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# INFLUENCE OF PATENT LAW ON FINANCIAL SYSTEM OF INDIA: A BRIEF REPORT

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**Abstract:**
Protection of Intellectual Property is very important for developing countries like India. In the past two to three decades, number of changes have been made to the policy and regulation in India to increase the protection of intellectual property. The first Patent Law of India came into being in 1856 which was subsequently repealed by the Act of 1857 and the same was enacted without the approval of the British Crown. The Patent system in India indirectly affects the economic growth of India. Indian Patent Law was amended in compliance with the TRIPS agreement after India became a signatory. As a result, many MNCs (Multinational Companies) started investing in India. MNCs also started their R & D (Research & Development) process in India which has indirectly increased the economic growth of India.

**Introduction:**
Protection of IP (Intellectual Property) is very important for developing countries like India. In the past two to three decades, number of changes have been made to IP policy and regulation in India to increase the protection of intellectual property i.e. patent, trademark, copyright, design and geographical indication. India signed the TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreement in the year 1994 which came into effect from 1st January, 1995. In India, pharmaceutical patents were not granted prior to 1995, which changed after the TRIPS agreement came into effect and brought about the amendment of 1995 in the Patent Act, 1970. Section-5 of the Patent Act, 1970 which stated that patent is granted only for methods or processes and not for products was repealed after the amendment of 2005 and hence, today, patent is not only granted for methods or processes but also for pharmaceutical products which has had a very huge impact on the growth of Indian economy. A patent is one of the most effective of the intellectual properties for achieving economic development. The number of Indian patent applications filed in recent days has increased as compared to previous years and as a result, have led to the growth in economy. At present the well-established multinational companies in India has clearly proven the effect of intellectual property for the growth of economy in the world.

**Former Patent Law:**
Earlier multinational companies were not interested in taking up research and development as process in India due to problems, mainly relating to the implementation of IP laws and the risk of infringement at a preliminary stage. The first Patent Law of India came into being in 1856 which was subsequently repealed by the Act of 1857 and the same was enacted without the approval of the British Crown. Fresh legislation for patent law as Act XV of 1859 was introduced by the British Crown in 1859 which was

based on the United Kingdom Act of 1852. In 1911 "The Indian Patents and Designs Act" came which replaced all the previous Acts and the Act brought patent administration under the management of Controller of Patents for the first time. After the Independence new patent law was made i.e. Patent Act, 1970 which came into force in 1972 because it was felt that the previous Act i.e. The Indian Patent and Designs Act, 1911 was not fulfilling its objective.

**Patent Law after TRIPS Agreement:**

In 1994 India signed the TRIPS agreement and hence Patent Laws of India were further amended according to the TRIPS agreement. Earlier patent was granted only for method or process in India which was amended in compliance with the TRIPS agreement in the year 2005. After that patents are not just granted for method or process but also for products. Advantage of this amendment is taken by various companies and individuals. The number of Indian patent applications has increased after this amendment. Recently, various national and multinational companies started their research and development process and investing in India as the implementation of IP laws in India are better, as compared to earlier patent system in India and various provisions relating to infringement of patent law is defined in Patent Act, 1970.

| Year | 1999-2000 | 2001-2002 | 2004-2005 | 2005-2006 | 2009-2010 | 2012-2013 | 2015-2016 | 2016-2017 |
|---|---|---|---|---|---|---|---|---|
| No. of patent application filed in India | 4824 | 10,592 | 17,466 | 24,505 | 34,287 | 43,674 | 46,904 | 45,444 |

**Table 1: Patents filed in India from 1999 to 2017**

A survey was conducted on the filing of patent application in India from the year 1999 to 2017. The survey clearly shows a rise in the number of patent application from year to year after the signing of the TRIPS agreement by India and also shows a very high rise in the number of patent application after the years 2004-2005 as section-5 of patent act, 1970 was repealed in the year 2005.

**Impact of Patent on Economic Growth of India:**

The Patent system in India indirectly affects the economic growth of India. Now that India has proper laws in place for the protection of intellectual property and their implementation is good enough to place trust on the same, a number of multinational companies have started their research and development process in India which has indirectly increased the economic growth of the country with the increase in payment of taxes and providing employment to the people of India. Ranbaxy is a multinational company founded in 1961 wherein 1,700 people were employed in 2005 and in the year 2012, the number of employees increased to 10,983. It is observed that the high rise in the number of employees indirectly increases the economic development of India. Dr.Reddy is another Indian multinational company founded in 1984 and 7,525 people were employed in 2006 and in the year of 2018, the number of employees increased to 23,524 as it can be clearly seen that more than 200% growth in the number of employees in a company was made possible in 12 years which resulted in increase in the economic growth of the country. The total revenue generated by intellectual property offices of India was Rs. 608.31 crores in the year 2016-17 while total expenditure was only Rs. 129.8 crores. Total

revenue generated by patent office was Rs. 410.03 crores and the remaining were generated by other intellectual property like Trademark, Geographical Indication, Design and Copyright.

Pharmaceutical companies of India are the third largest in the world owing to the production of generic drugs at very cheap rates and exporting these drugs to many countries like Africa, Latin America and other Asian countries because the cost of production in India is very low as compared to USA and Europe. According to the report of WIPO (World Intellectual Property Organization) pharmaceutical patent application is the second largest subject matter in India and this was jumped after the year 2005 when India enacted the law that allowed product patents. Pharmaceutical industry of India has grown from 6 billion US Dollar in 2005 to 30 billion US dollar in 2015 and it is expected to go up to 55 billion US Dollar by 2020.

**Conclusion:**

Indian Patent Law was amended in compliance with the TRIPS agreement after India became a signatory. As a result, many MNCs (Multinational Companies) started investing in India. MNCs also started their R & D (Research & Development) process in India which has indirectly increased the economic growth of India and has provided employment to the people of India. At present India needs to invite more MNCs for investing and starting their R & D process in India. This way, the economy of India will increase. Pharmaceutical Industry of India has grown from 6 billion US Dollar to 30 billion US dollar over last ten years, this is because many Pharmaceutical MNCs have invested and started their research and development process in India after the year 2005.

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# INTELLECTUAL PROPERTY RIGHTS IN INDIA - AN OVERVIEW

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**Abstract**

India is one of the UKs priority overseas markets. If you plan to do business in India, or if you are already trading there, it is essential to know how to use, guard and enforce the rights you have over the intellectual property (IP) that you or your business own. This guide explains about IP in general, and gives guidance on how to apply these principles in the Indian market. It describes the issues you may face with IP infringement in India, offers advice on how you can effectively tackle these, and provides links to sources of further help.

In 1485 the first system of protection of intellectual property came in the form on Venetian Ordinance historically. In England in 1623 it was followed by Statue of Monopolies, which extended rights of patents for Technology Inventions. In 1760, patent laws were introduced in The United States. Between 1880 and 1889 patent laws of most European countries were developed. In the year 1856 in India Patent Act was introduced which remained in force for more than 50 years which was later modified and revised and was called "The Indian Patents and Designs Act, 1911". A complete bill on patent rights was enacted after Independence in the year 1970 and was called "The Patents Act, 1970".

Intellectual property rights have grown to a position from where it plays an important role in the global economy's development over the past two decades. In 1990s, laws and regulations were strengthened I this area by many countries unilaterally. In the multilateral level, there was enhanced protection and enforcement of IPRs to the level of solemn international commitment because of the successful conclusion of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in World Trade Organization. There is a vast domain of intellectual property. Designs, Copyrights, and Patents Trademarks since a long time have received recognition. Newer forms of the protection are also developing particularly encouraged by the stimulating emergence in technological and scientific activities.

The Law on the subject is covered by the Copyright Act; the Trade and Merchandise Marks Act; Patents Act and the Designs Act. These are mainly based on the English law on the subject. The law is poised for fundamental changes to meet the international commitment of the Indian Government under the TRIPS/WTO Agreement.

**Key words:** Intellectual Property, Copyright Act, the Trade and Merchandise Marks Act, Patents Act and the Designs Act.

**Introduction**

The recognition and protection of these rights is of recent origin. Patents, designs and trademarks are considered as industrial property. As per International Convention for the protection of industrial (Paris Convention) the protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations or origin and the repression of unfair competition when copyrights, Geographical indicators, layout Designs and confidential information were included to industrial property, they all become intellectual property.

With the trade related Aspects of Intellectual Property Rights (TRIPS) Agreement of World Trade Organisation (WTO), the intellectual property rights attained the authority to enforce the law internationally. According to TRIPS, the intellectual property rights are:

**What are intellectual property rights?**

Intellectual property (IP) 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.

Common types of IP include:

**Copyright** – this protects written or published works such as books, songs, films, web content and artistic works;

**Patents** – this protects commercial inventions, for example, a new business product or process;

**Designs** – this protects designs, such as drawings or computer models;

**Trademarks** – this protects signs, symbols, logos, words or sounds that distinguish your products and services from those of your competitors.

IP can be either registered or unregistered.

With **unregistered** IP, you automatically have legal rights over your creation. Unregistered forms of IP include copyright, unregistered design rights, common law trademarks and database rights, confidential information and trade secrets.

With **registered** IP, you will have to apply to an authority, such as the Intellectual Property Office in the UK, to have your 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. Copyright is also register able

1) Copyright and Related Rights

a) Rights of artists, painters, musicians sculptors, photographers, and authors for copyright in their works;

b) Rights of computer programmes whether in source or object code for a copyright in their programmes and compilation data;

c) Rights of performers producers of phonogram's and broadcasting organizations in respect of fixation on their programmes for copyright in their work.

2) Right of traders in their trade marks.

3) Right of manufacturers & producers on geographical indication in relation to such products and produce.

4) Right of designers for their distinctive design striking to the eye.

5) Patents:

a) Right of the inventor for patent is his invention.

b) Rights of plant breeders and farmers.

c) Rights of biological diversity.

6) Right of computer technologist for their layout design of integrated circuits.

7) Right of businessmen for protection of their undisclosed information on technology and management.

**Copyright**

Copyright protection in India is available for any literary, dramatic, musical, sound recording and artistic work. The Copyright Act 1957 provides for registration of such works. Although an author's copyright in a work is recognised even without registration, it is advisable to get the same registered since it furnishes prima facie evidence of copyright in a court of law.

Infringement of copyright entitles the owner to remedies of injunction, damages and accounts.

Copyright in a literary, dramatic, musical or artistic work (other than a photograph) published within the lifetime of the author subsists for fifty years from the lifetime of the author. An Amendment Bill is on the anvil to extend the term in favour of performers[1] (at present twenty five years) to fifty years (in order to bring it in accord with the TRIPS Agreement). The amendment also aims to bring original works relating to satellite broadcasting, computer software and digital technology under copyright protection. With the issuance of the International Copyright Order, 1999, the provisions of Copyright Act have been extended to nationals of all World Trade Organization (WTO) Member countries.

**Trade Marks**

The law relating to registration of trade marks is governed by the Trade and Merchandise Marks Act, 1958. A distinctive mark (as defined) can be registered under the said Act. In case of infringement of registered trademarks, the statutory remedies of injunction, damages, accounts and delivery up of infringing labels and marks are available. An action for "passing-off" would lie in relation to an unregistered mark under certain circumstances.

In order to simplify the law and meet India's international obligations under the TRIPS, a new law called the Trade Marks Act, 1999 has been passed but has not yet been brought into force. Extensive changes have been introduced by the new Act. The major changes are given below:

- Definition of a 'mark' is extended to include the shape of goods, packaging, and combination of colours.
- Service Marks: These would now be allowed to be registered.
- Well Known 'Mark': An application for registration of a mark may be refused if it is similar or identical to a well known mark.
- Collective marks: The new Act will permit registration of marks in favour of associations of persons as "collective marks". Collective marks are defined as signs which distinguish the geographical origin, material, mode of manufacture, quality or other common characteristics of goods or services used or intended to be used, in commerce, by the members of a co-operative, an association, or other collective group or organisation.
- Duration of registration: The 7 year's period available under the existing Act has been increased to 10 years, extendable by further periods of ten years each.
- Multiclass registration applications: Applicants would be able to file a single application for marks capable of registration in number of classes.
- Infringement of a mark: Offences relating to trade mark infringement have been dealt with more severely under the new Act.

**Patents**

The subject is covered by the Patents Act, 1970. India recognises product patent protection for a period of 14 years. However, in three areas: food, chemicals and pharmaceuticals, it recognises only a process patent for a period of 7 years. With the signing of the GATT Agreement, the Patents Act, 1970 has been amended by the Patents (Amendment) Act, 1999 to bring it in line with the Trade TRIPS Agreement. The amended law would allow the filing of all product patents with a regulatory authority. It also contains provision for granting Exclusive Marketing Rights (EMRs) for five years or till the patent is granted or rejected whichever is earlier.

The Patents (Second Amendment) Act 2002[2] recently passed by the Parliament provides protection for new micro organisms and proposes a uniform 20 year term from filing date for all patents granted after commencement of the Act. It also provides for publication of all patent applications within 18 months of filing or priority date, whichever is earlier.

**Industrial Design**

The Designs Act, 2000 protects certain designs. The features of shape, configuration, pattern, ornament or composition of lines or colours applied to any 'article' whether in two or three dimensional forms (or both), by an industrial process which appeals to the eye can be registered under the said Act. The

Designs Act 2000 brought into force in May 2001 entitles an applicant to apply for registration in more than one class. However, registration is granted for only one class. Furthermore detailed classification of designs has been incorporated conforming to the international regime.

Copyright in the design under the 2000 Act would be protected for a period of 10 years from the date of registration.

**Geographical Indication**

The Geographical Indication of Goods (Registration and Protection) Act, 1999, was enacted to register and protect geographical indicia of goods that originate from or are manufactured in a particular territory, region or even locality. These goods include agricultural, natural or manufactured goods that are distinct from similar products due to quality, reputation or any other characteristic that is essentially attributable to their geographical origin. Under the Act, such distinctive geographical indicia can be protected by registration. The Act thus facilitates promotion of Indian goods when exported overseas and in turn protects consumers from deception.

