

UNIT 38 – UPSC - Issues relating to Intellectual Property Rights

Intellectual Property rights has vital role in all sector and has become a crucial factor for investment decisions by many companies. India is now TRIPS-compliant. This is an international agreement administered by the World Trade Organization (WTO), which sets down minimum standards for many forms of intellectual property regulations as applied to the nationals of other WTO Members. The well-balanced Intellectual Property rights system in India is helpful for foreign companies to protect their Intellectual Property in India



World Intellectual Property Organization describe Intellectual Property as "The creations of the mind, inventions, literary and artistic works, and symbols, names, images, and designs used in commerce". It is documented in literature that Intellectual Property is any piece of work that is shaped by the skills and abilities of someone called the author. Fundamentally, Intellectual property is a term referring to a brand, invention, design or other kind of creation, which a person or business has legal rights over. Almost all businesses own some form of IP, which could be a business asset. According to the Lebanese law, an author can be a writer, designer, software

developer, director, and producer. Intellectual property rights are the rights which an author holds to protect his/her own piece of work.

Copyright laws were set up in the past to protect these rights. WTO (1995) explained IPR as a general term covering patents, copyright, trademark, industrial designs, geographical indications, protection of layout design of integrated circuits and protection of undisclosed information (trade secrets). IPRs refer to the legal ownership by a person or business of an invention/discovery attached to particular product or processes which protects the owner against unauthorized copying or imitation.

General types of IP include:

1. Copyright: This protects written or published works such as books, songs, films, web content and artistic works;
2. Patents: Patents are a long-established ways to motivate innovation. This property right convenes to the holder the exclusive right of exploitation and enables them to exploit the invention by manufacturing, using, or selling products or processes incorporating the technology covered by the patent. The owner may also allow the invention to be exploited by others over a set period of time, in return for fair remuneration to compensate them for the intellectual and material effort involved in its conception and production. Patent protection provides the owner of the right with the means to prevent unauthorised use of the protected technology, to defend their rights in law and to initiate legal proceedings against any persons fraudulently using the patented invention. In United States, there are three different types of patents:
Utility Patents: these patents protect inventions that have a specific function, including things like chemicals, machines, and technology.
Design Patents: these patents protect the unique way a manufactured object appears.
Plant Patents: these patents protect plant varieties that are asexually reproduced, including hybrids.
3. Designs: This protects designs, such as drawings or computer models. Copyrights protect the dramatic arts. They give owners exclusive rights to reproduce their work, publicly display or perform their work, and create derivative works. Moreover, owners are given economic rights to financially benefit from their work and prohibit others from doing so without their permission. It is vital to realize that copyrights do not protect ideas, only how they're expressed.
4. Trademarks: This protects signs, symbols, logos, words or sounds that distinguish products and services from those of competitors. Trademarks shield the names and identifying marks of products and companies. The aim of trademarks is to make it easy for customers to distinguish competitors from each other. Trademarks are automatically assumed once a business begins using a certain mark to identify its company, and may use the symbol TM without filing their symbol or name with the government.

Intellectual property can be either registered or unregistered. Unregistered IP allow the creator to automatically have legal rights over his creation. Unregistered forms of IP include copyright, unregistered design rights, common law trademarks and database rights, confidential information and trade secrets. With registered IP, person will have to apply to an authority, such as the Intellectual Property Office in the UK, to have rights recognised. If you do not do this, others are

free to exploit your creations. Registered forms of IP include patents, registered trademarks and registered design rights.

Requirement of Intellectual Property rights: The protection of intellectual property rights is an essential component of financial policy for any country. Only such protection can stimulate research, creativity and technological innovations by giving freedom to individual inventors and companies to gain the benefits of their creative efforts. It is a very important issue to plan to protect the intellectual property rights. The major needs are to

1. Prevent plagiarism.
2. Prevent others using it.
3. Prevent using it for financial gains.
4. Fulfil obligation to funding agency.
5. Support income generation strategy.

