

CONTEMPORARY ISSUES OF INTELLECTUAL PROPERTY RIGHTS IN THE
DIGITAL ERA

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Abstract

Intellectual property rights have been made a very discussing topic in the digital era. During the Covid crisis more and more contemporary issues evolutes in the society like infringements of the copyright, stole the content and copy-paste, piracy, duplicate features, and name of the trade and inventions, etc. intellectual property rights are potential for the development of the human mind, innovation, inventions & new startups. The object of the study is to find out contemporary issues at present time concerning IPR and what is the basic reason for the violation of Intellectual property rights and measures of the remedy concerning it. How to implement the rights of Intellectual property is an effective manner by the Indian government. What is the Role of schemes or policies concerning with development, awareness, protection of Intellectual property rights? The methodology adopted doctrinal data collection from many ministries, Legal documents, case studies, debates by experts, etc. International Conventions on Intellectual property rights are successful or not into the formulation of a strategic plan for giving dynamic areas to Intellectual property rights that helps to prevent problems regarding poverty, hunger, education, and improving health, & Environmental Solidarity. The limitation of a research paper is not concerned with empirical study. The finding of the research work is the IPR gives various modes of development like inventions, ideas, enhance creativity, and innovation, etc.

Key Words: Digital, Science & Technology, Intellectual property Rights, International Agreements, Organizations.

INTRODUCTION

Intellectual property rights are denoting many rights related to mental ability, growth, and education. Today, the effect & use of technology has to consider the importance of the protection of intellectual property. It is not a national problem as well as becomes international problem no doubt many global services are prevailing

for protection of intellectual property (IP) like the Patent Cooperation Treaty¹ in short known as PCT, Madrid and Hague Systems, Industrial Property Automation System², WIPO³ Publish and WIPO Scan, etc. Indian Legal System is to ensure Intellectual property rights & their development, security, & promotion.

Many Democratic countries of the globe have inaugurated procedures to strengthen and reorganize intellectual property administration as a result of commitments planed⁴ under TRIPS by the reason respectively the USA government establishing Intellectual Property Cells that provide pertinent information about Intellectual Property Rights. In this regard, the European Union has organized a Helpdesk for the security of Intellectual Property Rights since 1998. The European Union & commission is also concentrated on intellectual property promotion & protection. The USA government has launched a special website for awareness of the IPR⁵. Approximately, in 1999 China has appreciated & enhancing knowledge about IPR. After the TRIPS agreement, the Indian government has also initiated determined pains to provide IPR information and awareness about it at the national level to promote a large section of the society and participating in bilateral planning or polygonal international treaties and conventions concerning IPR. These aspects are originated many questions in the mind like why Intellectual property rights might be protected by the government and how to contributed IPR to the growth of society. The Digital era has increased the significance of the IPR and started a new debate on how to make potential the rights of Intellectual property. Thus the study on this topic should be made very valuable for students, the public, government, institutions, and private sectors. Intellectual property is an expression touch on to a product, creation, plan, or another kind of formation, which a person or business has legal rights over. Almost all businesses own some form of IP, which could be a business asset. Ordinary types of Intellectual Property comprise below:

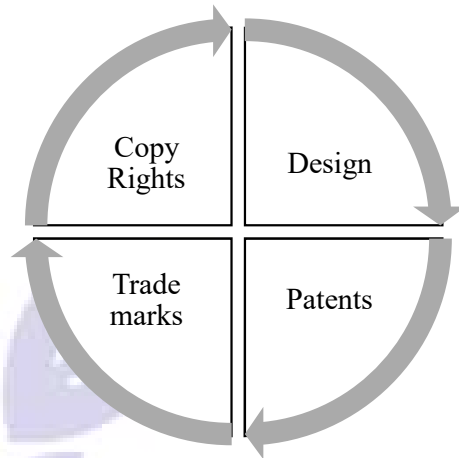
¹The Patent Cooperation Treaty is assists applicants in seeking patent protection internationally for their inventions helps patent office with their patent granting decisions & facilitates public access to a wealth of technical information relating to those inventions.

² IPAS is one of the key components of the global IP infrastructure that is used by WIPO, along with a set of modernization services, to offer a comprehensive sustainable automation solution to requesting IP offices from developing countries with diverse levels of development, resources, capacity, skills and infrastructure.