An application for registration of a geographical indication can be made by any authority, organization or association of persons representing the interest of the producers of the concerned goods. Registration would entitle a registered proprietor, or a duly authorized user, to the exclusive right of usage of that particular geographical indication with respect to the goods for which it is registered and to obtain relief for any infringement thereof. It may be pointed out however, that non-registration does not mean non-protection of a rightful user. Registration affords better protection in an action for infringement.

The validity of bona fide registration of a geographical indication as a trade mark prior to the coming into force of the Act will not be affected by this enactment and will be treated as valid under the laws relating to trade marks.

**Trade marks**

India's trade mark laws consist of the 1999 Trade Marks Act and the Trade Marks Rules of 2002 and 2017.

The regulatory authority for patents is the Controller General of Patents, Designs and Trade Marks under the Department of Industrial Policy and Promotion. The police now have more robust powers in enforcing trade mark law, including the ability to search premises and seize goods suspected of being counterfeit without a warrant. But these powers are tempered by the requirement for the police to seek the Trade Mark Registrar's opinion on the registration of the mark before taking action. This adds to the delay and may result in counterfeit goods being removed or sold.

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 widespread practice of 'cyber squatting' – 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 – it is advisable for rights owners to register their domain names in India as trademarks as soon as possible.

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**

- To enjoy most types of intellectual property (IP) rights in India, you should register them.
- For patents, individual registrations must be made in India, but for rights other than industrial designs you can apply under the terms of the Patent Cooperation Treaty, which is usually easier and quicker.
- For trademarks, you should register them within India, either through the domestic trade mark system or under the Madrid system.
- For copyright, no registration is required but registering copyrights with the copyright authorities is advisable.

'Priority rights' under the Paris Convention can help in the local registration of trademarks, designs and patents by allowing rights previously registered elsewhere to become effective in India, if filed within a time limit.

**Enforcing IP rights in India**

IP rights can be enforced by bringing actions to the civil courts or through criminal prosecution. India's IP laws set out procedures for both civil and criminal proceedings, as does the Competition Act. Criminal proceedings do not apply to patent and design infringements.

A disadvantage of civil litigation is that you are unlikely to recover large damages, and punitive damages against an infringer are rare. However, if you 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. Damages are routinely awarded in cases of copyright piracy and trade mark infringement (which come under criminal litigation); less so in patent cases. Over the years, however, decisions in favour of foreign companies against local infringers have demonstrated the judiciary's impartial approach.

As in other countries, the Indian Government brings actions in criminal cases, although in most cases actions follow complaints to magistrates or police authorities by rights owners. Criminal proceedings against infringers carry the prospect of much harsher remedies, including fines and imprisonment.

Mediation or negotiation with an infringer can also be effective as an alternative form of dispute resolution. The Civil Procedure Code provides for a formal mediation process.

**Self-help considerations**

There are various things you can do to make it harder in general for infringers to copy your product. For example, you could:

I. Think about the design of your product, and how easy it would be for somebody to reproduce it without seeing your original designs;

II. When you hire staff, have effective IP-related clauses in employment contracts. Also make sure you educate your employees on IP rights and protection;

III. Have sound physical protection and destruction methods for documents, drawings, tooling, samples, machinery etc.;

Make sure there are no 'leakages' of packaging that might be used by counterfeiters to pass off fake product;

Check production over-runs to make sure that genuine product is not being sold under a different name

**Potential problems faced in India and how to deal with them**

India's intellectual property (IP) legislation covers every significant aspect of the protection of IP. The regulations relating to all forms of IP have been amended or reissued in recent years, mainly in response to India's accession to the World Trade Organisation in 1995.

Although Indian IP law is thorough and generally comparable with European IP laws, there are still significant concerns over IP enforcement. A major cause for concern in enforcement is bureaucratic delay, with a backlog of cases at both the civil and criminal courts. This means that cases can run for five years or more. There is also a lack of transparency, particularly at a local level.

A significant feature of the IP environment in India is the large number of small players infringing IP rights. This means that seizures tend to be small, which requires a sustained and financially draining effort in order to make an impact.

An advantage for UK businesses operating in India is that the legal system is based on common law, as in the UK, so the fundamental processes are familiar.

**Avoiding problems**

The most important way to avoid problems when defending IP rights in India is to be prepared. To make sure that you can anticipate any potential issues, you should:

Take advice from Indian IP rights experts at an early stage on how to protect your IP – prevention is better than cure;

A. Consult publications and websites on Indian IP rights and protection in general;

B. Carry out risk assessment and due diligence checks on any organisations and individuals you deal with;

C. Take professional advice from other experts – for example lawyers, local diplomatic posts, Chambers of Commerce and the UK India Business Council;

D. Talk to other businesses already doing similar business in India;

E. Consult agents, distributors and suppliers on how best to safeguard your rights;

F. Check with trade mark or patent attorneys to see whether there have been previous registrations of your own marks, or other IP, in India;

G. Stick to familiar business methods – don't be tempted to do things differently because you're trading in a different country.

**Who should take responsibility for your IP protection?**

You should make sure that everyone in your business takes some responsibility for IP protection. Many businesses depend on the integrity of their IP, and it can often be one of their most valuable assets. So it should be given proper attention by both management and employees, as well as other businesses that you have relationships with.

It may be sensible to nominate a manager to have particular responsibility for understanding and protecting your IP rights. In businesses with legal departments, a legally-trained manager would be a good choice.

**Where to get intellectual property help in India**

Whether you're resident in and doing business in India, or trading internationally with the country, there are a number of professional organisations that can offer you advice and support:

The British High Commission, New Delhi offers advice on working with India, including details of cultural relations. It provides a full range of diplomatic, consular and business-related services:

1) https://www.gov.uk/government/world/organisations/british-high-commission-new-delhi
2) The UK India Business Council (UKIBC) helps and supports British businesses with regard to trade with India: http://www.ukibc.com
3) The Department for International Trade (DIT) India has a range of online information on doing business in India: https://www.gov.uk/government/world/organisations/department-for-international-trade-india
4) Local law firms in India can offer you legal advice and services specific to your business. The Chambers and Partners website offers a search facility listing Indian local law firms: http://www.chambersandpartners.com/Asia/Search/Location/110

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# TAX INCENTIVES FOR IPR
# CASE STUDIES ON INCOME TAX AND START-UPS UNDER ACTS INVOLVED IN GOVERNMENT SCHEME

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## INTRODUCTION

The relevance of intellectual property as an asset has just surged in the last few decades and has become a strong foot for the economic development of the nations. Reasons like global competition, high innovation risks, short product cycle, need for rapid changes in technology, high investments in R&D, production and marketing & more signifies the need to have systems in place which boost up the creation of intellectual property assets. An undermined organizational structure which catalyses the research and development of intellectual property assets in a country is taxation. A good IP taxation regime and efficient royalty policies would persuade the authors and artist to come up with more original & artistic work and expand the number of technology or know-how transfers into India.

Intellectual property is an intangible property that are creations of the mind. To protect this property certain rights are awarded to the creator to protect his property. These rights are known as intellectual property rights. Currently, Indian legislation has passed Acts to protect the intellectual property of individuals and companies.

### Copyright Act, 1957

This Act governs the copyright law in India and its origin can be traced back to the era of British colonial rule. It was the first post-independence copyright legislation in India. In its duration the Copyright Act, 1957 has been amended six times, most recently in 2012.

### The Patent Act, 1978

The Patent Act, 1970 along with the Patent Rules 1972, came into effect in 1972. It replaced the pre-independence legislation of Indian Patents and Design Act, 1911. The Patent Act was passed mainly due to the recommendations of the Ayyangar Committee report. Furthermore, India has become a signatory to international agreements and has brought its laws to modern standards.

### Trademark Act, 1999

The protection of trademarks in India is under the governance of the Trademark Act, 1999. It deals with the process of registration and protection of trademarks. The law also provides for the transfer of such rights, the infringement of such rights as well as the punishment for such infringements. Before the passing of the Act, the trademark law was based on the common law of equity-based on English law. After becoming a member of TRIPS the 1999 Act was passed to meet the compliance of its regulations.

**Geographical Indication of Goods (Registration and Protection) Act, 1999**

India is a member of the World Trade Organisation passed the Act for the protection of GI's and its usage. The Act came into force in 2003.

Intellectual property and the rights that protect them are important for the practice of fair and transparent commercial practices. Intellectual property is a recognisable asset much like physical property. The need to have them protected by law to ensure that such property is not stolen and misused is paramount for encouraging inventors and creators.Types of intellectual property

There are five types of intellectual properties.

**Copyright:**

Copyright is the right a person has over a literary or artistic creation. The right protects the property from being exploited by others without the consent of the creator. Copyright protects films, novels, computer programs, music compositions etc.

**Industrial Designs:**

Industrial designs are mainly ornamental in nature, they may be in a two dimensional or three-dimensional form. The value of these designs is more aesthetic than practical in most cases. Therefore to be protected under law it must be non-functional and more ornamental in nature. The articles that make the product more appealing and attractive.

**Geographical Indication:**

Geographical indications are signs that are used on products to show their particular geographical origin. This is to convey the quality or the reputation of the product due to its place of origin. The main industry that uses geographical indications is the agricultural industry. Such as tea from Darjeeling or green apples from Kashmir. They convey the quality of the product due to its origin. It is considered an intellectual property that is protected so as to stop misrepresentation by commercial operators.

**Patent:**

A patent is an exclusive right awarded to an invention. This invention may be a new product or new process for doing something. It can also be a technical solution to something. Such patent protection is given for a limited period of 20 years to the holder of the patent. A patent protects the inventor from the exploitation of his invention by third parties, it protects the monetary interest of the inventor.

**Trademark:**

A trademark is a unique sign that certain goods or services were provided by a particular company or individual. The concept of a trademark came to be long ago where artists and craftsmen left unique marks or signatures to their product. In today's system, the trademark has to be registered for it to be protected by law. Such protection ensures that the owners of the trademark have to exclusive right to use them to identify their goods or service. Like the period of imitation upon patents, the protection awarded to the trademark also has a limitation period. Such a period may vary, but the difference

between patents and trademark in this aspect is that trademarks may be renewed an indefinite number of times.TAX STRUCTURE IN INDIA

The manufacturing of an IP includes various transactions which are taxed separately:

**DEDUCTION :** The capital used for research and development of an IP which is the pre-existing stage including the analysis cost, manufacturing cost, etc is treated as an expense which is to be deducted from the gross income for further calculation of income tax

**INCOME:** The income received as royalty by transfer of IP is treated and taxed under the Income Tax Act, 1961. To promote innovation in the country, royalty income is given tax incentives

**GOODS AND SALES TAX:** Tax on Sale/ Transfer/ Licensing/ Assignment of the intellectual property.

Once the IP is created, it can be commercialized either by integrating it into products and selling them or the right to use the IP can be transferred- temporarily or permanently and is subject to taxation under the Indian Taxation system of direct and indirect taxes.

**INCOME TAX**

**ROYALTY:** Royalties are taxable income and also a business expense. If you receive royalties from someone for use of your property, you must claim these payments as business income.

Explanation 2 to Section 9(1)(vi) of Income Tax Act elaborates the definition of royalty. Income by way of royalty is taxable under the Income Tax Act except in respect of any right, property or information used or services utilized by a resident, outside India or for the purposes of making or earning any income from any source outside India

Royalty income is taxable in respect of any right, property or information used or services utilized by a non- resident, in India or for the purposes of making or earning any income from any source in India.

If such income is payable in pursuance of an agreement made before the 1st day of April 1976, and the agreement is approved by the Central Government, is not taxable.

**DEPRECIATION:** Section 32(1)(ii) of the Act accounts for depreciation of the intellectual property as expenditure for the purpose of calculation of income tax.

**EXPENDITURE:** Section 35A of the Income Tax Act 1961 explained the expenditure on acquisition of patents and copyrights rights.

Depreciation over the acquired patents and copyrights shall be claimed over a period of time when the consideration is paid in lump sum.

In a scenario where the consideration if paid on periodical timeline, the depreciation can be claimed as expenditure fully incurred for the purpose of business.

Provided any expenditure incurred after the 28th day of February 1966 but before 1st April 1998, on the acquisition of patent rights or copyrights for the purpose of business, deductions will be allowed

for each of the previous years on an amount equal to the appropriate fraction of the amount spread over 14 years.

Deductions are not applicable to amalgamating companies in the case of amalgamations, if the amalgamating company sells or otherwise transfers the rights to the amalgamated company (being Indian company).

Section 35AB states that where the assessed has paid any lump sum consideration for acquiring any know-how for the use of his business, the expenditure for the same shall be deductable in six equal instalments for six years:

One-sixth of the amount so paid shall be deducted in computing the profits and gains of the business for that previous year, and the balance amount shall be deducted in equal instalments for each of the five immediately succeeding previous years.

**DEDUCTIONS:** Section 80 GGA talks about certain other deductions for scientific research which are provided under the head "deduction in respect of certain donation for scientific research or rural development" – Any sum paid to for scientific research or to a university, college or institution to be used for scientific research. The research work for the development of a patent comes under the umbrella of scientific research.

Under present laws, expensed deductions and additional weighted deductions are permitted to all taxpayers for R&D expenditure.

Such weighted deduction is restricted to 150% of the expenditure from tax year 2017/18 to tax year 2019/20. Thereafter, deduction will be restricted to 100% of the expenditure.

Section 80-O provides and that no deduction shall be allowed in respect of the assessment year beginning on the 1st day of April, 2005 and for subsequent years for income from patents.

Section 80 OQA states that a deduction of 25% shall be allowed from any income obtained by the author in exercise of his profession on account of any lump sum consideration for the assignment or grant of any of his interests in the copyright of any of his books or of royalty or copyright fees.

**Exceptions to 80 OQA :** No deduction in case of:

Dictionary, Thesaurus, Encyclopaedia, any book that has been added as textbook in the curriculum by any university for degree of graduate or post graduate course of the university, or

Book which is written in any language specified in the 8th schedule of the constitution or in any other language as the Central Government by notification in the official gazette specifies for the promotional need of the language.