Development of Intellectual property rights in India:

India has been a World Trade Organisation (WTO) member since 1995. WTO member nations must include some IP protection in their national laws. This means that if you are doing business with India, you will find some similarity between local IP law and enforcement procedures, and those enforce in the UK.

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| Chronological | development | of | IPR | in | India: |
| 1947: | Patents | & | Designs | Act, | 1911 |
| 1995: | India | | joins | | WTO |
| 1998: | India | joins | Paris | | Convention/PCT |
| 1999: | Patent amendment | provided | EMR | retrospectively | from 1/1/95 |
| 2003: | 2nd amendment | | in | Patents | Act |
| Term of Patent | – | 20 years | after | 18 months | publication |
| Patent Tribunal | | Set up | | at | Chennai |
| 2005: | Patents | (Amendment) | | Act | 2005 |

1999 - 2005: Plant Varieties and Farmers' Rights Act & Biodiversity Act. Designs, TM/Copyright Acts updated GI Registry set up at Chennai. IP Acts TRIPS Compliant

Intellectual property rights - systems in India:

India has been a member of the World Trade Organisation (WTO) since 1995. This requires member nations to establish intellectual property (IP) laws whose effect is in line with minimum standards. Consequently, there should be few major variances between India's laws and developed countries. Copyright India is a signatory to the Berne Convention on copyright. Though, it is good to register copyright of creative work as doing so may help to prove ownership if there are criminal proceedings against infringer. In most cases though, registration is not needed to maintain a copyright violation claim in India. Registration is made, in person or via a representative, with the Copyright Office. Internet piracy of films, music, books and software is an issue in India. Patents India's Patents Act of 1970 and 2003 Patent Rules set out the law concerning patents.

The regulatory authority for patents is the Patent Registrar within the department of the Controller General of Patents, Designs and Trade Marks, which is part of India's Ministry of Commerce and

Industry. Patents are valid for 20 years from the date of filing an application, subject to an annual renewal fee. India's patent law operates under the 'first to file' principle - that is, if two people apply for a patent on an identical invention, the first one to file the application will be awarded the patent. The laws governing designs are the Designs Act 2000 and the Designs Rules 2001. Designs are lawful for a maximum of ten years, renewable for a further five years. Trade marks India's trade mark laws consist of the 1999 Trade Marks Act and the Trade Marks Rules of 2002, which became effective in 2003. The regulatory authority for patents is the Controller General of Patents, Designs and Trade Marks under the Department of Industrial Policy and Promotion.

Trade names also constitute a form of trade mark in India, with protection, irrespective of existing trade names, for those wishing to trade under their own surname. Because of the common practice of 'cybersquatting' - the registration in bad faith of marks by third parties registering domain names for certain well known marks in order to sell them to the original rights owners. Registration takes up to two years. A trade mark in India is valid for ten years and can be renewed thereafter indefinitely for further ten-year periods. Registering and enforcing intellectual property rights in India.

Intellectual property rights can be imposed by bringing actions to the civil courts or through criminal prosecution. India's laws governing all forms of IP set out procedures for both civil and criminal proceedings, as does the Competition Act. A drawback of civil litigation is that persons are unlikely to recover large damages, and disciplinary damages against an infringer are rare. However, if persons have an identified infringer, it may be advisable to launch civil litigation, because if an interim injunction is granted the infringement can be halted pending the outcome of the case. Over the years, however, decisions in favour of foreign companies against local infringers have established the judiciary's unbiased approach. It has been observed that the protection of intellectual property rights has debatable issues in international commerce. Disputes of intellectual property rights dominate not only business among nations, but business within nations. Several latest developments in technology due to globalization and skill, and the rapid development of emerging economies have raised the importance of intellectual property rights protection, both politically and commercially. In advanced countries, IPR violations cause job and revenue losses.

Major Issues

While the IPR system in India comprises of strong Intellectual Property laws but it has many loopholes as it lacks effective implementation, for which "least priority given to adjudication of IP matters" is often quoted as a reason. Major challenge is to inform the enforcement officials and the Judiciary to take up issues of Intellectual Property rights, at par with other economic offences, by bringing them under their policy locator. There are also many issues in having an Intellectual Property fund, which can be utilized for further developing the IP culture in the country. It is necessary to devise a National IP Policy for India, which will help in working towards realizing the vision of India in the area of Intellectual Property rights. This will enable the establishment of a strong socio-economic foundation and deep international trust.

