

An Analysis of Intellectual Property Rights and Economic Development

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Abstract

Any property which is a creation of the human mind is called intellectual property. In the globalized era intellect of human mind plays a very vital role in overall development. The rights attached to the intellectual properties are becoming more important and valuable also. The whole world provides proper protection to intellectual property rights through several legislation and other mechanisms. India being developing country and member of several international agreements and conventions extend adequate protection to the intellectual property. Intellectual property also contributes to the development of the economy of nations. Intellectual property rights led to economic development, and it is the primary activity of every business in the world. The trade and business of the whole world is mainly concentrating on promoting effective IPR regimes. On the one hand, IPR protects the individual rights of the innovator or the creator and on the other hand it protects the rights of the common people at large. So, Intellectual property is considered as a power tool for economic development. Intellectual property promotes investments in knowledge and innovations by extending exclusive rights to use and sell the new technologies and goods and services. If the law does not extend proper protection, the imitators can reproduce the work easily through technology without caring about the rights and interest of the creator or innovator. It is a practical guide to using those intangible assets, such as, knowledge, information, creativity, and inventiveness, which are rapidly replacing traditional and tangible assets, such as, land, labor, and capital, as the driving forces of economic health and social well-being. For many years, economists have tried to provide an explanation as to why some economies grow fast, while others do not; in other words, why some countries are rich and others poor. It is generally agreed that knowledge and inventions have played an important role in recent economic growth. Intellectual assets play an important role in developing innovation. IP is effectively being used worldwide by even small and medium-sized enterprises. IP assets stimulate and aid to generate revenues from product sales and licensing royalties, appeal high-value foreign direct investment (FDI) and joint ventures, assist retain and inspire technical staff, encourage research and development (R&D) based industries and create employment, sustain educational and research institutions, endorse funding for R&D, which offers and improves needed technologies and products, offer bargaining power in technology transfer negotiations, assist to gain access to goods and technologies through licensing agreements. The current era has realized the importance of IPR laws. It is not only innovation but also the name which matters in today's world. The name carries huge value in the form of goodwill. Some companies just sell their name in exchange for a huge amount of money. Intellectual Property rights have a great influence on the financial improvement of a nation. The

IPR can play both negative and growth in economic development. This article analyzes the role of Intellectual Property rights in economic growth.

Keywords: *Intellect, Property, Rights, Economy, Development.*

Introduction

Since ancient times, human civilization has witnessed the power of knowledge in every aspect of life. In the present time, knowledge led to the creation of the concept of ownership, which is called intellectual property. After globalization, the whole world became fully awakened towards creation and acquisition of wealth of intellectual property. In the 21st century IP is considered an important component of the business sector. The importance of IP is very vital for gaining benefit in the field of academic, agriculture, GIs & traditional knowledge. The acquisition of IP in the different fields such as, Copyright, Patents, Industrial Design, GI, Trademark, Biodiversity, etc not only resulted in boosting the position of organization or individual but also tries to address the issues of the society apart from bringing huge revenue¹ The development of technology and adoption of the same and various other interrelated process resulted Economic development.²

Intellectual Property rights have vital importance in the overall development of a country. Law relating to Intellectual property differs from one country to another. In the developed nations, the strict implementation of the IPR laws has a huge contribution to economic development. IPR encourages innovation which helps to achieve economic growth. In the present time, every business in the world is the creation of Innovation. The individuals have realized the importance of IPR laws. IP not only concentrates on innovation but also the names in today's world. The name itself carries values in the form of goodwill. Intellectual Property rights have a great influence on the economics development of a nation. The IPR can play both negative and positive role in economic development.³ Creativity is the main element of progress; the civilized society afford better protection for such creativity to encourage same. The economic as well as social development of a civilization is basically dependent on creativity. The protection extended by the IPR to the innovators and creators is an act of incentivization for encouraging the creators to create more creations and a kind of motivation for others to create such new and novel.

creations. IP is an integral part of human society, every nation has dedicated agencies for laying the guidelines, implementation, and enforcement of IP related issues. In India also, there are many organizations or agencies deal with the different aspects of IP. To create free exchange of IP activities

¹ Prof. Rupinder Tewari, Ms. Mamta Bhardwaj, *Intellectual Property A Primer for Academia*, Publication Bureau, Punjab University Chandigarh, 2021.

² Keith E. Maskus, *The Economics of Intellectual Property Law: Volume 2 Analytical Methods*, edited by Peter Menell and David Schwartz, Edward Elgar, 2016.