Section 80QQB, highlights the deductions to be made in respect of royalty income of authors of certain books other than text-books

Section 88 RRB deals with the deductions on payment of royalties for patents. In some cases, the total income earned by an individual on a Patent can be divided into royalty and additional income classified

not under royalty. In all cases, the income received as royalty alone is eligible for tax deduction, it states that when income is received as a royalty, the whole income or Rs. 3 lakhs (whichever is lesser) shall be deducted.

When a compulsory license is being granted in respect of any patent, the terms and conditions of the license agreement shall decide the status of the income by way of royalty for the purpose of allowing deduction under this section which shall not exceed the amount of royalty

Deductions under Section 80 RRB can be claimed only upon satisfaction of a few basic criteria by the inventor:

The individual claiming a deduction should be an Indian resident.

Only patentees can claim this tax deduction. Individuals who do not hold the original patent are not eligible for tax benefits.

The patent under Section RRB in question should be registered under the Patent Act of 1970, either on or after April 1, 2003.

Patent Box Regime: Section 115BBF provides concessional rate of taxation at 10% on royalty income in respect of exploitation of patents granted under Patents Act, 1970 and is only applicable to Indian resident who is a patentee (eligible taxpayer). The total income of eligible taxpayer must include income by way of royalty in respect of patent developed and registered in India and at-least 75% of the expenditure is incurred in India by eligible taxpayer for invention No other expenditure is allowed under the tax provisions if concessional tax rate under Section 115BBF is availed.

The eligible taxpayer has an option to avail the benefit of Section 115BBF is exercised in any year but he is required to continue to avail the benefit for next 5 years because in case option is not exercised in any of such 5 years, he shall not be eligible to take the benefit under the section for the next 5 years following such year in which option is not exercised.

Treatment of Capital Expenditure and Revenue Expenditure: While talking about the tax liability, the difference between revenue and capital expenditure is a critical one. A revenue expense is deductable from a business' chargeable income, while capital expenditure is not.

The Hon'ble Supreme Court in case of Assam Bengal Cement Companies Ltd. v. CIT, observed that "If the expenditure is made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business it is properly attributable to capital and is of the nature of capital expenditure. If, on the other hand, it is made not for the purpose of bringing into existence any such asset or advantage but for running the business or working it with a view to produce the profits, it is a revenue expenditure. The aim and object of the expenditure would determine the character of the expenditure whether it is a capital expenditure or revenue expenditure."

**START-UPS AND SME'S**

While talking about Start-ups and Small & Medium Enterprises, there is always confusion in the minds of people in respect of difference between the two. What is a startup, and how is it different from an

SME? Let's first see the difference between the two. Startup is basically an industry which has been in existence for a period not more than 7 years and has a turnover not exceeding 25 Crores whereas SME's are enterprises with an investment upto 1 Crore in Plant and Machinery. The main objective of a startup is to work in innovation and development of products and processes and thus, government has come up with special tax exemptions to promote such startups

**TAX EXEMPTION FOR STARTUPS:**

Startup-India, to flagship initiative facilitated by of the Indian Government, intended to catalyze startup culture and build a strong and inclusive ecosystem for innovation and entrepreneurship in India. The two main points in the 19-point Action plan to be taken into consideration in respect of intellectual property envisaged for Startup India includes easier IPR facilitation and better tax benefits and easier compliance.

**SECTION 80- IAC:**

Post getting recognition a Startup may apply for Tax exemption under section 80 IAC of the Income Tax Act. Section 80 IAC of Income Tax Act, 1961 provides for Income tax exemption to recognized startups for any 3 consecutive years out of a block of 7 years (10 years for startups from Bio-Technology Sector) from the date of its incorporation. Eligibility Criteria for applying to Income Tax exemption (80IAC): The entity should be a recognized Startup

Only Private limited or a Limited Liability Partnership is eligible

The Startup should have been incorporated after 1st April, 2016

**SECTION 56-Income Tax Act (ANGEL TAX)**

Post getting recognition a Startup may apply for Angel Tax Exemption. Eligibility Criteria for Tax Exemption under Section 56 of the Income Tax Act:

The entity should be a DPIIT recognized Startup

Aggregate amount of paid up share capital and share premium of the Startup after the proposed issue of share, if any, does not exceed INR 25 Crore.

Other Benefits for Intellectual Property for Startups:

**FAST-TRACKING OF STARTUP PATENT APPLICATIONS AND FACILITATION HEPLINE**

**FACILITATION COST:** The Central Government shall bear the entire fees of the facilitators for any number of patents, trademarks or designs that a Startup may file, and the Startups shall bear the cost of only the statutory fees payable.

**REBATE ON FILING OF APPLICATION:** Startups shall be provided an 80% rebate in filing of patents vis-a-vis other companies, helping them spare costs in the crucial formative years.

**GOVERNMENT SCHEME FOR MSME**

"Support for International Patent Protection in E&IT (SIP-EIT)" is a scheme launched by the Department of Electronics and Information Technology to provide financial support to MSMEs and Technology Start-Up units for international patent filing. SIP-EIT Scheme captures the growth opportunities in the area of information technology and electronics. This scheme encourages indigenous innovation and also recognise the value and capabilities of global IP. The Reimbursement limit has been set to the maximum of Rs. 15 Lakhs per invention or 50% of the total charges incurred in filing and processing of a patent application, whichever is lesser.

This support scheme can be applied at any stage of international patent filing by the applicant. However, the reimbursement will only be applicable to expenditures incurred from the date of acceptance of a complete application by DeiTY subject to the approval of the competent authority.

**CASE STUDIES**

**1. CIT Vs. Neyveli Lignite Corporation ltd. [(2000) 243-ITR-459 (Mad.)]**

The Court observed that the term 'royalty' normally connotes the payment made by a person who has exclusive right over a thing for allowing another to make use of that thing which may be either physical or intellectual property or thing. The exclusivity of the right to the thing for which royalty is paid should be with the grantor of that right.

**2. CIT Vs. HEG Ltd. [(2003 ) 263-ITR-230 (MP)]**

High Court held that payment for every information is not royalty some sort of expertise or skill is required. In this case payment was made for purchase of data on carbon graphite electrode industry.

**3. Goa Carbon Ltd. Vs V.M. Muthuramalingam & Anr. [( ) 251-ITR-348 (Mum.)]**

High Court held that consideration of services rendered only by sending two persons for a specified period to start the working of the machinery in an agreement for transfer of technology is 'Royalty' & not 'Fees for Technical Services'.

**4. IMT Labs (India) Pvt. Ltd. [(2006) 287-ITR-450 (AAR)]**

Advance authority ruled that payment made for use of software through internet on the server situated in USA. It was held that the software on the server is scientific equipment licensed to be used for commercial purpose and therefore the payment was held to be Royalty.

**5. Wipro Ltd. Vs. ITO [(2005) 94-ITD-9 (CESTAT)]**

Tribunal held that payment made to avail the users' licence which allows electronic access to the services offered by the foreign company which is highly specialized and researched industry information in 'secret information' and hence royalty u/s 9(1) (vi) as well as the DTAA except for payments of professional fees in respect of consulting services, which will be 'Fees for Included Services' under the DTAA.

**6. DIT Vs. Sheraton International Inc. [(2009) 313-ITR-267 (Delhi)]**

ITC and Sheraton entered into an agreement for development of tourism, maximizing foreign exchange earning, etc. Sheraton's expertise was to be utilized for publicity, marketing and advertising of hotel business. Use of Sheraton's trade name and trade mark was incidental to main services. Sheraton was compensated as a percentage of room sales. ITO held that payment was for royalty. Tribunal held that payment was for publicity marketing and advertising of hotel business was neither royalty nor FTS. Delhi High Court approved the ITAT's decision.

**7. International Hotel Licensing Co. [(2007) 288-ITR-534 (AAR)]**

The applicant, a non-resident company, entered into an agreement with the Indian company ( a Marriott Group Hotel). As per the agreement Indian company would participate in the marketing business promotion programmes and that the applicant would provide, inter alia, advertising space in magazines, news papers and other printed media and electronic media which would be conducted by it outside India for Marriott Group of Hotels word wide. Advance Authority of Ruling held that the payment of annual contribution of 1.5 percent of the gross revenues of the hotel made by the Indian company was for rendering managerial and consultancy services. Thus, it was held to be Fees for Technical Services.

**Overview**

Start-ups and SME's both are governed by the general taxation provisions in respect of intellectual property under The Income Tax Act, 1961 and GST. Taking into consideration additional tax exemption benefits, the government has provided for better tax exemption schemes, patent protections and more flexible public procurements for the start-ups with the main objective of working towards innovation and development of products and processes. On the other hand, the SME's are granted with better financing facilities at lower interest rates over leveraged tax benefits.

Some of the tax planning techniques used subject to GAAR provisions in treaty/domestic laws:

Form a base company in a favourable jurisdiction which is used to own the intellectual or other intangible property belonging to the group. The objective of such a structure is either the accumulation of profits in a low tax country, the elimination or reduction of withholding taxes, or the use of a country providing a deduction for the amortization of the intangible, while reducing the corporate taxes of the manufacturing company through a licence fee.

Another form of exploiting IP is licensing. A licence is a form of direct sale whereby a licensee is authorized to manufacture or distribute the licensor's product or technology, in consideration for royalty payments or some other form of reward. Licensing is a mid-point between exporting products abroad and commencing overseas production.

**References**

1) The imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill ;

2) The use or right to use any industrial, commercial or scientific equipment but not including the amounts referred to in section 44BB;

3) The transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but not including consideration for the sale, distribution or exhibition of cinematographic films ; or

4) The rendering of any services in connection with the activities referred to in sub-clauses (*i*) to (*iv*), (*iva*) and (*v*).

5) Section 9(1)(vi) of The Income Tax Act, 1961

6) https://abcaus.in/wp-content/uploads/2019/02/startup.pdf

7) Startup India Scheme

8) SIP-EIT Scheme, https://www.indiafilings.com/learn/sip-eit-scheme/

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# NEW NATIONAL IPR POLICY AIMS, OBJECTIVES & OPERATIONAL ISSUES INVOLVED IN IMPLEMENTING DYNAMIC IPR POLICIES IN INDIA

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**Introduction**

Creativity and innovation have been a constant in growth and development of any knowledge economy. There is an abundance of creative and innovative energies flowing in India. The evolution of the film and music industry; the contribution of the Indian pharmaceutical sector in enabling access to affordable medicines globally and its transformation to being the pharmacy of the world; a strong and dynamic software industry; a considerably diverse handicraft and textile industry; richness and versatility of the Indian systems of medicines such as Ayurveda, Unani, Siddha and Yoga; the advances made in the Indian space programme and the pioneering role of our scientists in keeping it cost effective; these are but a few examples of these energies. While India has always been an innovative society, much of the intellectual property (IP) created remains unprotected both on account of lack of awareness and the perception that IP protection is either not required or that the process to obtain it is unnecessarily complicated. The rationale for the National IPR Policy lies in the need to create awareness about the importance of intellectual property rights (IPRs) as a marketable financial asset and economic tool. India has robust IP laws and a strong IP jurisprudence. The legal framework does reflect the underlying policy orientation and national priorities, which have evolved over time, taking into account development needs and international commitments. An all-encompassing IPR Policy will promote a holistic and conducive ecosystem to catalyse the full potential of intellectual property for India's economic growth and socio-cultural development, while protecting public interest. Such a policy will nurture the IP culture, guiding and enabling all creators and inventors to realize their potential for generating, protecting and utilizing IPRs which would contribute to wealth creation, employment opportunities and business development. This policy shall weave in the strengths of the Government, research and development organizations, and educational institutions; corporate enters including MSMEs, start-ups and other stakeholders in the creation of an innovatonconducive environment. It will complement the strengths of our substantive laws with transparent, predictable and efficient administrative and procedural mechanisms as also well-informed adjudicatory structure.

The broad contours of the National IPR Policy are as follows:

**Vision Statement:**

An India where creativity and innovation are stimulated by Intellectual Property for the benefit of all; an India where intellectual property promotes advancement in science and technology, arts and culture, traditional knowledge and biodiversity resources; an India where knowledge is the main driver of development, and knowledge owned is transformed into knowledge shared.

**Mission Statement:**

Stimulate a dynamic, vibrant and balanced intellectual property rights system in India to:

- foster creativity and innovation and thereby, promote entrepreneurship and enhance socio-economic and cultural development, and
- focus on enhancing access to healthcare, food security and environmental protection, among other sectors of vital social, economic and technological importance.

**BALANCING ACT**

The National IPR policy has been announced by the government with a tagline of 'Creative India, Innovative India' to incentivize entrepreneurship, creativity and innovation and curb manufacturing and sale of counterfeits. The seven objectives of the policy include IPR public awareness; stimulation of generation of IPRs, need for strong and effective laws and strengthening enforcement and adjudicatory mechanisms to combat infringements. The policy seeks to promote R&D through tax benefits available under various laws and simplification of procedures for availing of direct and indirect tax benefits. Increasing awareness about IPR will help in building an atmosphere where creativity and innovation are encouraged, leading to generation of protectable IP that can be commercialized. Bringing the Copyright Act and the Semiconductor Integrated Circuits Layout-Design Act under the Department of Industrial Policy and Promotion (DIPP) would benefit industry and individuals. Commercial importance (of IPRs) will be better affected when it is under one roof and particularly with the ministry which is so oriented for promotion of such activities.

The IPR policy aim is to create awareness about economic, social and cultural benefits of IPRs among all sections of society. Moreover, the window for trademark registration would be brought down to one month by 2017. The policy aims to create and exploit synergies between all forms of intellectual property (IP), statutes concerned and agencies. There are seven objectives that guided the policy mechanism, which include IPR public awareness, stimulation of generation of IPRs, need for strong and effective laws and strengthening enforcement and adjudicatory mechanisms to combat infringements. The policy also puts a premium on enhancing access to healthcare, food security and environmental protection. It is expected to lay the future road map for intellectual property in India, besides putting in place an institutional mechanism for implementation, monitoring and review. It balances consideration of inventability, innovation and public health consideration."

