

# Emerging Trend Between Intellectual Property and Environmental Protection with Environmental Technology -An Analysis

Sowmya.K<sup>1</sup>, Prof.Dr.C. Basavaraju<sup>2</sup>  
*SBRR Mahajana Law College*



*“If the green is the symbol of prosperity and Brown is of Barrenness, then Court is of course the symbol of Cure”*

- By Chetan Singh Mehta<sup>1</sup>

## I. INTRODUCTION

Man's very survival depends upon his harmony with nature. There is a close interaction between the Man and the Nature. The relationship between the two is vice versa i, e., if man cares for the nature; then only nature will care for him and not otherwise and therefore it is the duty of man not to pollute the

Environment. But in today's world the importance of the Intellectual Property is spreading in such a way that man thinks that the Intellectual Property is very important than the Protection of the Environment. In reality it is not so. Intellectual property rights considered as temporary privileges over the products of intellectual activity, determine who controls information and technology. Intellectual property rules fundamentally affect the quality and availability of innovative ideas and products, and are therefore extremely important in achieving sustainable development, ensuring human health, and protecting the environment. No doubt the Intellectual Property is significant topic. But at the same there is a need to protect the Environment as well.

In this paper the researcher focuses on different aspects of Environment and Intellectual Property with the enormous damage being done to the Environment. There is a need to probe into the causes of Environmental Degradation and warming up of the Earth.

Due to excessive exploitation of Natural Resources, Natural calamities are taking place causing damage to millions of people across the globe. The inventions and manufacturing of various products through main intelligence there is a negative impact on the climate Therefore there is a need to

- ❖ To know the importance of Environment Protection and the Intellectual Property
- ❖ To know the inter relationship between these two.
- ❖ To examine the importance of green technology and to spread awareness and knowledge of Environment protection and Intellectual Property.
- ❖ To discuss important laws relating to these two aspects in Toto.

<sup>1</sup> In “Environmental Protector and the Law”  
Published by A.P.H.Publishing Corporation- 2009

The following important questions can be addressed such as

- ❖ What is the significance of Environment Protection with the Intellectual Property?
- ❖ Whether the present Laws in India are sufficed to conserve the Environment and Intellectual Property?
- ❖ Whether the authorities which could regulate the Environmental Pollution and promote for the protection of Environment and Intellectual Property are functioning properly?

## II. MEANING AND DEFINITION OF ENVIRONMENT PROTECTION AND INTELLECTUAL PROPERTY

The term 'Environment' is derived from the French word 'environner' which means 'to encircle' or 'to surround'<sup>2</sup>.

According to Black's Law Dictionary "The milieu in which an organism lives. Includes the sum of all of its surroundings. This includes natural forces and other living things. It defines the conditions of danger and damage to existence, as well as development and growth. Refer to environmental factors"<sup>3</sup>

Under Section 2(a) of THE ENVIRONMENT (PROTECTION) ACT, 1986 clearly defines the term Environment. According to this section "Environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property.<sup>4</sup>

Environmental protection is essential for protecting the natural resources on for the benefit of both the environment and human beings. Due to the pressures of overconsumption, population and technology, the biophysical environment is being degraded, sometimes permanently.<sup>5</sup>

The convention establishing the World Intellectual Property Organization (WIPO), concluded in

Stockholm on July 14, 1967 (Art. 2(viii) provides that

"intellectual property shall include rights relating to:

- 1) literary, artistic and scientific works;
- 2) performances of performing artists, phonograms and broadcasts;
- 3) inventions in all fields of human behaviour;
- 4) scientific discoveries;
- 5) industrial designs;
- 6) trademarks, service marks, and commercial names and designations;
- 7) protection against unfair competition and all other rights resulting from intellectual activity in industrial scientific, literary or artistic fields".<sup>6</sup>

According to Ann Marie Sullivan, in his book titled "Cultural Heritage & New Media: A Future for the Past" it was said that "Intellectual property (IP) is a category of property that includes intangible creations of the human intellect, and primarily encompasses copyrights, patents, and trademarks. It also includes other types of rights, such as trade secrets, publicity rights, moral rights, and rights against unfair competition. Artistic works like music and literature, as well as some discoveries, inventions, words, phrases, symbols, and designs, can all be protected as intellectual property"<sup>7</sup>

According to World Intellectual Property Organization "Intellectual property rights are like any other property right. They allow creators, or owners, of patents, trademarks or copyrighted works to benefit from their own work or investment in a creation."<sup>8</sup>

These rights may be enforced by a court via a lawsuit. The reasoning for intellectual property is to encourage innovation without the fear that a

---

<sup>2</sup> Dr.S.R.Myneni , Environmental Law, Asia Law House, New Edition(Reprint)- 2014

<sup>3</sup> Featuring Black's Law Dictionary Free Online Legal Dictionary 2nd Ed. <https://thelawdictionary.org/environment/>, visited on 13/09/2018 at 4.30 PM

<sup>4</sup> <http://envfor.nic.in/legis/env/env1.html>

<sup>5</sup> [https://en.wikipedia.org/.../Environmental protection](https://en.wikipedia.org/.../Environmental%20protection)

---

<sup>6</sup> [www.wipo.int/treaties/en/text](http://www.wipo.int/treaties/en/text).