³ The World Intellectual Property Organization is a flexible, modular system that can be customized to individual industrial property offices to automate their IP business and administrative processes from application reception to registration, including post-registration actions such as amendments, assignment, renewal, annuities, etc.

⁴ Ch Ibohal Singh & Th Madhuri Devi, Intellectual Property Rights: Some Aspects, available at: <http://ndl.iitkgp.ac.in/document/Zk1HM2RKtkZSdDdJWkU1NlhnSSsybC9DckZsLzJleFdiYUgycDJYdERURT0>(last visited on 07/07/2021).

⁵ The Independent Inventor Programs (OIPP) of the US concerning to Patent management and Trademark Office (USPTO).



Copyright is secures written or published works such as books, songs, films, web content, and artistic works⁶. At present time infringement of the copyright is become general thinks. The next Intellectual property is a Patent⁷. It is protected commercial inventions, like a new business product, schemes, formulas or processes. Inventions should be always new and unique. Design is a valuable Intellectual Property Rights that protects designs, such as drawings or computer models. Trademark is a symbol of product and company; it is also an industrial intellectual property right⁸. Under this right protects signs, symbols, logos, words, or sounds that distinguish your products and services from those of your competitors⁹.

In the Philippines, the Supreme Court has issued a resolution designating sixty- five lower courts in the country for the protection of copyrights and other industrial intellectual rights. The Philippines Special Commercial Courts have decided cases involving a violation of Intellectual Property Rights (IPR). Indeed, the Indian government has passed much legislation for the smooth management of Intellectual property rights.

LEARNING OUTCOMES:

- To understand contemporary issues are related to Intellectual property Rights and solution towards it.
- To discuss potential ideas related to the betterment of intellectual property rights and their progress.

⁶ Section 2(c) of the Copyright Act, 1957 is defined Artistic Works a painting, a sculpture, a drawing including a diagram, map, chart or plan an engraving or a photograph, whether or not any such work possesses artistic quality.

⁷ Patent, available at: <https://www.wipo.int/patents/en/>(last visited on 2/07/2021).

⁸ Industrial property is including patents and utility models for inventions, industrial designs, trademarks and geographical indications. It also outlines the means by which creators can seek protection for their industrial property.

⁹ Intellectual Property Rights in India, Intellectual Property Office, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/627956/IP-Rights-in-India.pdf (last visited on 2/07/2021).

- To analyze the strategic plan of international conventions this is played blooming of rights of intellectual property.
- To find out new quality, innovative principles regarding intellectual property rights that encourage

Philosophical Arrangement: Intellectual Property Rights

The theory of natural law is investigated into the relevancy of property and the impact of the significance of property on individuals. It is explored the property is good motivation and gift of the God. Plato, Cicero & Aristotle were much convened with the protection of property rights. In the 19th century, utilitarians were formulated the greatest happiness of the greatest number of principles in the protection of property rights. Blackstone has nicely explained in his book¹⁰ IPR is a rights related mental ability and the nature of the problem¹¹.

The jurist of Social Contract Theory was in favour of the protection of Intellectual Property rights. John Locke was a famous jurist in this theory and propounded the natural rights of property¹². John Locke's writing¹³ on a property is that it shows natural rights to justify intellectual property rights primarily depends on a concept of community and an accompanying metaphysical scheme¹⁴. He has advocated the labour theory of property that means everyone is entitled to their labour; the government is responsible to protect the IPR¹⁵.

Various jurists are agreed with the philosophy of John Locke on the theory of intellectual property and the strategic freedoms regarding it by the reason he was known as a model builder. The essence of the labour theory that the consignment labour can transmit in a justificatory theory of intellectual property depends on two factors that are the basic outset of a group of people and relation with the community to the intellectual commons¹⁶. The security of hard work or labour is justified and necessary on the matter of intellectual property. Hegel is an eminent philosopher of jurisprudence and supported the protection of intellectual property rights it is directly to be improved the labour of their citizens, all know that it is a key point of the

¹⁰ The Commentaries on the Law of England, University of Chicago Press (1979).

¹¹ Peter Drahos, A Philosophy of Intellectual Property. Available at: https://www.researchgate.net/publication/304514536_A_Philosophy_of_Intellectual_Property (last visited on 07/07/2021).

¹² John Locke, Stanford Encyclopedia of Philosophy, available at: <https://plato.stanford.edu/entries/locke/> (last visited on 8/07/2021).