³ The Role of Intellectual Property Rights in Economic Development

<https://www.khuranaandkhurana.com/2021/03/10/the-role-of-intellectual-property-rights-in-economic-development/>

among all the nations, it is necessary to have standard rules and regulations in all aspects of IP including rights, development, and exceptions etc.

Intellectual property is considered as a 'power tool' for economic growth and such IP is not utilized to optimal level in almost all the countries to achieve economic development, particularly in developing countries. In all the countries especially developing countries there is need of strong IPR laws for the purpose of promoting investments in the field of knowledge creation and promote innovations by establishing the rights and transfer newly developed technologies, goods, and service. In the absence of laws, rules, and regulations the rights of the creators and innovators are subject to violations. The third party will use the work of creators and innovators without paying royalty to such creators. The effort of the innovators is violated by such imitators and these people will make profit and result in violations of their rights. Because of this the investors hesitate to invest in research and innovations. With protection from the IPR system, the innovators and creators could gain additional profit through monopoly protection; they would be more willing to spend physical capital and human resources on innovation activities with the expectation of gaining more monopoly profit.⁴

Intellectual Property Rights – Meaning

Intellectual property deals with the well being of the human beings, and also helps to live longer life. It stirs interest among people concerned. It also helps in generation of income and causes movement of all resources and creates industry and commerce. It has played a vital role in economic and social development of human beings. Intellectual property is also having equal economic value like that of other tangible property. Economical benefit is the main reason in encouraging the further development of IP. Proper laws needed to protect the rights against any illegal infringement. The right holder is granted exclusive right to exploit their creations by self-exploiting and by licensing others for royalty. The monopolistic character of the IP and its utilization is limited under certain conditions as specified by law.⁵

Intellectual property is the outcome of intellect of the human activities such as creativity, innovation, models of the industry, trademarks, names, brands etc. Intellectual property rights are treated equal with that of the property rights. These rights allow their owners to get the benefits from such property. Intellectual property is the outcome of the idea of the creator or innovator. Idea when it is converted into expression than only the creator or innovator is entitled to get the protection. The law relating to intellectual property rights not only deals with the rights and also the obligation of the right holder. It imposes the restriction on the others from using the creation or innovation of the others. It also prevents others from using, dealing with their products without prior permission from the innovator or creator. Law also gives the right to take legal action against those people who are responsible for the violation of the rights.⁶

Intellectual property is a kind of intangible property which includes human's intellectual creations. The intangible nature of IP poses difficulties when it is compared with traditional property such as land or goods.⁷ From the economical perspective IP is very important for business purpose because it helps in differentiate and create a competitive advantage. In the present period IP plays a vital role in all the fields.

⁴ Munmun Rai, Love Kumar Singh, Aarti Sharma, *Intellectual property: A strong determinant of economic growth*, J Pharm Bioall Sci October-December 2009 Vol 1 Issue 1.

⁵ *Role of IPRs for the social and economic development of the APEC region*
<https://www.mofa.go.jp/policy/economy/apec/symposium/sympo0305/session1-3.pdf>

⁶ <https://www.dubaicustoms.gov.ae/en/IPR/Pages/WhatIsIPR.aspx>

⁷ https://en.wikipedia.org/wiki/Intellectual_property

Intellectual property provides a good platform for making the more and more profit in the present business world.

History reveals the fact that, many societies have considered intellectual creations-technological inventions, artistic, and literary works-as the property of inventors and authors. Intellectual property rights (IPRs) provides the owners the legally enforceable right and power to stop others from using an intellectual creation or to set the conditions on which it can be used. In the industrial countries, IPRs are part of the institutional infrastructure encourages private investments in formal research and development (R&D) and other inventive and creative activities.⁸

Types Of Intellectual Property

Intellectual property includes patents, trademarks, copyrights, trade secrets, industrial designs and geographical indications. The owners frequently use more than one of these types of intellectual property law to protect the intangible assets. For example, trademark law protects a product's name, whereas copyright law covers its tagline.

Patent

Patents are considered as legal rights granted to the owners the exclusive right to make use for commercial purpose. To claim the protection under Patent law the invention must be new, non-obvious and commercial application. Patent law extends 20 years of protection to the inventor, after which the invention becomes public domain. The system of Patent is the oldest and traditional form of IPR protection. Maximum industries claiming the protection under patent law to protect the invention against the infringement. Since the early 1980s, patents have also been granted for agricultural biotechnology products and processes and for certain aspects of computer software. The Patent law provides the owner the right to decide how the inventions can be used by the others.