<sup>7</sup> Ann Marie Sullivan, Cultural Heritage & New Media: A Future for the Past, 15 J. MARSHALL REV. INTELL. PROP. L. 604 (2016)

<sup>8</sup> The World Intellectual Property Organization (WIPO) is one of the 15 specialized agencies of the United Nations (UN). WIPO was created in 1967 "to encourage creative activity, to promote the protection of intellectual property throughout the world". Its headquarters are in Geneva, Switzerland.

competitor will steal the idea and / or take the credit for it.<sup>9</sup>

### III. NATURE AND SCOPE OF INTELLECTUAL PROPERTY LAW WITH REFERENCE TO THE ENVIRONMENTAL PROTECTION



Now a days there is a rapid interaction between Intellectual Property Law and Environmental Law. Although Environmental Law and Intellectual Property Law have shared for a long time a common interest in machines, chemicals and their effects, they are now sharing a new and rapidly growing common interest in living organisms.

Environmental Laws are seeking to preserve ecosystems functions to preserve the quality of the human and natural environments. On the other side in IP Law the legal system provides certain rights and protections for owners of property. Such kind of property that results from the fruits of mental labor is called intellectual property. It preserves and protects the quality of human intellect and the environment.

9

<http://www.businessdictionary.com/definition/intellectual-property-rights.html>

So, the two fields of law be more aware of each other and co-operate for common goals.

The important principle of our economic system is that technological innovation is necessary to maintain and improve our standard of living. But some time due to these technological innovations air and water get contaminated causing environmental pollution immense growth in the field of manufacturing, agriculture, and transportation. Due to this it damages the environment. However, sometimes through technology we can reduce and prevent pollution and minimize waste of resources. An environmental perspective, therefore, distinguishes between harmful and beneficial technologies, and discourages the former while encouraging the latter.

This research paper examines the practical ways to serve environmental protection by promoting innovation in beneficial environmental technology through application and reformation of intellectual property laws.

### IV. LAW RELATING TO INTELLECTUAL PROPERTY RIGHTS

We have two types of intellectual property law i.e., worldwide and nationwide.

- ❖ International instruments to protect Intellectual Property rights
  - World Intellectual Property Organization (WIPO).
  - Agreement on Trade Related intellectual Property Rights (TRIPs)
- World Intellectual Property Organization (WIPO) •

WIPO is established on 14th July, 1967. It is designated as a specialized body of UNO to act as a complementary body with WTO, for the promotion and protection of Intellectual Property Rights. The objectives of WIPO are

- To promote the protection of intellectual property throughout the world.
- To harmonize national international property legislation and procedures.
- Provide services for international applications for intellectual property rights.
  - Exchange information on intellectual property.

- Agreement on Trade Related intellectual Property Rights (TRIPs)

The TRIPs agreement for the first time creates a multilateral framework for enforcement of all Intellectual Property Rights at international level which were so far left to the national states to carry out at their discretion under national laws. It is a mandatory agreement attached to WTO. Every member of WTO is required to observe the provisions of TRIPs and provide minimum level of Intellectual Property Rights in their national laws.<sup>10</sup>

❖ Indian law relating to protect Intellectual Property rights

Intellectual Property Laws have been amended significantly during the last few years in order to comply with WTO regulations. The following are the important legislations relating to Intellectual Property –

1. Trademarks Act, 1999
2. Patent Act, 1970
3. Copyright Act, 1957
4. Designs Act, 2000
5. Geographical Indications Act, 1999
6. Information Technology Act, 2000
7. Competition Act, 2002
8. Semiconductor Integrated Circuits Layout Designs Act, 2000

#### V. STEPS TAKEN

There are number of steps taken to create a legal awareness and to encourage environmentally friendly technologies which are as follows:

- First, an environmental patent akin to the German and Japanese utility patents should be introduced to encourage environmental technology innovation and to accelerate the process of diffusion.
- Second, both command-and-control and marketable permit systems should remain as important tools of environmental policy. Each creates different valuable innovation and diffusion incentives for the polluting industry and the pollution control industry. Where the command-and-control approach is relied upon, however, performance standards should be utilized instead of technology standards.

