tasks: punishing infringement by free riders and disciplining enterprises that try to extend their rights beyond intended levels by acting in an anti-competitive manner. These objectives require the development of extensive legal and scientific expertise.

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22 Computer programs may contain elements of industrial utility in addition to their expressive elements; some countries make programs eligible for patents. The designs of integrated circuits typically are awarded exclusive rights for shorter time periods than patents, recognizing that semiconductor designs often embody elements of expression and that technology changes quickly in that industry. Electronic transmissions of internet materials, broadcasts, and databases may not be adequately protected by standard copyrights.


24 See supra note 16
The law relating to intellectual property is based on certain basic concepts. Thus patent law centers round the concepts of novelty and inventive step. Design law is based on novelty or originality of the design not previously published in India or any other country. The substantive law of trademarks is based on the concepts of distinctiveness and similarity of marks and similarity of goods. Copyright is based on the concepts of originality and reproduction of the work in any material form. The copy rights also involve complexities by itself since the act of person known and unknown to the world issues have to be addressed in the process.

The Intellectual property of whatever species is in the nature of intangible incorporeal property. In each case it consists of a bundle of rights in relation to certain material object created by the owner. Patents began as instruments used by noble or republican governments in later medieval and early Renaissance in Europe primarily to induce the transfer and disclosure of foreign technologies. It even the most cursory attention to this bit of history should give pause to one casual supposition which the basic economic analysis of the patent system has fostered - viz., that the protection of intellectual property has been instituted, where governments recognized, that there was more to be gained by stimulating indigenous inventive activity, than by applying knowledge of techniques and products that could be "borrowed" freely from the rest of the world.

The Advent of the Agreement on Trade – Related Aspects of Intellectual Property Rights (TRIPS Agreement) has disrupted the present global system and longestablished assumptions about the domestic welfare, sovereignty and territoriality. The agreement has advanced a truly transnational law of intellectual property by incorporating globally negotiated standards into each member country’s domestic system. Unlike previous multilateral treaties,

which established a framework for cooperation within which shared national interests could be pursued in a coordinate fashion, TRIPS Agreement articulates the bare elements of an international public policy deeply enmeshed in an instrumentalist vision of intellectual property rights, which is better stated in the preamble of the TRIPS Agreement and agreements are designed to accomplish primarily the goals of free trade.

2.3 - INTERNATIONAL CONVENTIONS ON INTELLECTUAL PROPERTY RIGHTS:

Intellectual Property Rights has grown in a variety of directions over recent years. Its economic significance for countries with any degree of industrial development is making it more international and more complex.  

Intellectual property protects applications of ideas and information that are of commercial value. This is growing in importance in the advanced industrial countries in particular, as the fund of exploitable ideas becomes more sophisticated and as their hopes for a successful economic future come to depend increasingly upon their superior corpus of new knowledge. Recent legal and political activities have strengthened the various types of protection for ideas.

An efficient, effective and democratic government is the best guarantor of social justice as well as orderly society. Similarly, there is also emphasis on the fact that the administrative system has to be country specific and area specific taking in view not only the institutions of governance and its legal and regulatory mechanisms but also its markets, its civil society and cultural values of the people. Therefore, the principal response of the state would be to facilitate, to enable and to coordinate. It is the neither the market nor the civil society can perform this role as effectively as the government and thus they

26Supra note 14 pp 4
cannot become substitutes for the government. A review of even the earliest intellectual property policies laws and practices over centuries shows how countries traditionally have retained the flexibility to advance their strategic interests.

Initially begun as bilateral arrangements, legal instruments emerged in the form of multilateral system to impose Adoption of framework conventions in the area of intellectual property rights began in the second half of the 19th century.

The first formal intellectual property law framework developed to regulate the ownership of knowledge can be traced back to a Venetian statue of 1474. It contained key principles including the balancing of the rights of inventors with consumers which formed the basis of modern intellectual property law. It is according to Mandich.

“Venice was the first to have continuously and constantly applied certain rules to patents of invention instead of granting an occasional isolated monopoly”.

The Discoveries and new inventions take place in every society from time to time. Changing scenario in the field of intellectual property rights lead to adoption of framework of conventions in the second half of 19th century.

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27Balmiki Prasad Singh, The Challenges of Good Governance in India: Need for Innovative Approaches In India, yojana special issue Vol.57 Jan 2013, page no 4, publications Division, Ministry of information and Broadcasting, Government of India

28See Supra note 18.