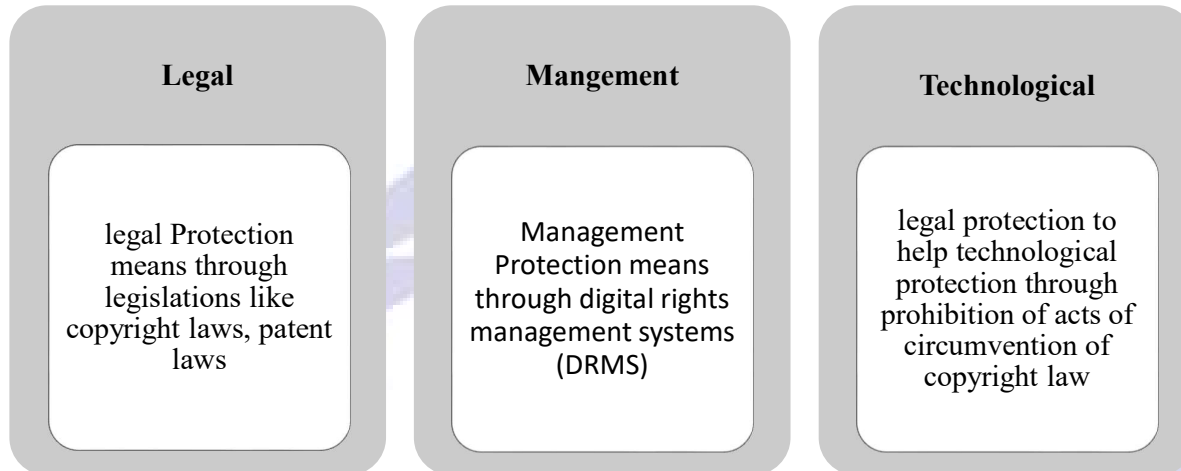
¹³ John Locke, *An Essay Concerning Human Understanding* (1689). It is first work done by the John Locke and explained behaviours of the human rights.

¹⁴ Ibid.

¹⁵ *The Second Treatise of Government* (1689).

¹⁶ John Locke, agreed with peace & security in the society through the protection of labour of human being including mental labour.

development of a community¹⁷. After the above discussions are cleared the fundamental object of the Intellectual Property Rights Act is threefold security they are mentioned below through chart2.



In the Digital era, the area of the IPR is enhancing user of technology¹⁸.

The Technologies have been developed to protect the content through many tricks like the use of watermarking, fingerprinting, user access control through the ID, tamper proof of software & hardware, and passwords. It prevents copy past, disables to download of the content. The contemporary issues are the increase in digital use and the development of technology. The digital economy is a big issue related to the context of Intellectual Property rights¹⁹. Digital Economy has created digital medium products and transactions that evolved new challenges before customer and seller. The economic viewpoint, individual and exclusive property rights on creations of mind are uncertain concerning their effects on innovation & novelty dynamics²⁰.

INTERNATIONAL PLANNING ON INTELLECTUAL PROPERTY RIGHTS

WORDS SPEAK

¹⁷Peter Drahos, A Philosophy of Intellectual Property, Locke, Labour and the Intellectual Commons, available at: <http://press-files.anu.edu.au/downloads/press/n1902/pdf/ch03.pdf>(last visited on 8/07/2021).

¹⁸ AL Moorthy & CR Karisiddappa, The Relevance of Intellectual Property Rights in the Digital Millennium, In International Conference on Information Management in Knowledge Society, Allied Publishers, Vol. 1, pp. 201-210 (2005).

¹⁹ ASA Krishnan, AK Chakravarti, Intellectual Property Rights in the Ensuring Global Digital Economy, Vol. 3 Journal of Intellectual Rights, 9-20(1998).

²⁰ Budzinski, Oliver, Monostori, Katalin, Intellectual property rights and the WTO, available at: <http://ndl.iitkgp.ac.in/document/bEFaZ29FRm1Nb21RbmFnOG9OeUhGV1lBaGVNK3pUcWZ1c2puQWRTOctQZz0>(last visited on 07/07/2021)

Protection Intellectual property Rights are not considered only on a national level as well as planned by the International community. International law is always functioning on peace and security in the world. In this context, firstly Paris Convention for the Industrial Property was played a significant role to evaluate the IPR. The Paris Convention was amended many times²¹but it is not successful for promotion and protection of the intellectual property system. The sustentative part of the convention dealt with three categories²² -