The National Intellectual Property Rights (IPR) Policy 2016 was adopted on 12.5.2016 as a vision document to guide future development of IPRs in the country. This has led to the following achievements:-

**i. Strengthening of Institutional Mechanism**

The administration of Copyright Act, 1957 and Semiconductor Integrated Circuits Layout-Design Act, 2000 has been transferred to Department of Industrial Policy and Promotion. This has enabled an integrated approach and synergy between different IP offices and Acts. Under the Finance Act 2017, the Copyright Board has also been merged with the Intellectual Property Appellate Board (IPAB).

**ii. Clearing Backlog/ Reducing Pendency**

Various steps undertaken by the Government, including augmentation of technical manpower, have resulted in drastic reduction in pendency in IP applications. The patent applications pending for examination have reduced from 1,97,934 as on 31.3.2016 to 1,39,274 as on 31.10.2018. As regards trademarks, the number has come down from 2,59,668 to 32,619 in the same period.

iii. Automatic issuance of electronically generated patent and trademark certificates has been introduced.

**Increase in Filings**

Patent filings have increased by nearly 7% in the first 8 months of 2018-19 vis-à-vis the corresponding period of 2017-18.

Trademark filings have increased by nearly 28% in this duration.

**iv. IP Process Re-engineering**

Patent Rules, 2003 has been amended to streamline processes and make them more user friendly.

Expedited Examination of patents is now permitted on certain grounds. In fact, the shortest time taken to grant a patent recently has been just 81 days from the filing of the request for examination.

Totally revamped Trade Marks Rules, 2017 have been notified on 6th March, 2017.

Nearly 200 international MoUs received from various Central Ministries/ Departments/ organizations have been vetted from IPR angle in time bound manner in the past 1 year.

India has acceded to the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT), which extend coverage of copyright to the internet and digital environment.

**v. Creating IPR Awareness**

IPR Awareness programs have been conducted in over 200 academic institutions, including rural schools through satellite communication, and for industry, police, customs and judiciary.

**vi. IPRs in School Syllabus**

Content on IPRs has been included in the NCERT curriculum of Commerce stream.

**vii. Technology and Innovation Support Centres (TISCs)**

In conjunction with WIPO, 6 TISCs have been established in various institutions across different states.

**viii. Global Innovation Index (GII)**

India's rank in the GII Report issued by WIPO has improved from 81$^{st}$ in 2015 to 57$^{th}$ place in 2018.

**ix. IPR Enforcement Toolkit for Police**

A IPR Enforcement Toolkit have been prepared to assist police officials in dealing with IP crimes, in particular, Trademark counterfeiting and Copyright piracy.

While there is no specific scheme to establish IP Centres in all universities in India, State Governments have been approached to establish IPR Cells in various academic institutions; IPR Cells have been established in 41 universities across different States. In addition, 'Institution Innovation Councils' (IICs) have been set up in more than 1000 Higher Education Institutions (HEIs) through the Innovation Cell at AICTE under the Ministry of HRD.

Intellectual Property Rights (IPRs) are private rights which are applied for, and enforced, by the owner of the concerned IP. IP professionals from the relevant fields, including legal field, assist them in this regard. In particular, 2240 Patent agents and 702 Trademark agents have been registered under the relevant provisions of the Patents Act, 1970 and Trade Marks Act, 1999 respectively by the Controller General of Patents, Designs and Trademarks. Further, an advocate registered under the Advocates Act can directly work as Trademarks Attorney for filing/processing of trademarks applications.

**MAIN OBJECTIVES**

**OBJECTIVE 1: IPR AWARENESS-OUTREACH AND PROMOTION**

Create a national program to raise awareness about the benefits and value of IPR to rights-holders and the public at large.

Create a climate that inspires creativity and innovation in research and development (R&D), industry, the public and private sectors, educational community and the more rural areas of India in order to help generate intellectual property that would become marketable and thereby profitable.

Promote an outreach program with the slogan: "Creative India, Innovative India."

**OBJECTIVE 2: GENERATION OF IPRS**

Utilize the large supply of talent in science and technology, by conducting a survey to assess and evaluate the potential talent in specific sectors where targeted programs could be put into effect.

Extra attention will be placed on helping innovators and researchers in areas of national interest.

Utilization and generation of IPRs by India's corporate world will be encouraged.

Devise steps to ensure that the IPR regime reaches a broad base of inventors and start-ups.

**OBJECTIVE 3: LEGAL AND LEGISLATIVE FRAMEWORK**

IP laws in India previous to the TRIPS agreement have since been amended or enacted and are in full compliance. This along with other legal decisions provide a secure and efficient legal environment for the marketing and protection of IPRs

Continue the commitment to the DOHA Declaration on TRIPS Agreement and Public Health and protect the diverse mix of traditional medical knowledge from exploitation.

**OBJECTIVE 4: ADMINISTRATION AND MANAGEMENT**

Establish a cost conscious and efficient environment for which to manage IPRs, by tasking the Department of Industrial Policy and Promotion (DIPP) to administer the Copyright Act of 1957, the Semiconductor Integrated Circuits Layout Design Act of 2000 as well as create a Cell for IPR Promotion and Management (CIPAM).

**OBJECTIVE 5: COMMERCIALIZATION OF IPR**

Create a program for the purpose of bringing together designers and innovators with investors, funding institutions and users so that the financial value of IPRs could be realized.

**OBJECTIVE 6: ENFORCEMENT AND ADJUDICATION**

Protect IP by fostering reverence for IP laws amongst society. Educate inventors and producers of IP as to their rights and the means to protect those rights.

Build up enforcement agencies and bolster IPR cells within police forces.

Create methods of identifying counterfeiting and piracy. Hold IP rights educational seminars for judges to help expedite the determination in IPR disputes. Explore an Alternative Dispute Resolution system and the creation of special courts for the sole purpose of adjudicating IP disputes.

**OBJECTIVE 7: HUMAN CAPITAL DEVELOPMENT**

Increase the supply of IPR experts in the areas of strategic development, administration, policy, law and enforcement and by that increase the creation of IP and economic prosperity.

**Implementation**

Intellectual property in India is regulated by several laws, rules and regulatons under the jurisdiction of diferent Ministries/ Departments. A number of authorites and ofces administer the laws. The legal provisions need to be implemented harmoniously so as to avoid confict, overlap or inconsistencies among them. It is necessary that the authorites concerned administer the laws in coordinaton with each other in the interest of efcient administraton and user satsfacton. Legal, technological, economic and socio-cultural issues arise in diferent felds of IP which intersect with each other and need to be addressed and resolved by consensus in the best public interest. Internatonal, regional and bilateral negotatons require developing a common natonal positon in consultaton with diferent Ministries, authorites and stakeholders. The present IP Policy aims to integrate IP as a policy and strategic tool in natonal development plans. It foresees a coordinated and integrated development of IP system in India and the need for a holistc approach to be taken on IP legal, administratve, insttutonal and enforcement related maters.

Thus, the Department of Industrial Policy and Promoton shall be the nodal point to coordinate, guide and oversee implementaton and future development of IPRs in India. The responsibility for actual

implementaton of the plans of acton will remain with the Ministries/ Departments concerned in their assigned sphere of work. Public and private sector insttutons and other stakeholders, including State governments, will also be involved in the implementaton process.

The new Intellectural Property Policy, unveiled by the Finance Minister is in compliance with TRIPS.

Finance Minister Arun Jaitley released India's National Intellectual Property Rights (IPR) Policy recently. The Policy which is in compliance with WTO's (World Trade Organisation) agreement on TRIPS (Trade Related aspects of IPRs), aims to sustain entrepreneurship and boost Prime Minister Narendra Modi's pet scheme 'Make in India.' Here are the highlights:

- ✓ The Policy aims to push IPRs as a marketable financial asset, promote innovation and entrepreneurship, while protecting public interest.
- ✓ The plan will be reviewed every five years in consultation with stakeholders.
- ✓ In order to have strong and effective IPR laws, steps would be taken — including review of existing IP laws — to update and improve them or to remove anomalies and inconsistencies.
- ✓ The policy is entirely compliant with the WTO's agreement on TRIPS.
- ✓ Special thrust on awareness generation and effective enforcement of IPRs, besides encouragement of IP commercialisation through various incentives.
- ✓ India will engage constructively in the negotiation of international treaties and agreements in consultation with stakeholders. The government will examine accession to some multilateral treaties which are in India's interest, and become a signatory to those treaties which India has de facto implemented to enable it to participate in their decision making process, the policy said.
- ✓ It suggests making the department of industrial policy and promotion (DIPP) the nodal agency for all IPR issues. Copyrights related issues will also come under DIPP's ambit from that of the Human Resource Development (HRD) Ministry.
- ✓ Trademark offices have been modernised, and the aim is to reduce the time taken for examination and registration to just 1 month by 2017. The government has already hired around 100 new examiners for trademarks. Examination time for trademarks has been reduced from 13 months to 8 months, with the new target being to bring the time down to one month by March 2017.
- ✓ Films, music, industrial drawings will be all covered by copyright.
- ✓ The Policy also seeks to facilitate domestic IPR filings, for the entire value chain from IPR generation to commercialisation. It aims to promote research and development through tax benefits.
- ✓ Proposal to create an effective loan guarantee scheme to encourage start-ups.

- ✓ It also says "India will continue to utilise the legislative space and flexibilities available in international treaties and the TRIPS Agreement." These flexibilities include the sovereign right of countries to use provisions such as Section 3(d) and CLs for ensuring the availability of essential and life-saving drugs at affordable prices.

- ✓ The policy left the country's patent laws intact and specifically did not open up Section 3(d) of the Patents Act, which sets the standard for what is considered an invention in India, for reinterpretation.

- ✓ On compulsory licensing (CL), India has issued only CL for a cancer drug. Mr. Jaitley said, "We rarely exercise this power." The statement assumes significance as developed countries, including the US, have raised concerns over India issuing the CL. As per the WTO norms, a CL can be invoked by a government allowing a company to produce a patented product without the consent of the patent owner in public interest. Under the Indian Patents Act, a CL can be issued for a drug if the medicine is deemed unaffordable, among other conditions, and the government grants permission to qualified generic drug makers to manufacture it.

- ✓ The IPR policy favoured the government considering financial support for a limited period on sale and export of products based on IPRs generated from public-funded research.

**IPR Ensures Safeguards for Indian Pharma Industry**

The policy comes in the backdrop of the US Trade Representative (USTR), in its annual (2016 edition) Special 301 Report (on the Global State of IPR Protection and Enforcement) retaining India on the 'Priority Watch List' this year for "lack of sufficient measurable improvements to its IPR framework." Though the U.S. concerns include the "rejections" of patent applications for innovative pharmaceutical products due to "unpredictable" application of Section 3(d) of the (Indian) Patents Act, the policy ensure that no changes are made in that Section (which prevents ever-greening of drug patents) and the patent-disabling Compulsory Licensing( CL) regime.

In fact, the IPR Policy states "India shall remain committed to the (World Trade Organization's) Doha Declaration on (WTO's) Trade Related IPR Agreement (TRIPS) and Public Health". There was, however, a bit of apprehension that mention of Doha Declaration and flexibility would mean there would be attempts to find loopholes in TRIPS in order to favour pharmaceutical companies. It also says "India will continue to utilize the legislative space and flexibilities available in international treaties and the TRIPS Agreement." These flexibilities include the sovereign right of countries to use provisions such as Section 3(d) and CLs for ensuring the availability of essential and life-saving drugs at affordable prices.

The IPR Policy says that to have strong and effective IPR laws, which balance the interests of rights owners with larger public interest, steps could be taken — including review of existing IP laws — to update and improve them or to remove anomalies and inconsistencies. The review will be done in consultation with stakeholders. The changes in the laws will be those relating to the Rules on patents, trademarks, copyrights and other IPRs, but the changes will not go beyond India's commitments at the WTO-level.

**Policy at Public Cost**

"The IPR policy is driven by the agenda of IP maximalism, where IP owners' rights will be maximized at the cost of public interest. This (policy) will influence courts and judges. The policy needs to be opposed from becoming a 'National' Policy," said Dinesh Abrol, Convener of the National Working Group on Patent Laws and WTO, a civil society group.

To ensure strong and effective IPR laws, the Policy states India will engage constructively in the negotiation of international treaties and agreements in consultation with stakeholders. The government will examine accession to some multilateral treaties which are in India's interest; and, become signatory to those treaties which India has de facto implemented to enable it to participate in their decision making process. The international treaties and agreements referred to are international IP classification agreements, including the Nice and Vienna Classifications, and not pacts like the Trans Pacific Partnership, which apparently has TRIPS-plus provisions.

**Encouraging IPR Filings**

The IPR Policy also seeks to facilitate domestic IPR filings, for the entire value chain from IPR generation to commercialization. Besides, it also aims to promote research and development through tax benefits. Another significant measure includes the proposal to create an effective loan guarantee scheme to encourage Start-Ups. The IPR policy favoured the government considering financial support for a limited period on sale and export of products based on IPRs generated from public-funded research. We rarely exercise this power. The statement assumes significance as developed countries, including the US, have raised concerns over India issuing the CL. As per the WTO norms, a CL can be invoked by a government allowing a company to produce a patented product without the consent of the patent owner in public interest. Under the Indian Patents Act, a CL can be issued for a drug if the medicine is deemed unaffordable, among other conditions, and the government grants permission to qualified generic drug makers to manufacture it. As per Section 3(d) of Indian Patent Act 1970 marginal alterations would not entitle a company to a new patent. The patent period beyond 20 years could be extended only if there is a fresh invention and not a marginal alteration.

National IPR Policy will allow compulsory licensing with restrictions in case of a public health emergency such as epidemics and it is compliant with the World Trade Organization's guidelines. Every country is entitled to defend its economic interests…monopolies are loved by those who own them. Ours is a balanced approach, taking into account inventability, innovation and public health.

**Operational Issues**

"The policy recognizes that India has a well-established TRIPS-compliant legislative, administrative and judicial framework to safeguard IPRs, which meets its international obligations while utilizing the flexibilities provided in the international regime to address its developmental concerns.

The government has also expanded the scope of the copyright law with the inclusion of music, cinema and industrial drawing, and made the Department of Industrial Policy and Promotion (DIPP) the Nodal Ministry in the matter. IPR cell would be created in every government department and state government to coordinate with DIPP for IPR policy implementation… Approval of national IPR policy will enable coordinated action to foster creativity and innovation and also promote entrepreneurship.