Two major conventions namely the *Paris Convention on the Protection Industrial Property of 1883* and the *Berne convention for the protection of Literary and Artistic Works of 1886* stand prominent. These two Conventions for the first time protected IPR through international instruments and gave uniform law for observance. In the Paris Convention an international convention for promoting trade among the member countries, devised to facilitate protection of industrial property simultaneously in member countries without any loss in the priority date and has member countries. The Convention used the term industrial property in the widest sense. Art. 1(2) states: “The protection of industrial property has its objects patents, utility models, industrial designs, trademarks, service marks, and trade names, indications of source or appellations of origin and the repression of unfair competition”.

The Protection of IPRs under the Paris Convention of 1883 and Berne convention of 1886 and the several amendments were introduced to the aforesaid two conventions to cover new discoveries, inventions that have taken place in the west from time to time, gave protection to the authors, artists, and inventors for fixed periods.

In 1893 the earliest intergovernmental Organization to intellectual property rights was United International Bureau (UIB) for the protection of Intellectual property, popularly known as BIRPI was established to administer the convention for the protection of literary and artistic works.

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31 The Paris Convention was first signed in 1883. Since then the Convention has been revised several times, in 1900 at Brussels, in 1911 at Washington, in 1925 at The Hague, in 1934 at London, in 1958 at Lisbon and in 1967 at Stockholm.

32 At present the Convention has 151 member countries.

33 Dr. T. R. Subramanya on “ An Overview of the Development in IPR Law From Paris to Marraksh and After” published at national workshop, Bangalore university, Bangalore,page no01-04

34 United International Bureau

It is in the recent past several amendments were introduced into the aforesaid two conventions to extend to all new forms of intellectual property rights.

The international Intellectual Property’s Architecture includes multilateral, regional and bilateral rules and arrangements by international organizations.

- Multilateral Treaties

Most of these agreements are administered by WIPO and are generally of three types.

I. Standard setting treaties which define agreed basic standards of protection. These include the Paris Convention, Berne Convention and the Rome Convention. Important non-WIPO treaties of this kind include the International Convention for the Protection of New Varieties of Plants (UPOV)\(^{36}\) and TRIPS.\(^{37}\)

II. Global protection system treaties which facilitate filing or registering of intellectual property rights in more than one

\(^{36}\)UPOV - Union for the protection of New Varieties of Plants (UPOV) The International Union for the Protection of New Varieties of Plants (UPOV) was established by the International Convention for the Protection of New Varieties of Plants (“UPOV Convention”). The UPOV Convention was adopted on December 2, 1961, by a Diplomatic Conference held in Paris. The UPOV Convention came into force on August 10, 1968, having been ratified by the United Kingdom, the Netherlands and Germany. The UPOV Convention has been revised on November 10, 1972, on October 23, 1978, and on March 19, 1991, in order to reflect technological developments in plant breeding and experience acquired with the application of the UPOV Convention. States and certain intergovernmental organizations wanting to accede to the UPOV Convention have laws on plant variety protection in line with the 1991 Act of the Convention.

\(^{37}\)TRIPs - Agreement on Trade Related Aspects of Intellectual Property Rights.
country. These include the Patent Co-operation Treaty (PCT) 38 1970 and the Madrid agreement 39 (concerning the International Registration of Marks).

III. Classification of treaties which organize information concerning inventions trademarks and industrial designs in to indexed, manageable structures for ease of retrieval Ex: Strasbourg Agreement concerning the International Patent Classification.

It is other international Agreements with IPR content include the International Treaty on Plant Genetic Resources for Food and Agriculture 2001 40 and the Convention on Biological Diversity 1992 41.

Regional Treaties or Instruments are for Ex: The Harare Protocol on Patent and Industrial Designs within the framework of ARIPO 42 and the Andean Community Common Regime on Industrial Property. The European


39 Madrid system for the international registration of marks) is the primary international system for facilitating the registration of trademarks in multiple jurisdictions around the world. Its legal basis is the multilateral treaty Madrid Agreement Concerning the International Registration of Marks of 1891, as well as the Protocol Relating to the Madrid Agreement (1989). The Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol) is an international treaty that allows a trademark owner to seek registration in any of the countries that have joined the Madrid Protocol by filing a single application, called an "international application." The International Bureau of the World Intellectual Property Organization, in Geneva, Switzerland administers the international registration system. As of February 2013, 88 countries have joined the Madrid Protocol. These countries are called "Contracting Parties." A current list of the Contracting Parties is available online at the World Intellectual Property Organization (WIPO) website: http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=8.