Copyright

Copyrights are those rights protects original works of the author. The protection extended under Copyright is differ from the protection provided under Patent. Copyright protects the expression of idea not the idea only. In the Idea Expression Dichotomy Copyright extends protection to expression only. The idea of an author can be used by the other without any restriction. The term of protection provided under Copyright law varies from country to country. In India the period of protection provided is lifetime plus 60 years. Copyright also extends protection for computer software Neighboring rights are accorded to phonogram producers, performers, and broadcasting organizations. Limits to exclusive rights exist in certain "fair use" exemptions, such as educational or library use or for purposes of criticism and scholarship.

Trademark

Another form of intellectual property protection extended to the words, signs or symbols which identify the certain product. Trademarks protect a product's and firm's reputation for quality. Customers are offered the assurance of purchasing what they intend to purchase. Trademarks can endure virtually indefinitely provided they remain in use. Almost all industries use trademarks to identify their goods and services. The use of trademarks has turned out to be of high significance in certain consumer goods

⁸ Carlos a. Primo Braga, Carsten Fink, Claudia Paz Sepulveda, *Intellectual Property Rights and Economic Development*, WORLD BANK DISCUSSION PAPER NO. 412, March 2000.

industries, such as clothing and watches. Similar to trademarks, *geographical indications* identify a product (e.g., wine or olive oil) with a certain city or region.

Trade Secrets

Trade-secret protection differs from other forms of protection, it does not grant an explicit title to the creator of an original work. It protects businesses from the unauthorized disclosure or use of confidential information. Confidential information includes inventions at the patenting stage, ways of organizing business, client lists, purchasing specifications, and so on. In agriculture, breeders rely on trade secrets to protect hybrid plant varieties, if they can be kept secret. Copying through reverse-engineering does not infringe trade-secret laws. In essence, all industries possessing secret business information rely on trade-secret protection to safeguard their (often otherwise unprotectable) intangible assets.⁹

Industrial Design

An industrial design constitutes the ornamental or aesthetic aspect of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color.

Geographical Indications

Geographical indications and appellations of origin are signs used on goods that have a specific geographical origin and possess qualities, a reputation or characteristics that are essentially attributable to that place of origin. Most commonly, a geographical indication includes the name of the place of origin of the goods.¹⁰

The management and administration of IPRs is most important in the area of patents, industrial designs, trademarks, and industrial designs, geographical indications etc. To gain protection for these types of intellectual property, applicants submit their intellectual creations to a concerned national IPRs office, which examines the applications, the eligibility for protection. Copyright and neighboring rights protection applies automatically upon creation of the intellectual work, although for evidentiary purposes authors may choose to register their works at copyright offices.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is one of the multilateral trade order under the aegis of World Trade Organization (WTO). The Eight round of GATT negotiation resulted in the emergence of new trade order and established new system called as WTO. According to WTO, all the member nations should apply the principles in their respective nations, the principles are Most Favored Nation (MFN) and National Treatment (NT). These principles also apply even to intellectual property rights also.¹¹

⁹ Supra note 8

¹⁰ <https://www.wipo.int/about-ip/en/>

¹¹ Unlike most other International agreements on intellectual property rights, TRIPS sets minimum standards of protection with respect to all forms of intellectual property: copyright, trademarks and service marks, geographical indications, industrial designs, patents, layout designs of integrated circuits, and trade secrets.

Intellectual Property and Economic Development

The tremendous advancement in the field of technology led to so many changes in the economy of every nation in the world. The technological advancement also made an impact on the intellectual property also. The Agreement on Trade-Related Aspects of Intellectual Property Rights under WTO mandates, all the member countries must have legal protection for different intellectual property. This development made the policymakers, academician, business and other organizations in understanding both economical and social impact of intellectual property rights. Intellectual property rights have come under increased scrutiny due to the growing significance of information and innovation. It is therefore imperative to evaluate the precise ways in which intellectual property contributes to development in various socio-economic settings. Reforming the law in this area of intellectual property, and the development of numerous nations' IP infrastructures has increased hopes for the use of the IP system to advance economic growth.¹²

In the field of economics, the literature on intellectual property has been rapidly expanding over recent years, particularly in some developed countries. As access to data on IP has improved, methodological tools for understanding its role in the economy have become increasingly sophisticated, and our understanding of the economic trade-offs has been enhanced. Nevertheless, the empirical literature from developing countries and countries with economies in transition has remained very limited, which has constrained the ability of policy-makers to take evidence-based decisions on IP matters and choose between different policy options.