The needs have an effective organization to balance the rights and interests of different groups of creators and consumers; of businesses and their competitors of high- and low-income countries known as WIPO. In 1891, Madrid Agreement was concerning the International Registration of Marks and passed the Protocol Relating to that agreement that the explained strategic plan to deals with registration of new ideas and innovation. The impact of these conventions is very vital and effective the reason Australia, the USA and India have passed legislation for example Digital Agenda Act, Digital Millennium Copy Right Act, Information Technology Act and Communications Convergence Act. TRIPS are a Multidisciplinary agreement that provides security of creation, knowledge, trademarks and invention. In India, the development of technology has increased matter related infringement of intellectual property, the department for the promotion of Industry and Internal Trade has released Annual Report on IP application²³ last five years mentioned below Chart 3-

WORDS SPEAK

²¹ Firstly revised at Brussels in 1900, Second at Washington in 1911, Third at The Hague in 1925, Fourth at London in 1934, Fifth at Lisbon in 1958, Sixth at Stockholm in 1967, and was amended in 1979.

²² Summary of the Paris Convention for the Protection of Industrial Property, available at: (1883)https://www.wipo.int/edocs/pubdocs/en/intproperty/442/wipo_pub_442.pdf(last visited on 8/07/2021).

²³ Annual Report, 2018-2019, Intellectual Property India, The Office Of The Controller General Of Patents, Designs, Trade Marks And Geographical Indications, Department For Promotion of Industry and Internal Trade.

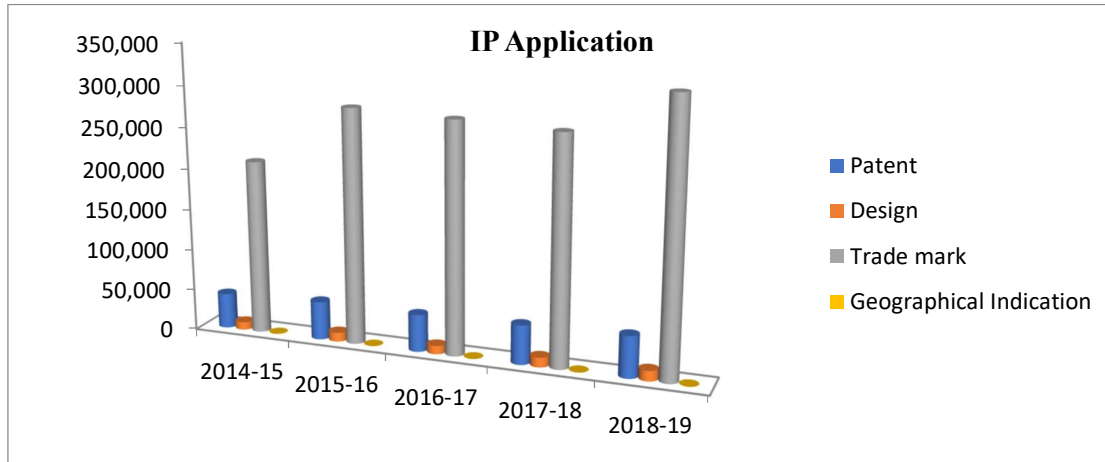


Chart No.3: Annual Report, 2018-2019, Intellectual Property India

After analysis of the above data it indicates IP application increased during 2018-2019 in India. It should be noted that the Intellectual Property application concerning Trade Marks is increased more rather than other Intellectual property like patent²⁴, design²⁵ & Geographical Indication²⁶. Now discussed the details of revenue received²⁷ and expenditure concerning Intellectual Property administration for the year 2018-19 as compared to the last year are given below in chart-4

²⁴ Patent Information System is supervised the matter related patent in India. The main objectives of the system to obtain and maintain a comprehensive collection of patent specification and patent related literature on worldwide basis to meet the needs of technological information of various users in R&D establishments, Government organizations, Industries, businesses, Inventors and other users and to provide technological information contained in patents through search services and supply of copies of patent specifications.

²⁵ The Designs Act, 2000, is deals with new features of new shape, innovative configuration, unique surface pattern, ornamentation and composition of lines or colours, etc.

²⁶ Geographical Indication is an intellectual property recognized by the TRIPS agreement. Its confers a sign used on any products related geographical process.

²⁷ Annual Report, 2018-2019, Intellectual Property India, the Office of the Controller General of Patents, Designs, Trade Marks and Geographical Indications, Department For Promotion of Industry and Internal Trade.