In recent years, the issue of intellectual property rights protections is debatable among public policy approaches to issues in developing countries. The TRIPs agreement, implemented in 1993 among World Trade Organization member nations, sets minimum standards of intellectual

property rights protections and enforcement in many developing countries, with the threat of negative repercussions if these guidelines are not followed.

Since many decades, intellectual property law has developed legal rules that cautiously balance the above competing interests. The objective is to provide enough legal protection to maximize incentives to engage in creative and innovative activities while also providing rules and policies that minimize the effect on the commercial marketplace and minimize interference with the free flow of ideas generally. In short, the law has developed a careful balance between competing interests. It is observed that legislative enactments and judicial decisions have adopted an extensive view of intellectual property. The subject matter eligible for protection has continued to expand significantly in recent years. This expansion has removed the clear description between patent, copyright, and trademark law. It has also led to overprotection of intellectual property in the form of overlaps that allow multiple bodies of intellectual property law to concurrently protect the same subject matter. Such overlapping protection is difficult because it interferes with the carefully developed principles that have evolved over time to balance the private property rights in intellectual creations against public access to such creations.

Plagiarism is a major issue. It is the act of theft of another person's intellectual property which comprises of ideas, inventions, and original works of authorship, words, slogans, designs, proprietary information, and using them as own without giving credit to main author or inventor.

Today, digital technologies are major tools for creating and storing information for its speed and easy access. Intellectual property rights apply on the Internet but the main issue is to make them enforceable. The ease of reproducing works if they are in digital format is low-cost and there is a near-perfect quality of copies. Publishers argue that the Internet harms their intellectual property interests by fundamentally transforming the nature and means of publications and thus making their works extremely vulnerable to Internet piracy. The distributed nature of Internet's management makes it possible for any user to widely circulate a work on the electronic network termed as Cyberspace through any number of channels. A user can easily distribute a work to news groups through e-mail or on personal website. Intellectual Property Rights Law has presented problems for advanced technologies such as computer programmers. The law adopts that something is either in writing protectable through copyright or a machine protectable by a patent but not by both concurrently.

In Indian situation, Indian Copyright Act kept track of international conventions, the current copyright law has many deficits as compared to the west. As India did not sign the "WIPO Internet Treaties" there is no corresponding legislation in India to the US DMCA. The present Copyright Act of India does not have requirements regarding the 'technological protection measures' nor the protection of electronic rights management information. Some provisions of the Indian Penal Code, 1860 (IPC) may serve to provide for legal protection for technological measures. Section 23 of the IPC speaks of 'wrongful gain or wrongful loss'.

To summarize, the concept of 'Intellectual Property' includes the creative and literary outputs of human such as novels, music, motion pictures and industrial designs that are used for commercial purposes. Intellectual property consists of original creations but the same creations are divided into two main categories. First is creations being used for industrial purposes, and second is creations that are copyrighted material. Industrial Property also covers patents or inventions,

trademarks, industrial designs and geographical indications of source. Patents are rights that are granted exclusively for inventions pertaining to a product or a process.

In Indian scenario, extremism activities are increasing rapidly. The scale of the extremists operations is massive and consequently these activities have perilous impact on nation's social, economic and political development.

Many scholars explained the notion of extremism as any ideology considered to be far outside the normal attitudes of society or to interrupt common moral standards. It is usually constructed with moderation or extremists with moderates. Various political writers signified that extremism also has numerous strands starting from just holding to one's ideas and values on one end of the continuum and use of violent means for nuisance on the other end. Thus, extremism is considered as a complex phenomenon.