Government has set a target to bring down trademark registration to one month by 2017. For the same, one of the objectives of the IPR policy is to strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs. The total number of patent applications and trademark registration requests pending as on February 1, 2016 were 2,37,029 and 5,44,171, respectively.

Ministry of Commerce is recruiting people and giving them training and modernizing offices about steps to reduce pendency of applications. The registration time for IPRs like trademarks "will come to in line with what is happening around the globe. Apparently, our waiting list will not be longer than the waiting list abroad. Government has taken adequate steps to reduce the waiting list. If India can achieve this timeline it will set a world class standard.

"It is a very progressive policy…the fact that government has said it would revisit IP laws is a good sign in these times of changing technology.

Supporting the idea of clean and green technology from developed countries is good step," said R Saha, advisor, IPR, at industry body Confederation of Indian Industry. India's pharma industry while lauding the policy has expressed concerns over the likely changes to be made to the IPR regime in keeping with global trends. DG Shah, Secretary General at Indian Pharmaceutical Alliance, said, "Unless the government is ready with funding and programmes to ensure access to medicine for all, any change in the legislative frame work would hurt not only the generic industry, but the people of India."

The policy appears to be fair and impartial. We do believe that the balancing act which India has struck is responsible for life-saving drugs available at a reasonable cost in India compared to the rest of the world. Apparently the model adopted seems to be both legal, equitable and WTO compliant. The new IPR policy will give a big boost to R & D and new innovations within the country while steps are being taken to cut waiting period for trademark and patent registrations. Terming the National Intellectual Property Rights (IPR) policy as "a great step forward for India", and would help in creating capacities and institutions to further enhance the robustness of India's IPR regime. "The policy envisages building capacities, institutions and awareness. It will encourage research and development for greater innovation and also look at traditional knowledge systems. The policy aimed at making India's IPR regime far more vibrant. Need of the hour is to have more innovation, R&D (research and development) and commercial use of trademarks and other IPRs."

Though the policy is more vocal on the promotion of modern IP, its comparative silence on the issue of traditional knowledge and the informal creativity/innovations based on it are significant. There is no evidence to show that the modern utility model and trade secret laws are useful to promote informal innovations. No serious efforts, however, are made to find out the actual need of IP in promoting creativity/innovations in both formal and informal sectors. The lip service paid to the importance of traditional knowledge and need for sui generis law for its protection without any details were clear indications.

The policy admitted that the benefits of the new changes in the IP laws in India were being enjoyed by foreign IP holders. This made it clear that the lack of innovation in India had no significance to IP laws, whether "robust, effective and balanced" or not. The policy takes a nuanced position on IPR issues and

states that policy formulation is not intended to have the force of law but merely serve as the guiding principles in the administration and enforcement of IP norms.

IPR Policy, which gave a strong message of supporting the Centre's Make in India Campaign, failed to address the question of whether a strong IP in itself was sufficient enough to attract foreign direct investment. The message is to strengthen IP system in India so that it's a good market for foreign IP holders to exploit their IP and get maximum benefit out of it.

The measures suggested in the policy envisaged large government funding for protecting and promoting foreign IP in India even though it stated that the primary obligation of protecting IP rights was on the IP owners. Moreover, the reference to State legislations in the context of copyright protection showed how the balance in the policy was tilted in favour of IP holders against society.

Better copyright and trademark regime, as promised by the new framework, along with stronger enforcement, would attract more foreign investment into the country. "The approach of the policy towards copyrights and trademarks appears to serve well the needs of foreign companies. Granting rights faster, and a strong enforcement, are also something that will encourage them. "But a lot depends upon the way the government implements the policy. If the balance is lost we will discourage innovating companies. One great thing in the policy is the way it has addressed digital piracy," indicating stricter steps for addressing the issue.

Lots of steps for Start-Ups had been recommended in the policy. The copyright subject matter has been shifted, which will help achieve objective of utilitarian industries like software, telecom and many more. The copyright law that used to be handled by the Human Resource Development Ministry earlier will now come under the new IPR policy.

The Policy recognizes that India has a well-established Trade Related Intellectual Property Rights (TRIPS)-compliant legislative, administrative and judicial framework to safeguard IPRs, which meets its international obligations while utilizing the flexibilities provided in the international regime to address its developmental concerns. India must provide enhanced certainty for the rights of innovators in line with international best practice. While IPRs are becoming increasingly important in the global arena, there is a need to increase awareness on IPRs in India, be it regarding the IPRs owned by oneself or respect for others' IPRs. The importance of IPRs as a marketable financial asset and economic tool also needs to be recognised. For this, domestic IP filings, as also commercialization of patents granted, need to increase. Innovation and sub-optimal spending on R&D too are issues to be addressed.

**Overview**

Creativity and innovation have been a constant in growth and development of any knowledge economy. There is an abundance of creative and innovative energies flowing in India. India has a TRIPS compliant, robust, equitable and dynamic IPR regime. An all-encompassing IPR Policy will promote a holistic and conducive ecosystem to catalyse the full potential of intellectual property for India's economic growth and socio-cultural development, while protecting public interest. The rationale for the National IPR Policy lies in the need to create awareness about the importance of IPRs as a marketable financial asset and economic tool.

The Union Cabinet yesterday approved the National Intellectual Property Rights (IPR) Policy that will lay the future roadmap for intellectual property in India. The Policy recognises the abundance of creative and innovative energies that flow in India, and the need to tap into and channelize these energies towards a better and brighter future for all.

The National IPR Policy is a vision document that aims to create and exploit synergies between all forms of intellectual property (IP), concerned statutes and agencies. It sets in place an institutional mechanism for implementation, monitoring and review. It aims to incorporate and adapt global best practices to the Indian scenario. This policy shall weave in the strengths of the Government, research and development organizations, educational institutions, corporate entities including MSMEs, start-ups and other stakeholders in the creation of an innovation-conducive environment, which stimulates creativity and innovation across sectors, as also facilitates a stable, transparent and service-oriented IPR administration in the country.

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# AN OVERVIEW OF INTELLECTUAL PROPERTY RIGHTS AND NEW INTELLECTUAL PROPERTY RIGHTS POLICY IN INDIA

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**Abstract**

This paper examines innovation and knowledge generation processes and supporting role of Intellectual Property Rights (IPRs) both for systematized investigate of many activities. IPR and its value frequently not effectively valued. In the progressively knowledge- driven economy, IP is a key thought in day-to-day business choices. New products, brands and original designs seem almost daily in the market and are the result of increasing human innovation and creativity. This paper further establishes how IP can become an economic tool and the challenges faced by the entrepreneur in implementing IP System and also driving the knowledge on New IPR Policy.

*Key Words: Intellectual Property, Entrepreneur, Systematized Knowledge, Economy Driven.*

## Introduction

Intellectual intelligence is understanding the facts the concepts behind the facts and the path followed to get those facts that the person with knowledge – type intelligence knows. An intellectual who engages in critical thinking and reading, research and human self- reflection about society, they may propose solutions for its problems and gain authority as a public figure.

Intellectual skills are defined as the methods an individual can use to evaluate or organize information and data. In the 1950s, educational psychologist Benjamin Bloom created a model of intellectual skill that defined abilities such as application, analysis and synthesis as building on basic knowledge.

According to Peter F Drucker, "Innovation means by which a person creates new wealth producing resources or endows existing resources with enhanced potential for creating wealth".

According to London Innovation, "Innovation is the successful exploitation of new ideas and is a vital ingredient for competitiveness, productivity and social gain with businesses, organizations and nations.

Objectives:

1. To encourage scientific research, new technological applications and industry process.

2. To have Grant of exclusive rights to the authorized persons.

3. To stimulate new inventions.

4. To pass the inventions into public domain for new advancements of technology.

5. To enable to understand the New IPR Policy.

Intellectual personality is feelings, behavior, beliefs, attitudes and ways of reasoning, evaluation and a decision making that people utilized when they face with a cultural phenomenon-social, political, religious, historical, economic and then accept or reject it.

A History on Patent Law in India-

- First enactment, the Indian Design and Patents Act was enacted in1911.
- The current act came into force in 1972.
- It was amended in 2005, where in the product patent was extended to all the fields of technology.
- Patents Rights varies from country to country, In India the law which govern patent right is "Indian Patent Act 1970".

The term IPR consists of: Copy Right and Related Rights, Trade Marks and Service Marks,

Geographic Indications, Industrial Designs, Patents, Lay out Designs, Protection of undisclosed information.

Patent refers to a government authority or license conferring a right or title for a set period, especially the sole right to exclude others from making using or selling an invention. A patent is an intellectual property and grant of protection for an invention. It is granted by the U.S. Patent and zTrademarks Office (PTO) and has a term of 14 to 20 tears. Owning a patent gives the right to stop someone else from making, using or selling invention without permission according to the Patents Act 1970.

Patents vs. Copy Right: Patent gives an inventor the right to exclude all others from making, selling or using an inventor for 17 years whereas copy right protects expression but not underlying ideas in books, music, and other works of authorship from the moment they are created.

There are three types of patents:

**a.** Utility Patent - If the government awards the inventions which is new, most valuable and named as "Patent for Invention", lasts for 20 years from the filing date and then becomes a part of the public domain and originality. Ex- Cellphone Applications, Investment Strategies, e-Commerce business solutions, etc.

**b.** Design Patent - It is having a unique visual style. A new thing added to a special design elements and time limit of 14 years and next taken to the public domain. Here patent protects only the physical appearance of the inventions. Ex- Equipment, Machinery, Tools etc.

**c.** Plant Patent - It is rare and specific. Ex- A botanist can file a claim to protect their creation of a new plant species and it lasts for 20 years with proving that specified item is novel, non-obvious.

The purpose of the patent system was to encourage the development of new inventions and in particular to encourage the disclosure of those new inventions. Inventors are often hesitant to reveal the details of their invention, for fear that someone else might copy it. If someone uses that invention without being allowed, the inventor can sue that person in court to make them stop. For example patentable items like- Business Methods, Computer Software, Computer Hardware, Computer Accessories, Games, Internet Advances, Jewellery, Machines, New Composition or Formula, Methods or Process, Tools, Perfumes, Sporting Goods, Musical Instruments etc. The government won't patent an idea. It doesn't matter how revolutionary and creative that idea is something still or not eligible for a patent like- Mathematical Formulas, Laws of Nature, Substances found in Nature, Surgical Methods and Procedures, Drugs.

Only an inventor may apply for a patent on his or her idea. If two or more people participate in the creation of an invention the law requires that all participants apply for a patent as joint inventors.

Ex- Cyber products, such as Data-Compression Software, Encryption Systems and various other network software are particularly difficult to protect on the internet. Because the internet has no geographical boundaries, such as agreement should consider all U.S. foreign and international laws.

Importance of IPR- IPRs are important because they can set business apart from competitors, be sold or licensed, providing an important revenue stream. Offer customers something new and different IP protection is critical to fostering innovation. Without protection of ideas, businesses and individuals would not reap the full benefits of their inventions and would focus less on research and development.

Trade Secrets: Protects secret information. Ex- New Invention-Coke Formula.

Trade Marks: Protects brands. Unlike patents and copy rights, trade marks do not expire after a set period of time. Ex- Apple for cell phones. Over the USPTO, grants a registered trade mark, then the owner must continue to use the trade mark in ordinary commerce.

Copy Rights: Protects works of authorship. To register copy right, need to go to the e -Co online system, create an account and then fill out the online form. The basic fee of $35 file online but e filing takes 3 to 4 months.

Patent: Protects functional and ornamental features. Ex-Swipe feature or iPhone Design.

Referral Case- Funk Brothers Seed Co. vs. Kalo Inoculant Co., 333 U.S. 127 (1948).

Kalo got patents on packaged mutually non-inhibitory rhizobia species for inoculation into the roots of leguminous plants and for the process. Held UN Patentable as, qualities of these bacteria are manifestations of laws of nature.

The first patent for a human product was granted on March 20, 1906 for a purified form of adrenaline. It was challenged and upheld in Parke-Davis vs. Mulford case, Judge argued that natural substances when they are purified are more useful than the original natural substances. Unlike direct issssnfringement, which does not require knowledge of the patent or any intent to infringe. It has become customary to refer under 35 U.S.C. 271 (a) as direct infringement, while grouping 35 U.S.C. 271(b) and 35 U.S.C. 271 (c) together as indirect ways of infringement of a patent.

Ex- Unigene Labs and Upshur smith Lab vs. Apotex, Sidney A, Diamond vs. Chakraborthy.

Patent Publication: Application is kept secret for a period of 18 months from the date of filing. In 19th month, the application published in the official journal and on the website weekly. Ex- Samsung Electronics flagship Galaxy smart phone looks very similar to Apple's iPhone jury has found and Samsung guilty of infringing on Apple's design patent and come in favor of Apple in the U.S. $1.049 billion. Rejected all of Samsung's claims and leading devices may be banned in the U.S.

Ayyangar Committee – In 1957, the Government of India appointed Justice N. Raja Gopala Ayyangar Committee to examine the question of revision of the patent law and advise government accordingly. Based on the committee recommendations, the Patents Act 1970 was passed. This Act repeated the 1911 Act relating to Law of Patents.

IPR refers to the assignment of property rights, assigned to the creators of IP regarding its exclusive use through patents, copy rights and trademarks. These allow the holder to exercise a monopoly on the use of the item for a specific period.

The four types of IP can be legally protected: Patents, Trade Marks, Copy Rights and Trade Secrets.

IP Law- It deals with the rules for security and enforcing legal rights to inventions, designs and artistic works. As law protects the ownership of personal property and real estate. So IPR, protect the exclusive control of intangible assets.

IPRs and Regulation – The regulatory authority for patents is the Patent Registrar under the office of the Controller General of Patents, Design and Trade Marks. Which is part of India's Ministry of Commerce and Industry. Patents are valid for 20 years from the dated of filing an application, subject to an annual renewal fee.

IPR Ways to protect- This keep it under scrutiny. Beware of IPRs consult an expert , double check if idea is unique, Hire an auditor, keep record of almost everything related, protect IP without delay.