40 The International Treaty on Plant Genetic Resources for Food and Agriculture was adopted by the Thirty-First Session of the Conference of the Food and Agriculture Organization of the United Nations on 3 November 2001. Full text is available at, www.planttreaty.org/content/texts/treaty.official version

41 The Convention entered into force on 29 December 1993, which was 90 days after the 30th ratification

42 ARIPO African Regional Industrial Property Organisation
Convention\textsuperscript{43} on the International Classification of Patents for Invention. This Convention created the International Classification of Patents for Invention and written in English and French, both texts being equally authoritative.

- **Regional Trade Agreements**

Regional Trade Agreements normally have sections governing Intellectual Property standards. Ex: The North American Free Trade Association, The proposed Free Trade area of the Americas, The EU/ACP Cotonoo Agreement.

- **Bilateral Agreements**

  - Specifically, these include those bilateral agreements that deal with IPRs as perhaps one of several issues covered. A recent example is the 2000 Free Trade Agreement between the US and Jordan.\textsuperscript{44}

BIRPI\textsuperscript{45} which had been established in 1893 to administer the Berne Convention for the protection of literary and Artistic works and the Paris convention for the protection of industrial property was only restructured and reconstituted as a United Nations agency in 1974. There are several international institutions involved in standard setting for intellectual property. WIPO is the principal international institution responsible for organizing the

\textsuperscript{43} Signed on December 19, 1954 in Paris France by members of the Council of Europe. It entered into force on August 1 1955 and it was denounced by all Parties and ceased to be in force as from February 18 1999


\textsuperscript{45} Bureaux International Reunis pour la Protection delaProprieteIntellectuelle, for United International Bureau for the Protection of Intellectual Property.
negotiation of IP treaties and their administration. BIRPI\textsuperscript{46} was itself the precursor to the WIPO\textsuperscript{47} which is one of the 16 specialized agencies of the UNO\textsuperscript{48}, WIPO\textsuperscript{49} was established "to encourage creative activity, to promote the protection of intellectual property throughout the world", further WIPO formally created by the Convention establishing the World Intellectual Property Organization, entered into force on 26\textsuperscript{th} April 1970. Article 3\textsuperscript{50} of this Convention gave strength to protect the interest of intellectual property rights to the entire world and further WIPO became a specialized agency of the United Nations in 1974.

Today the main functions of WIPO are to serve as a forum for negotiation of international IP treaties to administer such treaties and operate the systems of global protection such as the patent cooperation Treaty (PCT) and the Madrid system and to provide technical assistance and training to developing countries and countries in Transition.\textsuperscript{51}

The general long-term objective of developing countries remains the establishment of sound development base. Intellectual property in itself has always been an integral part of general economic, social and cultural development worldwide but these new challenges emphasize all the more how globally interlinked national and regional intellectual property systems have become new approaches and strategies to meet the challenges have become correspondingly global with concerted action at the national, regional and international levels to enable developing countries to participate in and benefit from these advances.

\textsuperscript{46} Ibid
\textsuperscript{47} World Intellectual Property Organization
\textsuperscript{48} United Nation Organization
\textsuperscript{49} WIPO has been established in 1967 by a convention in Stockholm head quartered in Geneva, it administers more than twenty international IPR treaties. But 148 WTO members have not signed all the treaties.
\textsuperscript{50} "Promote the protection of intellectual property throughout the world."
\textsuperscript{51} Source available at http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=8
There was interface between intellectual property rights and international trade with regard to marketing of copyrightable creations, patented inventions or products based on them, and use of trademarks and variety of Intellectual property rights in international trade, while absence of international protection of these rights had set an exploitative trend.

In September 1986 the historic Uruguay round of trade negotiations were launched in puncta del Este Uruguay, by the contracting parties of General Agreement on Tariffs and Trade (GATT)- predecessor of the World Trade Organization.

