
INTELLECTUAL PROPERTY RIGHTS AND FUNDAMENTAL RIGHTS

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Introduction :

Intellectual Property is an intangible property. It means that those assets or properties which require some protection and which are created by someone using their minds such as music, artistic work, designs, inventions, literary work and so on. It is described as property because it can be sold, purchased, mortgage etc. Intellectual property rights are the rights given to each and every person for the creation of new things according to their minds. IPR usually give the creator a complete right over the use of his/her creation for a certain period of time.

Intellectual property rights are the legal rights that cover the benefits given to individuals who are the owners and inventors of work and have created something unique with their intellectual creativity or capability. Every person related to areas such as literature, music, invention, etc., can be granted such rights, which can then be used in their business practices by them.

The creator/inventor gets complete rights against any misuse or use of work without his/her prior information. However, the rights are issued for a limited period of time to maintain equilibrium.

What are Intellectual Properties :

1. Industrial designs
2. Scientific discoveries
3. Protection against unfair competition
4. Literary, artistic, and scientific works
5. Inventions in all fields of human endeavour
6. Trademarks, service marks, commercial names, and designations

Types of Intellectual Property Rights:

Intellectual Property Rights can be classified into four types:

1. **Copyright:** Copyright is a term that describes ownership or control of the rights to the use and distribution of certain works of creative expression, including books, videos, movies, music, and computer programs.
2. **Patent:** A patent gives its owner the right to exclude others from making, using,



selling, and importing an invention for a limited period of time. The patent rights are granted in exchange for enabling public disclosure of the invention.

3. **Trademark:** A Trademark is a Graphical representation that is used to distinguish the goods and services of one party from those of others. A Trademark may consist of a letter, number, word, phrase, logo, graphic, shape, smell, sound, or combination of these things.
4. **Trade Secrets:** Trade secret describes about the general formula of any product and the key behind any organization's progress. It also includes various firms' different secret formulas for the same products which differ in quality.

Advantages of Intellectual Property Rights:

- IPR yields exclusive rights to the creators or inventors.
- It encourages individuals to distribute and share information and data instead of keeping it confidential.
- It provides legal defence and offers the creators the incentive of their work.
- It helps in social and financial development.
- It inspires people to create new things without fear of intellectual theft.

Fundamental Rights :

Fundamental rights refer to the basic human rights which are enshrined in the Indian Constitution which came to guaranteed for all citizens and were applied without any discrimination on the basis of race, gender, religion etc. and significantly, the fundamental rights are enforceable by the courts, subject to certain conditions.

Current Affairs on Fundamental Rights 2023 :

- **Supreme Court Ruling on Article 19:** On January 5, 2023, the Supreme Court of India made a significant ruling in a case involving the fundamental right to freedom of speech. In a 4-1 majority decision, the Constitution Bench of the court stated that an individual can seek enforcement of this right.
- **Supreme Court Verdict on Same-Sex Marriage:** In October 2023, a five-judge Constitution Bench of the Supreme Court unanimously declined to recognize same-sex marriages. The Bench also declined to permit 'civil unions' for same-sex couples. All the judges of the Bench, although in favour of civil unions, ruled that there is no fundamental right to marry under the Indian Constitution

Fundamental Rights in the Indian Constitution :

There are six fundamental rights in the Indian Constitution are:

1. Right to Equality (Article 14-18)
2. Right to Freedom (Article 19-22)
3. Right against Exploitation



4. Right to Freedom of Religion (Article 25-28)
5. Cultural and Educational Rights (Article 29-30)
6. Right to Constitutional Remedies (Article 32)

Fundamental Rights of India :

Fundamental rights are essential for everyone's moral and intellectual growth. Fundamental rights are essential for an individual's growth. India's post-independence era has resulted in the addition of some extremely important fundamental rights in the Indian constitution. Every citizen of India is given certain rights by law. It's vital to know what they are so that no one's rights get infringed upon. The Indian Constitution Overview Indian Constitution states the following six fundamental rights for an Indian citizen:

1. Right to Equality
2. Right to Freedom
3. Right against Exploitation
4. Right to Freedom of Religion
5. Cultural and Educational Rights
6. Right to Constitutional Remedies

Right to Equality :

Equal legal rights for all citizens are completely safeguarded by the right to equality. Inequality based on caste, creed, religion, place of birth, race, or sex strictly is prohibited by the Right to Equality. It also guarantees equal opportunity in government employment and prevents the government from discriminating against anybody in the workplace merely based on religion, caste, race, gender, descent, place of birth, place of residence, or any of these considerations. Articles 14 to 18 provide for equality before the law. Equality before the law is guaranteed by the Constitution, which assures that all people are treated equally before the law. The state cannot discriminate against citizens based on their religion, caste, race, gender, or place of birth. To attain equality, this is necessary.