Intellectual property rights have a immense impact on the economical growth of a any nation. The economic development may have both positive and negative impact. It is duty of every nation to protect the rights of the creator and innovator for the purpose of encouraging the others involve in such creation and innovation which is linked to the economic growth.

The two central economic objectives of system of intellectual property protection, the *first* objective is to promote investments in the field of knowledge creation and business innovation by providing exclusive rights to use and transfer newly developed technologies, goods, and services. In absence of such rights, the valuable information could be misappropriated. The business firms may show less interest in investment in research and development activities. In economic terms, weak IPRS create a negative dynamic externality. They fail to overcome the problems of uncertainty in R&D and risks in competitive appropriation that are inherent in private markets for information.

The second goal is to promote widespread distribution of new knowledge by encouraging (or requiring) rights holders to place their inventions and ideas on the market. Information is a form of public good in that it is inherently non-rival and, moreover, developers may find it difficult to exclude others from using it. In economic terms it is socially efficient to provide wide access to new technologies and products, once they are developed, at marginal production costs. Such costs could be quite low for they may entail simply copying a blueprint or making another copy of a compact disk or video.¹³ The main aim of IPR is to

¹² THE ECONOMICS OF INTELLECTUAL PROPERTY, World Intellectual Property Organization, January 2000.
https://www.wipo.int/edocs/pubdocs/en/economics/1012/wipo_pub_1012.pdf

¹³ Keith E. Maskus, *Intellectual Property Rights and Economic Development*, 32 Case W. Res. J. Int'l L. 471 (2000)

encourage holders of right to place their innovations and ideas on the market to promote the extensive circulation of most recent technology for the event of the economy.

Intellectual Property Rights – Positive Impact on Economy

The developing economies in the globe must focus on raising productivity in the market. The countries can increase productivity by improving technology and method. Innovation needs investments, it requires a great amount of investment, these are expensive but have an important role in investment. We can see and learn from developed countries like the USA and Japan in which the rate of development increased by 5 times after the implementation of Intellectual property laws.

Now there are different theories suggest that IPR has an unfavorable effect on the economy. In China during 1980s, trademark infringement negatively affected Chinese economy. The local companies started exploiting the well-established company by making counterfeited products and by launching them in the market.

Copyright violations also have a same impact on economy. In countries where copyright laws are very weak pirate firms start exploiting the law and the market. The piracy of copyrighted work would have negative impact on the economy because of the pirated version which is easily available in the market. IPR laws provide adequate protection creator and innovator which is a incentive for them. It also protects the interest of the customers also.

After the introduction of Trade-Related Intellectual Property Rights ("TRIPS") the market started changing. The act started to provide space for operation and opportunities to the companies for innovations. The private sector has started investing in Research and development. After the implementation of TRIPS, the number of patents filled in India has increased.

Intellectual Property Rights - Drawback and Misuse of IPR on Economic Development

The biggest drawback of IPR is it sometimes it restricts the technology to be used in the best suitable way. The person who is holding rights sometimes misuses their rights. They can charge according to their will and because of protection under IPR that innovation cannot be used by the competitors. Competition is the most important factor for the development of an economy. The spirit of competition keeps check and balance on price and as well as on the quality of the product. But IPR laws are against the principle of competition.

IPRs laws create a monopoly in the market. It supports monopoly, Law like copyright, trademark, and patents are creating barriers for the competitor to use the innovation. Competition makes sure that producer must think about the benefit and satisfaction of the consumer, because if the consumer is not satisfying then he or she can shift to other competitors in the market. The producer can charge any price and it can directly affect the consumer and the market. This is the law of demand that if the price is high then the demand will be low. But this law does not apply when there is a monopoly in the market. The consumer will get no other options and have to buy the product at the price determined by the producer. Due to competition, the producer is forced to charge not much more than the marginal cost.

Conclusion

Technological advancement made a tremendous impact on the life of human beings. The present system of IPR laws provides adequate protection the creators and innovators. The proper implementation of IPR

laws will help in the development of economies of any nations. The developing countries give preference to implement the laws, in turn helps in economical development of such nations.

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