The subsequent eight years of Uruguay round (1986-94) witnessed the largest and most complex negotiations in the history of international economics. The outcome of which was embodied in a document of some twenty six thousand pages, WTO is fully fledged legally constituted international organization, came into being with effect from 1st Jan 1995 but also culminated into a range of agreement covering subjects such as diverse as agriculture, industrial tariffs, non-tariff barriers, antidumping, subsides, technical standards, textiles safeguards and so on. It is an another accomplishment was certainly the incorporation of three new areas considered to be non-trade issues within the rule based system of the GATT 1, Services 2, TRIPs and TRIMs.\(^{52}\) It is widely accepted that the adoption and entry into force of the WTO Agreement on Trade –related aspects of Intellectual Property Rights (TRIPs) significantly changed the international intellectual property institutional regime in both. With the inclusion of TRIPs in the Uruguay Round, intellectual property has also come under the aegis of the WTO, the successor to GATT. A special council for TRIPs was created within the WTO structure to administer the TRIPS agreement.

\(^{52}\)Kasturi Das, “GATS Negotiations and India, Evolution and state of play” Working Paper-7,2006 CENTAD Delhi, page no2
The framework of international legislative and administrative assistance to developing countries has been strengthened by the agreement on trade related aspects of intellectual property rights (TRIPS) administered by the world trade organization in cooperation with WIPO. Ratification of TRIPS is a compulsory requirement of world trade organization membership, any country seeking to obtain easy access to the numerous international markets opened by the World Trade Organization must enact the strict intellectual property laws mandated by TRIPs for this reason. TRIPs are the most important multilateral instrument for the globalization of intellectual property laws. It is in another major international Treaty is the Patent Cooperation Treaty adopted to overcome some of the problems involved in the national system came in to force in 1978.

Strasbourg Agreement Concerning the International Patent Classification (or IPC), establishes a common classification for patents for invention, inventors’ certificates, utility models and utility certificates, known as the “International Patent Classification” (IPC). The Agreement was amended on September 28, 1979.

The European Patent Convention (EPC 1973) adopted by the European Community intended that the states contracting each other to strengthen cooperation between the States of Europe in respect of the protection of inventions, a single procedure for the grant of patents and by the establishment

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53TRIPs Text is available at Source http://www.wto.in
55 On January 24, 1978, and became operational on June 1, 1978, with an initial 18 Contracting States
56 Also known as the IPC Agreement, was signed in Strasbourg, France, on March 24, 1971 and entered into force on October 7, 1975
57 ibid
58 Was signed in 1973 at the Munich Diplomatic conference as a solution for the establishment of a system for approving patent grants in Europe
of certain standard rules governing patents so granted, to conclude a Convention which establishes a European Patent Organization. In 1977 this law was enforced in the following countries.\textsuperscript{59}

\section*{2.4-Intellectual Property Rights and Right to Development}

Intellectual property is a form of knowledge which societies have decided can be assigned specific property rights. They have some resemblance to ownership rights over physical property or land but knowledge is much more than intellectual property. In developed countries there is good evidence that intellectual property is, and has been, important for the promotion of invention in same industrial sectors.\textsuperscript{60}

In the world no country favours perpetual property rights for inventors or to creators and some forms of Intellectual property such as trademarks and trade secrets can exist in perpetuity. The root issue is to ensure a balance between the socio-economic and political purposes sought to be achieved through intellectual property rights. The primary function of law may be to engineer socio economic and political changes conducive to development.

\textsuperscript{59} Europe- Belgium, Germany, France, Luxembourg, Netherlands, United Kingdom and Switzerland. Sweden later joined this EPC group of countries in the following year. As of now European Patent Convention has 32 countries in its list of members

United Nation’s (UN) Charter as an international institution is playing critical role in promoting the application of science, technology and innovation to the Millennium Development Goals. Other development goals and the aspirations of humanity as embodied in UN Charter. By combining their functional competencies only rather than jurisdictional mandates they can achieve progress in innovation, development and in Intellectual Property Rights. Though multilateral organizations are addressing the issue of how institutions of knowledge could be better designed to meet the goals of achieving basic freedoms and economic development. Because the term of intellectual property rights is vast and daily attempts are made to extend the term from traditional areas of patents, copyright, trademarks and industrial designs have been joined by other types like trade secrets, utility models, broadcasting rights and rights on compilations of data.