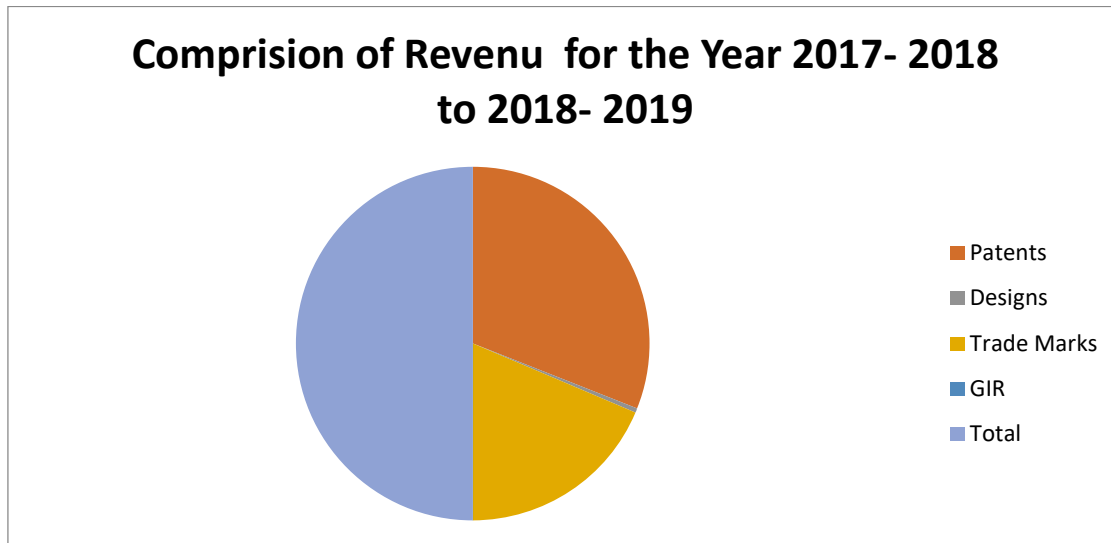


Chart No.4: Annual Report, 2018-2019, Intellectual Property India

Chart four is indicated the intellectual property also becomes a big source of revenue. The Annual report, 2019 of the Department for Promotion of Industry and Internal trade has announced the status of intellectual property in the field of revenue. It is a vast role to generate economic stability. The government of India has connected with IP office established by the western democratic countries namely-

- ❖ Patent Office of European²⁸.
- ❖ Intellectual Property Office²⁹, Canada.
- ❖ Danish Patent and Trademark Office
- ❖ Intellectual Property Office, European Union
- ❖ INPI – IP Office, France
- ❖ Regional Intellectual Property Organization³⁰, African
- ❖ Intellectual Property Office³¹, UK
- ❖ Patent and Registration Office, Swedish
- ❖ Intellectual Property Organization³² (OAPI), African

²⁸ European Patent office, available at:<https://www.ipcentrum.com/>(last visited on 8/07/2021).

²⁹ CIPO, available at: <http://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/home>(last visited on 8/07/2021).

³⁰ The organization is inter- governmental organization to provide cooperation member states, available at: <https://www.aripo.org/>(last visited on 8/07/2021).

³¹ The UK government has established office of Intellectual property, available at: <https://www.gov.uk/government/organisations/intellectual-property-office>(last visited on 8/07/2021)

No doubt, an excellent effort has done by the government of India for the security of IPR in a digital era. The property right is a constitutional right so that IPR is including Article 300A and Article 19(1)(a) of Public law of India.

LEGISLATIVE RESPONSE: INDIAN PERSPECTIVE

Post-independence, the Indian legal system is focused development of technology, science, and prevention of misuse of IPR; for this reason, the Parliament has passed the copyright Act, 1957 that provides a remedy to infringement of copyright. Our Indian constitution has conferred the right to freedom of speech and expression and includes protection of intellectual property right however intellectual property is part of the term expression under Article 19 of the constitution of India.

The Right to Information Act, 2005 is very glorious and effective legislation to set a limitation of digital society and remedy. To achieve the principle of transparency and turned the system into good governance with the functioning of IP offices. All appropriate information with observation to a mixture of activities has been made accessible on the official website for proactively provided that information to the public and stakeholders. In addition, without delay measures were taken on all applications acknowledged under the Act in strict conformity with the legislative intent and mandate of the RTI Act. The main objective of the Act³³ is to provide a democratic system to all concerned with transparency, responsibility, active and, good governance.