IPRs License- IPRs is the authorized body under section 33 of the copy right act to issue a public performance license to any organization or individual playing music in public place or any commercial establishment. The guidelines exists and require to obtain a license.

IP and Protection - IP Laws passed by congress are administered by two government agencies, the U.S. Copy Right Office. Patents give inventors the right to use their product in the market pace or to profit by transferring that right to someone else. Article 1, Section 8, congress power to regulate trademarks is constitutionally grounded in the commerce clause. The US Patent and trade mark office is responsible for issuing and monitoring federally registered patents and trademarks.

IP Protection- Registered Copy Rights, Trade Marks and Patents. Register business, Product or domain names, Create Confidentiality, Non-disclosure or Licensing Contracts for employees and partners, Implement Security Measures, Avoid Joint ownership.

IP Claim- Register the appropriate IP Protection, Pursue foreign Registration, Keep it a secret, Monitor the Market place, Defend the Rights if infringed.

Issues of IPR - This includes copyrights, trademarks, patents and trade secrets. Violations could cost thousands of dollars and even lead to criminal charges and jail time. Avoiding IP Violations is a matter of due diligence and best practices around the use of third- party content. With respect to trade secrets, can be a breach of civil law or criminal law, which depends on the type of IP involved, the jurisdiction and the nature of the action. And simply keeping (R) means a trade mark is registered.

WIPO- World Intellectual Property Organization, was established by the WIPO convention in 1967. The WIPO is a specialized agency of United Nations. It promotes the protection of IP throughout the world. Its headquarters are in Geneva, Switzerland.

**New Industrial Policy in India**

"Creative India, Innovative India"- The Union Cabinet has approved the National Intellectual Property Rights Policy on 12th May, 2016 that shall lay the future road map for IPR in India. This policy recognizes the abundance of creative and innovative energies that flow in India, and the need to tap into and channelizes these energies towards a better and brighter future for all. The National IPR Policy is a Vision document that encompasses and brings to a single platform of all IPRs. This aims to create and exploit synergies between all forms of IP, concerned statutes and agencies. It sets in place an institutional mechanism for implementation, monitoring and review. It aims to incorporate and adopt global best practices to the Indian scenario.

Creating IPR Awareness: IPR Awareness programs have been conducted in over 200 academic institutions, including rural schools through satellite communication and for industry, police, customs and judiciary.

Technology and Innovation Support Centres (TISCs) - In conjunction with WPO,. Six TISCs have been established in various institutions across different states.

IPRs in School Syllabus – Content on IPRs has been including the NCERT curriculum of commerce stream.

Global Innovation Index (GII) – India's ranking the GII Report issued by WIPO has improved from 81st in 2015 to 57th place in 2018.

IPR Enforcement Tool Kit for Police – IPR enforcement tool kit have been prepared to assist police officials in dealing with IP crimes, in particular trademark, counterfeiting and copy right piracy.

Institution, Innovation Council (IICs) – set up in more than 1000 Higher Education Institutions (HEIs) through the innovation cell at AICTE under the Ministry of HRD.

Union Budget 2020: Government promotes Digital Platform for IPRs. While India's technology industry and the startup ecosystem have grown leaps and bounds over the last decade. In a bid to boost innovation in the country, there's an urgent need to bring in reforms in patents and IPRs. So that new innovation is inoculated against IP theft. And to build towards that vision, the Union Finance Minister

Smt. Nirmala Sitaramanji in the budget 2020 pitched for improved IPRs through dedicated, Policy, need to expand knowledge driven enterprises. This will play a crucial role in new firms' creation well. In terms of filing of application, the number of patents has grown by 18% from 2013- 2014 to 2018- 2019 and trademarks have grown 395% in the same period. IPR moves us closer towards an era of enhanced Public Private Partnership where technology will play a decisive role. The Global Innovation Index ranked Indi at 52nd position from 81st in 2015.

**Conclusion**

The importance of IPR and their protection is acknowledged the world over as an essential to business. India too has recognized the value of IP and is now a signatory to various IP treaties and conventions. The Indian Police has appointed specially trained police officers to monitor IP infringement and cybercrimes. IPRs reward creativity, human endeavor, which fuel the progress of humankind. Understanding the country's IPRs and following the best practices can drastically reduce the risk of losing the companies intellectual property. Indian Government has initiated various steps towards IPRs protection.

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# INTELLECTUAL PROPERTY RIGHTS IN INDIA

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Intellectual property rights (IPR) have been defined as ideas, inventions, and creative expressions based on which there is a public willingness to bestow the status of property. IPR provide certain exclusive rights to the inventors or creators of that property, in order to enable them to reap commercial benefits from their creative efforts or reputation. There are several types of intellectual property protection like patent, copyright, trademark, etc. Patent is a recognition for an invention, which satisfies the criteria of global novelty, non-obviousness, and industrial application. IPR is prerequisite for better identification, planning, commercialization, rendering, and thereby protection of invention or creativity. Each industry should evolve its own IPR policies, management style, strategies, and so on depending on its area of specialty. Pharmaceutical industry currently has an evolving IPR strategy requiring a better focus and approach in the coming era.

Intellectual property (IP) pertains to any original creation of the human intellect such as artistic, literary, technical, or scientific creation. Intellectual property rights (IPR) refers to the legal rights given to the inventor or creator to protect his invention or creation for a certain period of time. These legal rights confer an exclusive right to the inventor/creator or his assignee to fully utilize his invention/creation for a given period of time. It is very well settled that IP play a vital role in the modern economy. It has also been conclusively established that the intellectual labor associated with the innovation should be given due importance so that public good emanates from it. There has been a quantum jump in research and development (R&D) costs with an associated jump in investments required for putting a new technology in the market place. The stakes of the developers of technology have become very high, and hence, the need to protect the knowledge from unlawful use has become expedient, at least for a period, that would ensure recovery of the R&D and other associated costs and adequate profits for continuous investments in R&D. IPR is a strong tool, to protect investments, time, money, effort invested by the inventor/creator of an IP, since it grants the inventor/creator an exclusive right for a certain period of time for use of his invention/creation. Thus IPR, in this way aids the economic development of a country by promoting healthy competition and encouraging industrial development and economic growth. Present review furnishes a brief overview of IPR with special emphasis on pharmaceuticals.

The laws and administrative procedures relating to IPR have their roots in Europe. The trend of granting patents started in the fourteenth century. In comparison to other European countries, in some matters England was technologically advanced and used to attract artisans from elsewhere, on special terms. The first known copyrights appeared in Italy. Venice can be considered the cradle of IP system as most legal thinking in this area was done here; laws and systems were made here for the first time in the world, and other countries followed in due course. Patent act in India is more than 150 years old. The inaugural one is the 1856 Act, which is based on the British patent system and it has provided the patent term of 14 years followed bynumerous acts and amendments.

Originally, only patent, trademarks, and industrial designs were protected as 'Industrial Property', but now the term 'Intellectual Property' has a much wider meaning. IPR enhances technology advancement in the following ways

It provides a mechanism of handling infringement, piracy, and unauthorized use

It provides a pool of information to the general public since all forms of IP are published except in case of trade secrets.

IP protection can be sought for a variety of intellectual efforts includingPatents

Industrial designs relates to features of any shape, configuration, surface pattern, composition of lines and colors applied to an article whether 2-D, e.g., textile, or 3-D, e.g., toothbrush

Trademarks relate to any mark, name, or logo under which trade is conducted for any product or service and by which the manufacturer or the service provider is identified. Trademarks can be bought, sold, and licensed. Trademark has no existence apart from the goodwill of the product or service it symbolizes

Copyright relates to expression of ideas in material form and includes literary, musical, dramatic, artistic, cinematography work, audio tapes, and computer software

Geographical indications are indications, which identify as good as originating in the territory of a country or a region or locality in that territory where a given quality, reputation, or other characteristic of the goods is essentially attributable to its geographical origin

A patent is awarded for an invention, which satisfies the criteria of global novelty, non-obviousness, and industrial or commercial application. Patents can be granted for products and processes. As per the Indian Patent Act 1970, the term of a patent was 14 years from the date of filing except for processes for preparing drugs and food items for which the term was 7 years from the date of the filing or 5 years from the

date of the patent, whichever is earlier. No product patents were granted for drugs and food items. A copyright generated in a member country of the Berne Convention is automatically protected in all the member countries, without any need for registration. India is a signatory to the Berne Convention and has a very good copyright legislation comparable to that of any country. However, the copyright will not be automatically available in countries that are not the members of the Berne Convention. Therefore, copyright may not be considered a territorial right in the strict sense. Like any other property IPR can be transferred, sold, or gifted.

Protection of undisclosed information is least known to players of IPR and also least talked about, although it is perhaps the most important form of protection for industries, R&D institutions and other agencies dealing with IPR. Undisclosed information, generally known as trade secret or confidential information, includes formula, pattern, compilation, programme, device, method, technique, or process. Protection of undisclosed information or trade secret is not really new to humanity; at every stage of development people have evolved methods to keep important information secret, commonly by restricting the knowledge to their family members. Laws relating to all forms of IPR are at different

stages of implementation in India, but there is no separate and exclusive law for protecting undisclosed information/trade secret or confidential information.

Pressures of globalisation or internationalisation were not intense during 1950s to 1980s, and many countries, including India, were able to manage without practising a strong system of IPR. Globalization driven by chemical, pharmaceutical, electronic, and IT industries has resulted into large investment in R&D. This process is characterized by shortening of product cycle, time and high risk of reverse engineering by competitors. Industries came to realize that trade secrets were not adequate to guard a technology. It was difficult to reap the benefits of innovations unless uniform laws and rules of patents, trademarks, copyright, etc. existed. That is how IPR became an important constituent of the World Trade Organization (WTO).

Patent is recognition to the form of IP manifested in invention. Patents are granted for patentable inventions, which satisfy the requirements of novelty and utility under the stringent examination and opposition procedures prescribed in the Indian Patents Act, 1970, but there is not even a prima-facie presumption as to the validity of the patent granted.

Most countries have established national regimes to provide protection to the IPR within its jurisdiction. Except in the case of copyrights, the protection granted to the inventor/creator in a country (such as India) or a region (such as European Union) is restricted to that territory where protection is sought and is not valid in other countries or regions. For example, a patent granted in India is valid only for India and not in the USA. The basic reason for patenting an invention is to make money through exclusivity, i.e., the inventor or his assignee would have a monopoly if,

The inventor has made an important invention after taking into account the modifications that the customer, and

If the patent agent has described and claimed the invention correctly in the patent specification drafted, then the resultant patent would give the patent owner an exclusive market.

The patentee can exercise his exclusivity either by marketing the patented invention himself or by licensing it to a third party.

The following would not qualify as patents:

An invention, which is frivolous or which claims anything obvious or contrary to the well established natural law. An invention, the primary or intended use of which would be contrary to law or morality or injurious to public health

**A discovery, scientific theory, or mathematical method**

A mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine, or apparatus unless such known process results in a new product or employs at least one new reactant

A substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance

A mere arrangement or re-arrangement or duplication of a known device each functioning independently of one another in its own way

A method of agriculture or horticulture

Any process for the medicinal, surgical, curative, prophylactic diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products

An invention relating to atomic energy

An invention, which is in effect, is traditional knowledge

A license is a contract by which the licensor authorizes the licensee to perform certain activities, which would otherwise have been unlawful. For example, in a patent license, the patentee (licensor) authorizes the licensee to exercise defined rights over the patent. The effect is to give to the licensee a right to do what he/she would otherwise be prohibited from doing, i.e., a license makes lawful what otherwise would be unlawful.

The licensor may also license 'know-how' pertaining to the execution of the licensed patent right such as information, process, or device occurring or utilized in a business activity can also be included along with the patent right in a license agreement. Some examples of know-how are:

Technical information such as formulae, techniques, and operating procedures andCommercial information such as customer lists and sales data, marketing, professional and management procedures.

Indeed, any technical, trade, commercial, or other information, may be capable of being the subject of protection.

Benefits to the licensor:

Opens new markets

Creates new areas for revenue generation

Helps overcome the challenge of establishing the technology in different markets especially in foreign countries – lower costs and risk and savings on distribution and marketing expenses

Benefits to the licensee are:

Savings on R&D and elimination of risks associated with R&D

Quick exploitation of market requirements before the market interest wanes Ensures that products are the latest

The patent cooperation treaty (PCT) is a multilateral treaty entered into force in 1978. Through PCT, an inventor of a member country contracting state of PCT can simultaneously obtain priority for his/her invention in all or any of the member countries, without having to file a separate application in the

countries of interest, by designating them in the PCT application. All activities related to PCT are coordinated by the world intellectual property organization (WIPO) situated in Geneva.

In order to protect invention in other countries, it is required to file an independent patent application in each country of interest; in some cases, within a stipulated time to obtain priority in these countries. This would entail a large investment, within a short time, to meet costs towards filing fees, translation, attorney charges, etc. In addition, it is assumed that due to the short time available for making the decision on whether to file a patent application in a country or not, may not be well founded.

Inventors of contracting states of PCT on the other hand can simultaneously obtain priority for their inventions without having to file separate application in the countries of interest; thus, saving the initial investments towards filing fees, translation, etc. In addition, the system provides much longer time for filing patent application in the member countries.

The time available under Paris convention for securing priority in other countries is 12 months from the date of initial filing. Under the PCT, the time available could be as much as minimum 20 and maximum 31 months. Further, an inventor is also benefited by the search report prepared under the PCT system to be sure that the claimed invention is novel. The inventor could also opt for preliminary examination before filing in other countries to be doubly sure about the patentability of the invention.

More than any other technological area, drugs and pharmaceuticals match the description of globalization and need to have a strong IP system most closely. Knowing that the cost of introducing a new drug into the market may cost a company anywhere between $ 300 million to $1000 million along with all the associated risks at the developmental stage, no company will like to risk its IP becoming a public property without adequate returns. Creating, obtaining, protecting, and managing IP must become a corporate activity in the same manner as the raising of resources and funds. The knowledge revolution, which we are sure to witness, will demand a special pedestal for IP and treatment in the overall decision-making process.