The UN has been dealing with many interrelated issues. Apart from the principal organs, specialized agencies and training institutes and other entities are working under one banner that is UN. Early in 1960s certain developing countries and newly independent states primarily but not exclusively from the global south also began advocating for the establishment of a trade body beyond the general agreement on tariffs and trade (GATT), which it was argued, did not sufficiently address the needs of developing countries held in Cairo in 1962, which led to the adoption of a declaration calling for an international conference on all vital questions relating to international trade, primary commodity trade and economic relations between developing and developed countries. This together with concerted efforts by developing countries and Non-Aligned movement (NAM) led to the establishment of the
United Nations conference on Trade and development (UNCTAD)\textsuperscript{61} in 1964. In 1970 in the U N general assembly on an “international development strategy for the second U N Development decade was called by the developing countries to revise Paris Convention relating to patents.\textsuperscript{62}

The Right to Development is an inalienable human right, by virtue of which every human person and all people are entitled to participation, contribute to and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized.\textsuperscript{63} The first Article of the text of the Declaration on the Right to Development succinctly puts forward the concept of the right to development, it states:-

“The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in and contribute to and enjoy economic, social cultural and political development in which all human rights and fundamental freedoms can be fully realized”

The First, there is a human right that is called the right to development, and this right is “inalienable” meaning it cannot be bargained away. Then, there is

\textsuperscript{61}Baker B and Avafia T, “The Evolution of IPRs from Beginning to the Modern Day, Trips-Plus Era:- Implications for Treatment Access”, working paper prepared for the third meeting of the technical advisory group of the global commission on HIV and the law 7-9 July 2011.

\textsuperscript{62} See the resolution 2626 adopted during the 25\textsuperscript{th} session of the U N general assembly dated 24\textsuperscript{th} October 1970. According to paragraph 64 developed and developing countries and competent international organizations will draw up and implement a program for promoting the transfer of technology to developing countries which will include inter alia, the review of international conventions on patents the identification and reduction of obstacles to the transfer of technology to developing countries facilitating access to patented and non-patented technologies to developing countries under fair terms and conditions

\textsuperscript{63}Article1.1, 1986 Declaration on the Right to Development.
a process of “economic social, cultural, and political development,” which is recognized as a process in which “all human rights and fundamental freedoms can be fully realized.” The Vienna Declaration and Program of Action (1993) reaffirmed the right to development as a universal and inalienable right and an integral part of fundamental human rights.

The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions, of both international covenants on human rights, the exercise of their inalienable right to full sovereignty overall their natural wealth and resources.

There is no tension between intellectual property rights and right to development. The recognition of right to development might be the basis on which the states should cooperate in lowering levels of intellectual property protection. There is no conflict between right to development and intellectual property because IPRs contribute to economic development. The Protection always was extended to an inventor provided that his invention was recognized as useful that the patent term was limited that the right was transferable inter-vivos and mortis causa and that it was subject to a compulsory license in favour of the state that a patent was forfeited by failure to use it within certain term and that it failed in cases of prior knowledge within the territory of the republic.

64 Article 1.2 of 1986 Declaration on the Right to Development

65 The Venetian statute is a clear indication at the outset exclusive rights provided to the inventor were to be balanced by the requirements that the invention be worked locally, that it pass the test of utility or usefulness and the rights of the inventor were subject to compulsory licensing (whether to another private party or for the purposes of government use)
2.5 INTELLECTUAL PROPERTY RIGHTS – INDIAN SCENARIO

IPRs are defined differently. It is the creative work of the mankind or an intellectual capital. It is a form of legal entitlement which allows its holder to control the use of certain intangible ideas and expressions. The term IPRs reflects the idea that once established. Intellectual property is expanding very fast. Persons who create new ideas and put them in proper form to seek protection under the umbrella of intellectual property rights make attempts to get as much protection as possible by resorting to multiple registrations. Some intellectual produce of a person can be patented, trademarked; copy righted and can be registered as design. There are many similarities in the law relating to the different species of intellectual property in regard to the nature of the property, the mode of its acquisition the nature of rights conferred the commercial exploitation of these rights, the enforcement of these rights and the remedies available against the infringement of these rights. The statue of law relating to intellectual property rights in India is not of recent one but they owe their history during the time of British rule in India.