The Copyright Act, 1957 refers protection of original work. It provides a remedy when anyone infringement the copyright. The Federal Court of Australia in **Telstra Corporation Limited v Desktop Marketing Systems Pvt. Ltd.**³⁴ has explained the importance of copyrights and Justice Raymond Finkelstein has observed that the low altitude and weak level of creativity and originality are protected under Copyright Law.

The Patent Act, 1970 provides a lot of protection concerning Intellectual property rights. Section 3 & 4 refers to the valuable and unique invention as a basic part of the Patent Act, 1970³⁵. The Trademarks Act, 1999 has

³² African Intellectual Property Organization has setup by the African government by the Bangui Agreement in 1977, available at: https://www.wipo.int/export/sites/www/patent_register_portal/en/docs/oapi.pdf(last visited on 8/07/2021).

³³ Right to Information Act, 2005.

³⁴ (2001) FCA 612.

³⁵ Patent Act, 1970, available at: https://ipindia.gov.in/writereaddata/Portal/IPOAct/1_31_1_patent-act-1970-11march2015.pdf (last visited on 8/07/2021).

passed by the parliament with obligations of TRIPS and demand of globalization. It provides a simple registration process and method and its protection. In *Yahoo Inc. v. Akash Arora*³⁶

GOVERNMENT POLICIES: SECURITY OF INTELLECTUAL PROPERTY RIGHTS

The Indian parliament has passed The Indian Government has launched awareness programmes on Intellectual Property Rights in collaboration with Public Sector undertakings³⁷, industries, scientific societies, etc. The World Intellectual Property Organization on Copyright Treaty and WIPO Performers and Phonograms have formulated a strategic plan for member states and to encourage make effective legislation and schemes for the security of copyrights, trademarks, and patent rights, etc. It also enlarges the treatment of copyright to the internet and digital environment. Both the treaties provide a framework for creators and right owners to use technical tools to protect their works and safeguard information about their use, for example, Protection of Technological Protection Measure & Rights Management Information. It is played a vital role and provides a secure platform for the trademarks & design intellectual property.

CONTEMPORARY ISSUES: INTELLECTUAL PROPERTY RIGHTS

With the modernization, acceptance of the digital era we all enjoyed all benefits of technology. Another side, a lot of problems is facing by the public at large for example data protection, machine learning, privacy, cybercrime, etc. Many contemporary issues are before the protection of the IPR. They are following as-

- ❖ Lack of awareness & Knowledge of Intellectual property rights.
- ❖ Lack of deep learning, machine learning & self-learning.
- ❖ Lack of skill development of technology of the gross root level.
- ❖ Failure of implementation of legislation concerning Intellectual property rights.
- ❖ Lack of effective review committee on Intellectual property rights
- ❖ Lack of technical knowledge and its better use.

CONCLUSION & SUGGESTIONS

This is concluding remarks the Intellectual Property Rights is a fundamental right with a legal right as well. It is not a new conception to use the human intellect that has been in existence for a long time, with the 18th & 19th centuries. Concerning others, mental ability, inventions, ideas are incorporated in International Law and national legal plans. With the progress of the digital regime has originated contemporary issues regarding IPR.

³⁶ 1999 PTC 201

³⁷ Department of public Enterprises are dealing public sector undertakings, and Industrial Management Pool including intellectual property rights.

Legislative response & government policies are well but not successful to prevent infringement of intellectual property rights. Thus, need to awareness respect of for another hard work, and labour. It is crucial to know about the laws, rules and regulations of legal Intellectual Property Rights. The rights are given a lesson to all do value to others & own work, ideas, innovation. In this context, suggest the Government of India focus on the spread of awareness about rights confers under IPR law. There are different types of IPRs relating to different aspects. The Digital era demands extraordinary thinking about the protection of Intellectual property and the rights related to it.

Acknowledgement: I thank God and Shrmti Aasha Devi to encourage me and motivated to write a research paper on contemporary issues of intellectual property rights in the digital era.

REFERENCE:

- ❖ Indian Constitution, 1950.
- ❖ Copyright Act, 1957.
- ❖ Patent Act, 1970
- ❖ Trademarks Act, 1999
- ❖ Right to Information Act, 2005
- ❖ Annual Report 2018-2019, Department for promotion of Industry and Internal Trade
- ❖ World Intellectual Property Rights Organization.