<sup>10</sup> <https://www.slideshare.net/.../intellectual-property...>

- Third, the innovation barriers that exist within the command-and-control and market-based systems must be removed. In the case of the command-and-control system, the permitting process must be standardized, must provide a testing system and must include an adequate soft-landing policy. In the case of the marketable permit system, there must also be a soft-landing policy as well as a way to test new environmental technologies. Furthermore, extensive self-reporting and other enforcement mechanisms must be established.
- Fourthly, as for the diffusion of new environmental technologies, change is necessary both at the national and the international levels.
- Fifthly, information clearinghouses must be created and monetary incentives should be provided to developers of new environmental technology. The barriers to diffusion created by intellectual property issues must also be eliminated.<sup>11</sup>
- At the very least within the international environmental treaty framework, states have obligations to promote the transfer and dissemination of renewable and environmentally-friendly technology.

#### VI. ENVIRONMENTAL TECHNOLOGY

Environmental technology (envirotech), green technology (greentech) or clean technology (cleantech) is the application of one or more of environmental science, green chemistry, environmental monitoring and electronic devices to monitor, model and conserve the natural environment and resources, and to curb the negative impacts of human involvement.<sup>12</sup>

For example: Biofiltration, Bioreactor, Bioremediation, Desalination, Doubly fed electric machine, Energy conservation, Energy saving modules, Electric vehicles, Wave energy, Green computing, Hydroelectricity, Wind power, Wind turbine, Hydrogen fuel cell, Ocean thermal energy conversion, Solar power,

<sup>11</sup> <https://eprints.qut.edu.au/85304/7/85304.pdf>

<sup>12</sup> [https://en.wikipedia.org/.../Environmental\\_techn...](https://en.wikipedia.org/.../Environmental_techn...)

#### Renewable energy

Renewable energy is the energy that can be replenished easily. For years we have been using sources such as wood, sun, water, etc. for means for producing energy. Energy that can be produced by natural objects like wood, sun, wind, etc. is considered to be renewable.

#### Water purification

Water purification: The whole idea/concept of having dirt/germ/pollution free water flowing throughout the environment. Many other phenomena lead from this concept of purification of water. Water pollution is the main enemy of this concept, and various campaigns and activists have been organized around the world to help purify water.

#### Air purification

Air purification: Basic and common green plants can be grown indoors to keep air fresh because all plants remove CO<sub>2</sub> and convert it into oxygen. It should also be noted that besides using the plants themselves, some species of bacteria can also be added to the leaves of these plants to help remove toxic gases, such as toluene.

#### Sewage treatment

Sewage treatment is conceptually similar to water purification. Sewage treatments are very important as they purify water per levels of its pollution. The most polluted water is not used for anything, and the least polluted water is supplied to places where water is used affluently. It may lead to various other concepts of environmental protection, sustainability etc.

#### Environmental remediation

Environmental remediation is the removal of pollutants or contaminants for the general protection of the environment. This is accomplished by various chemical, biological, and bulk methods.

#### Solid waste management

Solid waste management is the purification, consumption, reuse, disposal and treatment of solid waste that is undertaken by the government or the ruling bodies of a city/town.

#### E-Gain forecasting

E-gain forecasting is a method using forecasting technology to predict the future weather's impact on a building. By adjusting the heat based on the weather forecast, the system eliminates redundant use of heat, thus reducing the energy consumption and the emission of greenhouse gases.

#### Energy conservation

Energy conservation is the utilization of devices that require smaller amounts of energy in order to reduce the consumption of electricity. Reducing the use of electricity causes less fossil fuel to be burned to provide that electricity.<sup>13</sup>

### VII. SUGESIONS

- Regulators, industry, private citizens, and their counsel need to balance economic and technical progress of intellectual property with environmental protection.
- Intellectual property law is useful for identifying, selecting, and encouraging environmentally beneficial technology which is profitable.
- Coordination of environmental regulation and intellectual property laws can help to achieve the desired balance between progress and protection.
- Environmental regulations are more effective for restricting the use of harmful technology than at promoting innovative beneficial technology.
- Intellectual property law is a well-established system for promoting invention and facilitating commercial development.
- Adequate measures can be undertaken to improve and protect environment along with of intellectual property.
- Federal and state environmental agencies should create awareness through various means to the public.
- State Authority should respect and enforce the rights of patentees, and should assure them rewards.

Therefore, applications of intellectual property principles are necessary for promoting innovation of environmental technology. Intellectual property law should also work towards improving environmental protection.

### VIII. CONCLUSION

From the above discussion it is evident that, there is a vast scope of Environment protection in terms of

---

<sup>13</sup> [https://en.wikipedia.org/.../Environmental\\_techn...](https://en.wikipedia.org/.../Environmental_techn...)

Intellectual property is concerned. All in all, India has taken many positive steps toward improving its IPR regime and is expected to do much more in the coming years to streamline itself with the best practices in the field of intellectual property rights. There is, of course, no guaranteed way of ensuring that beneficial technologies replace harmful ones. Nonetheless, increased reliance on intellectual property law can improve environmental protection. Both Environmental Protection and Intellectual Property are interconnected for the development of Economy. Each one should supplement and complement with each other.