Right to Freedom :

It can also be called as Right to Liberty. Every person's most treasured desire is for them to be free. Freedom of speech, expression of freedom, freedom of assembly without arms, freedom of movement throughout our country's territory, freedom of association, freedom to pursue any profession, and freedom to reside in any region of the country are just a few of the rights granted by the right to freedom. These rights, however, are subject to several restrictions.

Example for Right to Freedom:

- Any person is entitled to say anything he/she wants freely unless it is deemed to be derogatory or defaming against another person/community/organization.
- Indian citizens can freely relocate to any place in India.

Right Against Exploitation :

The Indian society has been based hierarchically, which has resulted in all sorts of exploitation. It's important to realize that being exploited is the same as, if not worse than



mistreated. No one may be forced to labour against their will, even if money is provided. The Indian constitution prohibits any form of forced labour. If a lower-than-minimum wage is paid, it is considered forced labour. In addition, the article declares human trafficking to be unconstitutional. As a result, buying and selling men and women for unlawful and immoral purposes is prohibited. In addition, this article declares this 'bound labour' unconstitutional.

Examples of Rights Against Exploitation:

- Any Employer is expected to at least pay the minimum wage to his/her workers and provide rightful working conditions to his or her workers.
- Employers are not permitted to engage in the practice of employing underage or minor labour.

Cultural and Educational Rights :

Cultural and educational rights give all members of society the right to preserve their cultural script or language. The image of Indian society that springs to mind is one of diversity. Our Constitution thinks that variety is our strength in such a diverse society. As a result, one of the fundamental rights of minorities is the right to preserve their culture. Democracy, as we all know, is the rule of the majority. Minorities, on the other hand, are critical to the organization's success. As a result, minorities' languages, cultures, and religions must be protected. This is necessary for minorities to not feel forgotten or undervalued under majority rule. Though individuals are proud of their own culture and language, our constitution provides for a particular right known as the Cultural and Educational Right.

Examples of Cultural and Educational Rights:

- Sikhs are allowed to take sharp objects such as Kirpan (a sharp object) in airports where any other sharp objects such as knives, daggers, etc are banned.
- Anyone in India can freely celebrate any religious or cultural festival unless it is in contradiction with Indian laws.

Right to Freedom of Religion :

The Constitution declares India a "secular state" because it is a multi-religious country where Hindus, Christians, Sikhs, and many more communities coexist. It signifies that the Indian state does not have its religion or "national" religion. However, it gives all residents complete freedom to believe in any religion and worship whomever they want. However, this should not interfere with other people's religious views and/or practices. This liberty is also available to foreigners. No one shall be forced to pay any tax whose earnings are used only to pay for expenses made in the promotion or preservation of any particular religion or religious denomination. Through educational institutions, this article allows the dissemination of religious knowledge.

Examples of Freedom of Religion:

- Any citizen of India can follow or abide by any religion they feel fit to follow at any time they want.



- The Government of India cannot persecute any person just based on religion.

Right to Constitutional Remedies :

- **Right to Constitutional Remedies:** In India, individuals have the right to approach the Supreme Court for the protection of their fundamental rights.
- **Articles 32 and 226:** These articles of the Constitution safeguard the right for the Supreme Court and the High Court, respectively.
- **Scope of the Right:** The Supreme Court and high courts can enforce fundamental rights, with local courts also having some authority in this regard.
- **Exemption of Court Martial:** Military law governed court martials are exempt from this constitutional protection.
- **Significance of Article 32:** Dr. B. R. Ambedkar referred to Article 32 as the constitution's soul and heart, essential to its basic structure.
- **Appeal Rights:** This right ensures that the appeal to the highest court cannot be denied, except by courts established by the Indian constitution.
- **Suspension During Emergencies:** Under Article 359, this privilege can be suspended during a national emergency.
- **Supreme Court's Role:** The Supreme Court acts as a guarantor and defender of fundamental rights under Article 32.
- **Direct Appeal to Supreme Court:** Individuals can directly approach the Supreme Court for redressal, bypassing the appeals process.
- **Invocation During Emergencies:** Citizens can invoke this right even during national emergencies.

Conclusion:

Intellectual Property Right is important to protect the interest of property holders who invented or created something. IPR protect their intangible property from frauds, theft, misuse or manipulation. Hence, ecommerce companies must register their creations and inventions to protect their websites and its contents from any kind of loss.

Fundamental rights are the bedrock of a democratic society, ensuring the dignity, liberty, and equality of all citizens. These rights provide a framework for a just and equitable society, safeguarding individuals against any form of discrimination and state excesses. They empower citizens to participate actively in the democratic process, fostering a culture of mutual respect and understanding. By guaranteeing freedoms such as speech, expression, and belief, fundamental rights not only protect individual liberties but also nurture a healthy and vibrant democracy. As democracy evolves, these rights adapt and expand, reflecting the changing needs and values of society, thereby maintaining the dynamic and resilient nature of a democratic system.



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