Competition in the global pharmaceutical industry is driven by scientific knowledge rather than manufacturing know-how and a company's success will be largely dependent on its R&D efforts. Therefore, investments in R&D in the drug industry are very high as a percentage of total sales; reports suggest that it could be as much as 15% of the sale. One of the key issues in this industry is the management of innovative risks while one strives to gain a competitive advantage over rival organizations. There is high cost attached to the risk of failure in pharmaceutical R&D with the development of potential medicines that are unable to meet the stringent safety standards, being terminated, sometimes after many years of investment. For those medicines that do clear development hurdles, it takes about 8-10 years from the date when the compound was first synthesized. As product patents emerge as the main tools for protecting IP, the drug companies will have to shift their focus of R&D from development of new processes for producing known drugs towards development of a new drug molecule and new chemical entity (NCE). During the 1980s, after a period of successfully treating many diseases of short-term duration, the R&D focus shifted to long duration (chronic) diseases. While looking for the global market, one has to ensure that requirements different regulatory authorities must be satisfied.

It is understood that the documents to be submitted to regulatory authorities have almost tripled in the last ten years. In addition, regulatory authorities now take much longer to approve a new drug. Consequently, the period of patent protection is reduced, resulting in the need of putting in extra efforts to earn enough profits. The situation may be more severe in the case of drugs developed through the biotechnology route especially those involving utilization of genes. It is likely that the industrialized world would soon start canvassing for longer protection for drugs. It is also possible that many governments would exercise more and more price control to meet public goals. This would on one hand emphasize the need for reduced cost of drug development, production, and marketing, and on the other hand, necessitate planning for lower profit margins so as to recover costs over a longer period. It is thus obvious that the drug industry has to wade through many conflicting requirements. Many different strategies have been evolved during the last 10 to 15 years for cost containment and trade advantage. Some of these are out sourcing of R&D activity, forming R&D partnerships and establishing strategic alliances.

The race to unlock the secrets of human genome has produced an explosion of scientific knowledge and spurred the development of new technologies that are altering the economics of drug development. Biopharmaceuticals are likely to enjoy a special place and the ultimate goal will be to have personalized medicines, as everyone will have their own genome mapped and stored in a chip. Doctors will look at the information in the chip(s) and prescribe accordingly. The important IP issue associated would be the protection of such databases of personal information. Biotechnologically developed drugs will find more and more entry into the market. The protection procedure for such drug will be a little different from those conventional drugs, which are not biotechnologically developed. Microbial strainsused for developing a drug or vaccine needs to be specified in the patent document. If the strain is already known and reported in the literature usually consulted by scientists, then the situation is simple. However, many new strains are discovered and developed continuously and these are deposited with International depository authorities under the Budapest Treaty. While doing a novelty search, the databases of these depositories should also be consulted. Companies do not usually go for publishing their work, but it is good to make it a practice not to disclose the invention through publications or seminars until a patent application has been filed.

While dealing with microbiological inventions, it is essential to deposit the strain in one of the recognized depositories who would give a registration number to the strain which should be quoted in the patent specification. This obviates the need of describing a life form on paper. Depositing a strain also costs money, but this is not much if one is not dealing with, for example cell lines. Further, for inventions involving genes, gene expression, DNA, and RNA, the sequences also have to be described in the patent specification as has been seen in the past. The alliances could be for many different objectives such as for sharing R&D expertise and facilities, utilizing marketing networks and sharing production facilities. While entering into an R&D alliance, it is always advisable to enter into a formal agreement covering issues like ownership of IP in different countries, sharing of costs of obtaining and maintaining IP and revenue accruing from it, methods of keeping trade secrets, accounting for IP of each company before the alliance and IP created during the project but not addressed in the plan, dispute settlements. It must be remembered that an alliance would be favorable if the IP portfolio is stronger than that of concerned partner. There could be many other elements of this agreement. Many drug companies will soon use the services of academic institutions, private R&D agencies, R&D institutions under government in India and abroad by way of contract research. All the above aspects

mentioned above will be useful. Special attention will have to be paid towards maintaining confidentiality of research.

The current state of the pharmaceutical industry indicates that IPR are being unjustifiably strengthened and abused at the expense of competition and consumer welfare. The lack of risk and innovation on the part of the drug industry underscores the inequity that is occurring at the expense of public good. It is an unfairness that cannot be cured by legislative reform alone. While congressional efforts to close loopholes in current statutes, along with new legislation to curtail additionally unfavorable business practices of the pharmaceutical industry, may provide some mitigation, antitrust law must appropriately step in. While antitrust laws have appropriately scrutinized certain business practices employed by the pharmaceutical industry, such as mergers and acquisitions and agreements not to compete, there are several other practices that need to be addressed. The grant of patents on minor elements of an old drug, reformulations of old drugs to secure new patents, and the use of advertising and brand name development to increase the barriers for generic market entrants are all areas in which antitrust law can help stabilize the balance between rewarding innovation and preserving competition.

Traditional medicine dealing with natural botanical products is an important part of human health care in many developing countries and also in developed countries, increasing their commercial value. The world market for such medicines has reached US $ 60 billion, with annual growth rates of between 5% and 15%. Although purely traditional knowledge based medicines do not qualify for patent, people often claim so. Researchers or companies may also claim IPR over biological resources and/or traditional knowledge, after slightly modifying them. The fast growth of patent applications related to herbal medicine shows this trend clearly. The patent applications in the field of natural products, traditional herbal medicine and herbal medicinal products are dealt with own IPR policies of each country as food, pharmaceutical and cosmetics purview, whichever appropriate. Medicinal plants and related plant products are important targets of patent claims since they have become of great interest to the global organized herbal drug and cosmetic industries.

Writing patent specification is a highly professional skill, which is acquired over a period of time and needs a good combination of scientific, technological, and legal knowledge. Claims in any patent specification constitute the soul of the patent over which legal proprietary is sought. Discovery of a new property in a known material is not patentable. If one can put the property to a practical use one has made an invention which may be patentable. A discovery that a known substance is able to withstand mechanical shock would not be patentable but a railway sleeper made from the material could well be patented. A substance may not be new but has been found to have a new property. It may be possible to patent it in combination with some other known substances if in combination they exhibit some new result. The reason is that no one has earlier used that combination for producing an insecticide or fertilizer or drug. It is quite possible that an inventor has created a new molecule but its precise structure is not known. In such a case, description of the substance along with its properties and the method of producing the same will play an important role.

Combination of known substances into useful products may be a subject matter of a patent if the substances have some working relationship when combined together. In this case, no chemical reaction takes place. It confers only a limited protection. Any use by others of individual parts of the combination is beyond the scope of the patent. For example, a patent on aqua regia will not prohibit

any one from mixing the two acids in different proportions and obtaining new patents. Methods of treatment for humans and animals are not patentable in most of the countries (one exception is USA) as they are not considered capable of industrial application. In case of new pharmaceutical use of a known substance, one should be careful in writing claims as the claim should not give an impression of a method of treatment. Most of the applications relate to drugs and pharmaceuticals including herbal drugs. A limited number of applications relate to engineering, electronics, and chemicals. About 62% of the applications are related to drugs and pharmaceuticals.

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# AN OVERVIEW OF INTELLECTUAL PROPERTY RIGHTS IN INDIA

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## INTRODUCTION

Intellectual Property Rights is the recent branch of law and with the growth of ICT in recent days, IPR and library study have gained more importance. Knowing the basics of intellectual property rights before discussing on the implications of intellectual property rights on library services is felt necessary.

## INTELLECTUAL PROPERTY

Society values the creative fruits of the human mind, believing that they enrich the fabric of life for all of its members. Thus, a system of laws has been developed that confers rights on the creators of these fruits. These rights are collectively known as intellectual property rights, which is commonly abbreviated to 'IPRs' .A category of intangible rights protecting commercially valuable products of the human intellect. Intellectual property is all about the results of human creativity. Its subject matter is formed by new ideas generated by man. Their application to human needs and desires can be of considerable benefit to mankind. New ideas can be embodied in familiar things such as books, music and art, in technical machinery and processes, in designs for household objects and for commercial ventures, and in all other sources of information. TRIPS define intellectual property rights as, the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time The subject matter of intellectual property is very wide and includes literary and artistic works, films, computer programs, inventions, designs and marks used by traders for their goods or services .

### What are intellectual property rights

Intellectual property (IP) 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.

### Common types of IP include

**Copyright** – this protects written or published works such as books, songs, films, web content and artistic works;

**Patents** – this protects commercial inventions, for example, a new business product or process;

**Designs** – this protects designs, such as drawings or computer models;

**Trade marks** – this protects signs, symbols, logos, words or sounds that distinguish your products and services from those of your competitors.

**ORIGIN AND DEVELOPMENT OF INTELLECTUAL PROPERTY**

**Paris Convention**

Paris Convention is an International Convention, which provides the common platform for protection of industrial property in various countries of the world. Prior to the existence of any international convention in the field of industrial property, seeking protection for industrial property in various countries was difficult due to diversity of their laws. Paris convention for the protection of Industrial property was convened in Paris in 1883 and was initially signed by 11 states Convention was revised at Brussels in 1900, at Washington in 1911, at The Hague in 1925, at London in 1934, at Lisbon in 1958 and at Stockholm in 1967 and was amended in 1979 .The Paris Convention addresses patents, industrial design rights, trademarks, well known marks, names and unfair competition The Republic of India is a member of Paris Convention since December 7, 1998. At present total 177 member countries are part of the Paris Convention.

**Patent Co-Operation Treaty**

The Patent Co-Operation treaty is an International treaty, which assists applicants in seeking patent protection internationally for their inventions. It also helps patent offices with their patent granting decisions, and facilitates public access to a wealth of technical information relating to those inventions.

PCT was framed at Washington on June 19, 1970 and the latest amendment to the PCT regulations was done on 1 July, 2017. There are currently 152 contracting countries (Patent Cooperation Treaty, 2017).

**TRIPS Agreement**

**TRIPS (Trade-Related Aspects of Intellectual Property Rights)**

Agreement is a multilateral agreement on intellectual property, which came into force on 1 January, 1995. TRIPS Agreement is administered by WTO (World Trade Organization). It is an attempt to narrow the gaps in the way these rights are protected around the world, and to bring them under common international rules .The agreement operates on a foundation of two of the existing conventions by embodying the substantive provisions of the Paris and Berne Conventions, as well as adding new provisions. The types of intellectual property covered by the TRIPS Agreement are copyright and related rights, trademarks, including service marks, geographical indications, industrial designs, patents, layout-designs of integrated circuits and undisclosed information, including trade secrets. It establishes minimum levels of protection that each government has to give to the intellectual property of fellow WTO members (WTO, 2017).

**Intellectual property rights – systems in India**

**Copyright :** India is a signatory to the Berne Convention on copyright. However, it may be a good idea to register your copyright as doing so may help to prove ownership if there are criminal proceedings against infringers. In most cases though, registration is not necessary to maintain a copyright infringement claim in India. Registration is made, in person or via a representative, with the Copyright Office. Since 2016, copyright policy was moved to India's Ministry of Commerce and Industry. All IPRs

are now administered by the Department for Industrial Property and Promotion (DIPP). Internet piracy of films, music, games and software is an issue in India, as is unauthorised copying of physical books.

**Patents**

India's Patents Act of 1970, 2003 Patent Rules and the 2016 Patent Amendment Rules set out the law concerning patents. As in the UK, there is no provision for utility model patents. The regulatory authority for patents is the Patent Registrar under the office 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.

**Designs**

The laws governing designs are the Designs Act 2000 and the Designs Rules 2001. Designs are valid 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 and 2017. The regulatory authority for patents is the Controller General of Patents, Designs and Trade Marks under the Department of Industrial Policy and Promotion. The police now have more robust powers in enforcing trade mark law, including the ability to search premises and seize goods suspected of being counterfeit without a warrant. But these powers are tempered by the requirement for the police to seek the Trade Mark Registrar's opinion on the registration of the mark before taking action. This adds to the delay and may result in counterfeit goods being removed or sold. 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 widespread 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 – it is advisable for rights owners to register their domain names in India as trade marks as soon as possible. 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.

**World Intellectual Property Organization (WIPO)**

WIPO is the global forum for intellectual property services, policy, information and cooperation, which was established in the year 1967. Mission of the WIPO is to lead the development of a balanced and effective international intellectual property (IP) system that enables innovation and creativity for the benefit of all. WIPO has 191 member states and headquarters is at Geneva, Switzerland. WIPO administers conventions namely, PCT-The International Patent System, Madrid-The International Trademark System, Hague- The International Design System, Lisbon The International system of Appellations of Origins , and Budapest-The International Microorganism Deposit System (WIPO, 2017).

## COPYRIGHT LAW OF INDIA

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work "Copyright" means to do or authorise the doing of any of the following acts in respect of a work, such as literary, dramatic or musical work, not being a computer programme, computer programme, an artistic work, cinematograph film, sound recording (Indian Copyright Act of 1957). Copyright in India is governed by the Copyright Act, 1957, which was came into effect from January 1958. Further, the act was revised and amended time to time in the years, 1983, 1984, 1991, 1994, 1999, and 2012.

## CONCLUSION

Intellectual Property Rights empowers creator or researcher through giving their rights through laws of Intellectual Property Law. Copyright is the law which is basically related to libraries among intellectual property rights laws, which protects author rights. Library is the store house of knowledge viz., books, journals, manuscripts etc. which are protected by copyright and providing access through various means, to provide such knowledge is the primary service of libraries. Fair use is the exception to the copyright law. It is analysed that exception to the libraries under the law is not clear and there is a need for proper interpretation of the law, in relation to libraries. It is observed, The Copyright law of India related to libraries is very vague and there is a need for clear provisions regarding libraries.

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# AN OVERVIEW OF INTELLECTUAL PROPERTY RIGHTS IN PAST, PRESENT ANDFUTURE.