Causes of extremism: There are numerous of reasons for the development of Extremism in India:

1. Lack of governance: Governance is mainly concerned the significant issue as that lack a long term strategic perspective. Priority of Government bodies is to focus on Industrialization and do not give much importance to people living in tribal areas. Tribal have been denied their constitutional rights and justice.
2. Socio-economic issues: When considering socio economic issues, education must be the prime involvement and this needs to be addressed with innovation. Once populace is literate and well educated in particular region, they will be able think logically and do not involve violent actions. Most of these people who are entering into the movement of extremism are lacking primary education, basic amenities and infrastructure facilities.

Economic discontent was a prevailing factor which led to the growth of the militant nationalism. Towards the end of the 19th century economic condition of the people became miserable due to unemployment and repressive financial measures of the Government.

In all over worlds, following causes can be observed for growth of extremism:

1. Political deprivation leading to hopelessness or a sense of powerlessness.
2. Long festering political disputes.
3. Lack of Education and poverty.

4. Ideological imperatives may lead to extremism.
5. Socio-economic inequities, unemployment, despair about the future.
6. Dishonest and self-serving dominant groups.
7. Foreign occupations.
8. Sense of victimhood amongst Muslims.
9. Renaissance of Islam phobia in Europe.

Types of Extremism:

1. Personal Extremism
2. Family Extremism
3. Institutional or Organizational Extremism
4. Group Extremism
5. Social or Cultural Extremism
6. National Extremism
7. International Extremism

Determinants of Extremism:

Extremism is just like epidemic ailment that spread its arms in various parts of world. There are three important determinants. First the extremism that those in power exhibit. They go in with tanks and bombs where persistent force backed diplomacy can work, seek to destroy what requires careful reconstruction, advance division and hate where understanding and bridging of differences is needed, and abandon the path of justice and fair play for pure partisanship. All this naturally promotes lethal and devastating extremism. Secondly, when political system is not credible and there is no reliable justice structure, political groups often frame their concerns and solutions in an extremist way. When a non-credible political system leads to the illegal imposition of the rule of a specific elite, party, ethnicity or institution over the 'rest', the response of the rest is often cast in extreme ethnic, religious, anti-elite or anti-institution character. Henceforth through overemphasis of their legitimate concerns, they construct a victimhood scenario. In countries where trustworthy political and legal systems do not exist, many would buy into victimhood framing. The causes of dissatisfaction may be plentiful. They could be political, cultural, sociological, economic and moral. Third determinant of extremism is perpetual discontent that develops frustration, irrationality and worry and a mind that will almost naturally take to radicalism. They have almost no stake in the dominant socio-political and cultural milieu. With lots of suffering, people choose path of the anarchistic, nihilistic or messianic route to worldly and heavenly deliverance.

Developmental issues associated with development and spread of extremism:

Natural Calamities: During the last decade of the 19th century, affliction of people was filled to the brim. Famine, plague, earthquake, war and repressions were let loose in the country. From 1896 to 1900 prolonged and catastrophic famines occurred throughout the length and breadth of the land in a bewildering succession. In 1896 bubonic plague broke out in Bombay and took a toll of millions of lives. These natural calamities were accompanied by the intensified exploitation and suppression by the Government. Such devastating conditions led to development of extremist.

Special Economic Zones:
 Spread of extremism is a major issue for any country. Land acquisition for Special Economic Zones created chaos among tribal people and they come to street for protest. Large tracts of land are being acquired across the country. There is a loss of revenue in the form of taxes and it greatly impacts on agricultural production. Land is living resource for farmers and their life is dependent up on the land. Special Economic Zones needs a single huge block of land and government is now taking stern steps to acquire the land. Mediators are also generating trouble between government and farmers. Such situation is very disturbing for farmers and they lose huge money. Government compensation is also not justified as it is very low. Such factors enforce people to become violent and give rise to their extremist activities.

Labour, Unemployment and wages:
 Another intense issue that spreads extremism is joblessness which creates insecurity of living. People may develop dissatisfaction and anger both in urban and rural areas. In allocation of government jobs, there has been shown some favouritism and this activity leads to dissatisfaction among youth as they are being ignored.