History of patent regime in India is a history of legislative enactments. The patent system in India emerged when India was a colony of the British and therefore the British used their own system while drafting the Indian patent act. The first act for protection of inventions in India was Act VI of 1856 on Protecting of Inventions, was based on the British patent law of 1852. Certain exclusive privileges were granted to the inventors of new manufacturers for a period of 14 years. The Act was modified in 1859 and certain exclusive privileges were granted to inventors for making, selling and using inventions in India and authorizing others to do so for 14 years from the date of filing specifications. However, a full-fledged legislation was passed later in 1911 in line with the British statute of 1907, after Indian independence; the government of India appointed Justice BakashiTek Chand in 1948-50 and

Justice N. RajagopalaAyyangar in 1956-59 to review British enacted Patent law in India\(^67\).

In the reports the Committee felt and realized that there was solid basis for this realization that the pre-1970 patent law was designed to perpetuate the hold of colonialism. It also stressed the fact that the existing Indian patent system inherited from its colonial past had failed to stimulate inventions for industrial purposes in the country so as to secure the benefits thereof to the largest section of the public.\(^68\) The Bill\(^69\) incorporating a few changes, in particular relating to Patents for food, drug, medicines, was introduced in the lower house of Parliament on 21st September, 1965 but could not be proceeded with for want of time and eventually lapsed with dissolution of Loksabha.

The Parliament passed Patents Act 1970 which came into force on 20th April 1972 along with Patent Rules 1972. This law has suited to the changed political and economic situation or needs for providing impetus to the technological development by promoting inventive activities in the country.

The Trade and Merchandise Marks Act 1958 for the first time codified the law relating to trademarks and provided for registration of trademarks already in use and those marks which are proposed to be used. Globalization of trade and industry and need to encourage investment flows and transfers of technology. The need to simplify and harmonize trademarks management system because of developments in trading and commercial practices. Accordingly the trademarks Act 1999 was passed.

The Trademarks Act of 1958 has served over the past four decades, it was amended in 1999 to be incompliance with international trade and developments and increasing globalization of trade and to give effect to

\(^67\)K.D Raju, Intellectual Property Law WTO and India ,New Era Law publications 2005
\(^68\)Girish Mishra Intellectual Property and NIEO , Allied publishers ltd. New Delhi 1990
\(^69\)The Patent Bill, 1965
important judicial decisions. In India the first legislation of copyright Act was passed in 1914 which was copy of UKs copyright act 1911.

During the British rule, in 1859, the Act for Granting Exclusive Privileges to Inventors (Act XV of 1859) was passed. The main aim of this act was to enable the English patent holders to acquire control over Indian markets. In 1872 the Patent and Designs Protection Act 1872 was passed followed by the inventions and designs Act 1888, the main intention of these enactments was to ostensibly to honor the inventor’s creativity in effect they sought to protect the industrial manufacturer and importer.

In the field of designs, Designs act was passed in 1911 was elaborate legislative enactment, as the patents and designs Act 1911, by then British government in India. It has become necessary to make the legal system of providing protection to industrial designs more efficiently.

It is also intended to ensure that the law does not unnecessarily extend protection beyond what is necessary to create the required incentive for designs activity. There was a necessity to amend this act and brings changes in the said act hence the Designs Act 2000 was passed in the independent India.

Geographical Indications of Goods Act 1999 to protect agricultural goods natural goods or manufactured goods or any good of handicraft or goods of industry including food stuffs of unauthorized use and protect consumers from deception and would add to the economic prosperity. These are the some forms of intellectual property rights and laws enacted to regulate them in India.

70 supra Note 15 page no 675

The whole world’s economy is dominated by this knowledge; it is one of the main factors for attending economic stability.

This knowledge not only transforms societies but also a key factor in wealth generation in any nation. In this competitive world, property is present in different forms; one such intangible, incorporeal form is intellectual property rights. This term includes patents, copyrights trademarks, industrial designs trade secrets and etc. from inclusion of IPR into the concept of property, it has undergone tremendous changes. Law has bestowed on owner of property all the rights for its fullest utilization and also gives remedies for violation of this legal right. Intellectual property is purely brain’s work and this is not new to the world. After the invention of Guttenberg’s printing press, infringement of intellectual property raised. Hence protection for these was felt. Because of its nature and scope it is more of international and more complex. From Venetian statute of 1474 to the present WIPO, it has travelled through different levels to form this present scenario.

Present, international framework on IPR includes all treaties, conventions, multilateral treaties bilateral treaties, regional treaties also. Hence, earlier laws on IPR were basically restricted by geographical boundaries but after TRIPs and internationalization and harmonization of IPR, these IPR rights are global in nature.