Policing:
 Improper policies and their ineffective implementation may result in extremist activities among weaker sections of society. It is very necessary that government must consider poor people when devising policies for economic growth of country. These policies must be well-organized and unprejudiced which reveal good administration .Weaker section of people does not have much confidence in police. People have no faith that justice will be done to them against the powerful person in the society. Such impression about government officials develops extremist thoughts among poorer section of society.

Process of getting Justice:
 When lower section of society is struggling with various issues related to survival or employment and their conflicts and disputes are not settled in time, frustration among people in society develops. Presently, judicial system of India is very time consuming and disputes are not settled in short time. The parties to the dispute lose control over even the terms and details of the dispute once it goes to the court. These factors create extremist feelings among sufferers.

Ways to resolve issue of extremism:
Land Related Measures:
 It is necessary to make efforts to continuously implement the land ceiling issues. So that the ceiling excess land obtained should be made available for distribution amongst the most susceptible section of the landless poor people. Land should be acquired by government for special economic zone through giving proper compensation to the agriculturalists.

Basic facilities and Infrastructure:
 It is observed that when government fails to provide infrastructure and services as per national norms that gives rise extremism affected areas. Basic services to standards among the people in these areas are to be given prime importance.

Governance

Issues:

There are some government issues that lead to spread of extremism. In central India where disturbance is prevalent such as states like Andhra Pradesh, Orissa, Chattisgarh, Madhya Pradesh, Jharkhand and parts of Maharashtra. State interventions both for development and for law and order are not good. Local populations present in the tribal areas are being dominated by the armed and rich people. Government must take necessary steps to protect these communities. The basic steps to improve the status of poorest section of society is establishment of credibility and confidence of government, keeping a continuous watch for fulfilment of peoples vision, effective protection, peace and good governance, sustainable development with equity in tribal areas, will make extremism low in tribal areas.

Government initiative to decrease extremism:

Government must come forward to reduce the expansion of extremism in India through implementing various policies. Military operations have not been uncontrolled and individual states continue to undertake area clearing operations, such exercises appear to form parts of a new clear, hold and develop strategy that uses development as a tool to win back the support of the tribal population, who overpoweringly appear to sympathize with the extremists. In the beginning of 2011, there is a rehabilitated focus to perform development initiatives in areas cleared of Maoist presence. Several flagship projects of the government to improve connectivity of tribal areas with the administrative centres, to provide work to the tribal youth and to make certain health and educational facilities have been launched. It is imperative to ensure that proper execution of these developmental projects and monitor their progress, a new scheme titled Prime Ministers Rural Development Fellows Scheme has also been revealed. Under the scheme, 156 young professionals have been trained and are being stationed in 78 worst-affected districts for two years to help the district administration. Resources have started flowing into the coffers of the district administration with an importance on time bound utilization and execution.

It has been observed in the past that the extremists targeted infrastructure projects or have prevented contractors from completing the projects, security forces are now allocated to protect the planned development ventures in order to ensure their timely completion and security. Government must assure to people of weaker section that they will not harm the tribal community.

The government has also cleared a proposal to raise a combat unit under the para-military Central Reserve Police Force (CRPF) for construction of roads in Maoist-affected areas.

India is currently dealing with an effective response to left-wing extremism. Even though in the last two years, extremist ferocity as well as areas under extremist influence has somewhat reduced, but the problem remains.

To summarize, extremism is entrenched in Indian community. Various authors elaborated this concept as violent activities of certain group of people due to dissatisfaction from government policies and initiatives. It is established that Extremism became a major philosophy of Indian nationalism. There are several grounds for development of extremism in India such as joblessness, ignorance of weaker section of society by government. After

thorough review of causes and issues for the development of extremism, it is revealed that extremism is viewed differently by dissimilar sections of the society. On one side, there are passionate supporters and, at the other extreme, some others hold the view that the movement should be crushed cruelly. It is difficult to classify the opinion in the middle path. It can be said that some of the demands of the extremists are genuine and cannot be ignored. Therefore, the Government must seriously consider such demands and make policies and execute them, either voluntarily or subsequent to negotiations with the protestors.