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## I. Origin of Intellectual Property Rights

The origin of intellectual property rights can be traced back to the ancient days when monopolies existed in the Byzantine Empire[83]. Ancient Greece in the 7th century BC granted monopoly to cooks to exploit new recipes for one year. But a few centuries later, Emperor Zeno in Rome rejected the concept of monopoly and in 480 AD, Emperor Zeno ordered that no one should exercise monopoly upon any garment or fish or any kind of thing. By 1432, the Senate of Venice enacted a statute providing exclusive privileges to those inventing any machine or any process to speed up the making of silk. This extended to other devices. Since then any new ideas introduced started obtaining protection. The earliest of the legislations for the protection of intellectual property rights was in the area of patents[84]. Thus, the origin of the intellectual property rights has a link with European enlightenment.[85] During that period people began to think that the knowledge came from the human mind working upon the senses, rather than through divine revelation, assisted bythe study of ancient texts- that it became possible to imagine humans as creators and hence owners of new ideas rather than as mere transmitters of eternal verities.

## II Development of Intellectual Property Rights in international arena :

### A. Early Antecedents of Intellectual Property

The first practice in the development of IPR was the marking of goods. The marks used to indicate reliability and reputation of the craftsman/maker. Marking of owners started with the practice of branding animals the earliest form of proprietary markings , which is evident from the cave painting of ear-cut branding and other techniques like ownership stamps on pottery and other household items excavated from prehistoric sites in Europe and Asia . Indeed the cutting of animal's ears to produce an individualized sign of ownership, using a specific owner's mark is still widespread in agrarian cultures and in modern farming, ear tags (and branding) continue to serve a similar function. For more than 6000 years (perhaps since animals were first domesticated), humans across the globe have marked objects they made, found or obtained resemble modern trademark today. In times of Egyptian and Mesopotamian empires, brick makers marked their products, alongside the name of the ruling king and the owner of the building where the bricks were used. In the Greek city –states, this recognition that a particular goods might be valued more highly by virtue of the identity of the maker started to spread from the material goods to the cultural goods to the culture (and intellectual) realm as well.

B. **Greek Ideas about Owning Ideas:**

In the Greek city-states, direct support by patronage began to be supplemented by prizes for recitation in public as well as for the performances which were paid. The Sophists are the reputed to be the first group to earn significant rewards through their freelance teaching activities.[89] The Sophists were regarded as the teachers of the thinking and doing, they were not recognized as the intellectual providers. It was uncommon to find in Greek culture from the sixth century B.C. onwards poets who claimed to be the authors of specific works and artists who signed their paintings or illustrations. [90] Mladen Vukmir took the appearance of makers' marks (and signature) on works of an art "reliable evidence of recognition of the proprietary nature of artistic activity" being both a "recognition of personal achievement and a warning of ownership" of the creative content. Thereby in Greek society during the sixth and fifth century B.C. we can see the emergence of the idea of creativity that subsequently would underpin the wider ownership of knowledge. The romantic view of the author as individual genius that emerged in the seventeenth and eighteenth centuries therefore finds its distance origins in Greece. Poetry was considered the first creative activity, which was commoditized.

C. **Roman Developments**

Romans use of artisan's marks continued earlier Greek practice. The mark at that time represented the honesty and integrity of the manufacturers thereby it has no legal status and hence there is no recourse against an infringement of a mark. The Roman publishing industry, or more accurately the organized production of multiple copied scribal texts, emerged and expanded in the first century B.C. originally in Alexandria, then moving to Rome in the fifty years before A.D. 100. As had happened previously in Greece, authors were frequently supported by patrons and did not directly receive money from the publication of their works. A new model of authorship slowly developed, with a direct link between author and sale of specific works, and a concept of literary property developed. After the decline of the Roman Empire these early ideas of ownership rights in knowledge or intellectual creations did not entirely disappear.

Saint Columbia, who in the year 567 surreptitiously copied a psalm book, is belonging to his, teacher, Finnian of Moville. When Finnian objected, the dispute went before king Diarmed the King concluded that both the original and copy belonged to Finnian saying, "to every cow her calf, and accordingly every book its copy". Diarmed saw the book as Finnian's property the ownership of which entitled Finnian to its product, the copy. There is a considerable doubt as to whether the reported story took place, but its mythical quality signaled the continuing appeal of authorship and knowledge. During the Middle Ages, however the form of trademark developed from Greek and Roman Empire.

D. **Venetian Moment and Intellectual Property:**

The widespread development of ideas about owning knowledge, the first formalised patent system was only developed in the fifteenth century in Venice. For the first time the legal and institutional form of intellectual property rights established the ownership of knowledge and was explicitly utilized to promote innovation. At that time there was no formal constitution and no clear separation

of authority among legislative, administrative and judicial bodies. Instead, custom and precedent guided government behavior with overlapping authorities. Venice enacted its first patent statue in 1474. The new statute –derived patents were not universally adopted by Venetian innovators, during the fourteenth and fifteenth centuries the granting of patents for monopolies as opposed to innovations was broadly similar across the continent of Europe and Britain. The first known attempt to protect craft knowledge in Venice had been a decree issued by the council of Venice on 21 May 1297that stated: "if a physician makes a medicine based on his own secret, he too must make it only of the best materials; all must be kept within the Guild and all Guild members must swear not to pry into it" by issuing a decree to this effect the council gave limitation on the diffusion of knowledge and the weight of law rather than merely of Guild regulation. In 1549 all Venice's printers and booksellers were organised into guild, which allowed a full record of works to be maintained, authors were dependant on the publishers to secure publication of works through the legal formalization of protectable text.

The Venetian moment produced the skeleton of a system that has been remarkably robust in its central elements. In Venice the invention of something akin to modern intellectual property was in part a response to a new revolutionary information Technology. Printing changed the environment in which knowledge and information could be deployed. It changed the rules of the game for those who sought to profit from their control of ownership of secret process and techniques of privileged information or merely access to important scholarship. During the fifteenth century the institutionalization of the intellectual property not only was directly related to the previous customary practice but remained as a method of providing protection. Certainly there is a coincidence between Venetian success, its domination of printing and the emergence of intellectual property that might imply some casual link. In the conventional justification for patent this link is axiomatic. Although presented

in terms universal principles what the Venetian moment reveals, however that is from its legislative origin, intellectual property was not unduly concerned with the idealized individual and his right but rather it was a government –derived strategy for the development of competitive advantage and effective economic organisation. The 1474 statute was intended to shore up and improve Venice's position in a number of industrial sectors in response to the problems that were starting to beset their commercial empire at the end of the fifteenth century. But this response was driven by logic developed not by the legislators but by those who would gain from a formal ownership regime in knowledge. As intellectual property emerged as an institution, whatever subsequent justification may claim, the rights and interest of the owners of knowledge not its producers were regarded as central to legislative innovation.

The first record of copyright case was *Finnian* v. *Columbia* in 550 AD. The statute of University of Paris in 1223 legislated upon duplication of texts for the University's use. Before the late fifteenth century, works of literature were mainly religious and written by scholarly monks who worked painstaking for considerable periods of time preparing their illuminated books. Obviously, because of the massive human labour and skill required to produce such works, plagiarism of books was usually a viable consideration. Eventually it became apparent that a stronger copyright law was desirable and this was responded to by the parliament through the passing of the copyright Act 1709, popularly known as Statute of Ann (the world's first copyright statute) the statute of Ann vested in authors of books a monopoly over their works, much to the surprise of the publishers.

Unlike the rights granted to publishers by Royal Decree, the statutory right limited to only 14 years, renewable for an additional 14 years by the author. The statute contained a complex system of registration, notice and deposit requirement and strict compliance with those requirements was required by the English courts for many years. The preamble of the Statute of Ann was applied by English Courts for many years as the preamble recognized the importance of copyright as a means of disseminating ideas and information. It reads as "An Act for the encouragement of learning, by vesting the copies of printed books in the authors or purchasers of such copies, during the times there in mentioned ….where as printers, booksellers and other persons have of late frequently taken the liberty of printing, reprinting and publishing or causing to be printed, re printed and published, books and other writings without the consent of the authors or proprietors of such books and writings to their very great detriments, and too often , to the ruin of them and their families."

The process of enlargement of the concept of copyright had begun in eighteenth century. The Engraves Copyright Act 1734, 1766 and 1777 were enacted. In the copyright Acts 1798 and 1814, sculpture were protected, in 1833 right was given in dramatic works, extended to musical works in 1842. In America, Connecticut and Massachusetts had passed Copyrights Acts in 1783. The congress in the same year had recommended to the various states to grant copyright protection to authors and publishers who were citizens of the United States. [101] In 1789 the constitution of the United States of America provided that the congress was authorized to promote the progress of science and useful arts by securing for the limited times, to authors and inventors, the exclusive right to their respective writings and discoveries. The Federal copyright Act 1790 was passed in accordance with the constitutional provision

**III Evolution of an International Intellectual Property Regime:**

The foundation of International Intellectual Property Protection was created in the 19th century at various Congresses in Vienna and the rest of Europe. The protection of Industrial Property was created in Paris Convention in the year 1883. Patents, Trade Marks and Industrial designs were the three main properties that were ranted protection in this convention. In 1998, India became a member of the Paris Convention.

In 1886, International Copyright Act was passed (resulting in the framing of the Berne Convention for the protection of literary and artistic works). The Paris Convention marked the beginning of the International Trade Marks Protection laws and introduced the concept of a well known mark. Special unions and arrangements have been created for the countries who are members of the Paris Convention. Madrid agreement is one special arrangement that was created to standardize the trademarks. Madrid agreement embodies the fundamental principles outlined in the Paris Convention.

The General Agreement on Tariffs and Trade (GATT) was negotiated during the UN Conference on Trade and Employment and was the outcome of the failure of negotiating governments to create the International Trade Organization (ITO). GATT was formed in 1949 and lasted until 1993, when it was replaced by the World Trade Organization in 1995

In 1960 the World Intellectual Property Organization was created. It governs the Paris and Berne Convention. In 1967 World Intellectual Property Organization (WIPO) was established by these conventions. In 1977 World Trade Organization (WTO) was created and become an important

international organization for the development and understanding of IPR; successor to the General Agreement on Tariffs and Trade.

The creation of the United Nations Conference on Trade and Development was based on the concerns of developing countries over the international market, multi-national corporations, and great disparity between developed nations and developing nations. The United Nations Conference on Trade and Development was established in 1964 in order to provide a forum where the developing countries could discuss the problems relating to their economic development. The organization's goals are to maximize the trade, investment and development opportunities of developing countries and assist them in their efforts to integrate into the world economy on an equitable basis·

When world trade began to expand dramatically in the 1960s, national governments began to realize the need for a global set of standards and rules to harmonize national and regional regulations, which until then governed. The United Nations Commission on International Trade Law (UNCITRAL) was established by the United Nations General Assembly in 1966 to promote the progressive harmonization and unification of international trade law·

The importance of intellectual property in India is well established at all levels- statutory, administrative and judicial. India ratified the agreement establishing the World Trade Organization (WTO). This Agreement, inter-alia, contains an Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) which came into force from 1st January 1995. It lays down the minimum standards for protection and enforcement of intellectual property rights in member countries which are required to promote effective and adequate protection of intellectual property rights with a view to reducing distortions and impediments to international trade. The obligations under the TRIPS Agreement relate to provision of minimum standards of protection within the member countries legal systems and practices. The IPR scene in India has undergone a dramatic change since 1995 with the creation of various tools of Intellectual Property·

IPR is already a part of the strategic options in the knowledge industry. In order to ensure sustained growth, enhanced profits and market leadership, many corporations have designed their project management system for

- Optimized use of inter/intra knowledge base

Strategic management of IPR

- External channels for knowledge and inventions as inputs
- Internal expertise to manage research and collaborations
- Clarity on knowledge ownership issues through mutually beneficial licenses
- Pooling of IPR as in the case of several companies who have formed patent pools of their DVD patents for mutual benefits

The emerging scene in the future will seek positive linkages between enhancing competition in society on one hand and establishing legal ownership of innovations on the other. Strongly inter-knitted societal, moral and ethical issues are already influencing approaches to international trade involving technology management, ownership of knowledge and business processes. The IPR 's Agreement provides norms and standards in respect of following areas of intellectual property:

- Patents
- Copyrights and related rights

- Trade Marks
- Geographical Indications
- Industrial Designs
- Layout Designs of Integrated Circuits
- Protection of Undisclosed Information (Trade Secrets)
- Plant varieties

Intellectual property rights are customarily divided into two main areas such as Copyright and rights related to copyright The rights of authors of literary and artistic works (such as books and other writings, musical compositions, paintings, sculpture, computer programs and films) are protected by copyright, for a minimum period of 50 years after the death of the author.

Also protected through copyright and related (sometimes referred to as "neighboring") rights are the rights of performers (e.g. actors, singers and musicians), producers of phonograms (sound recordings) and broadcasting organizations. The main social purpose of protection of copyright and related rights is to encourage and reward creative work.

**A. Patents**

Patent is a statutory right granted for an invention to the inventor or his assignee for a limited period of time, excluding **others** from making, using, offering for sale, selling or importing any **product** covered by a patent or, if a patent is for a **process**, then from using the process or a product obtained by that process, for the above actions. For this purpose, an invention is defined as a new product or process, involving an Inventive Step and capable of Industrial application

***Criteria for Patentable invention***

- An invention should not form a part of the state of the art which is the novelty of its kind.
- The invention that involves technical advance as compared to existing knowledge or has economic significance or both and that makes the invention not obvious to aperson skilled in the art
- The invention is capable of beingmade or used in any kind of industry.
- Patent is valid for 20 years from the date of filing or priority date

The history of patent regime in India is a history of legislative enactments. Even during the British rule in 1859, the grant for exclusive privilege to inventors was passed. The main aim of this Act was to enable the English patent holders to acquire the Indian market. In 1872 the Patent and Design Protection Act was passed followed by the Invention and Design Act 1888. These enactments were to honour the inventors' creativity. The Patent and the Design Act 1911 was a comprehensive piece of legislation. it occupied the field of India till the passing of the 1970 Patent Act.[115] It provided for an elaborate administrative regime under the management of the controller of patent and various time bound procedural requirements for processing of application and filling of objection etc. it was after the several amendments and few committee reports that the Act of 1970 was passed. Considered the failure of the Indian Patent system to stimulate invention and encourage the exploitation of new invention for industrial purposes and suggested that there should be compulsory licenses should be issued and efficient machinery should be evolved to tackle the issue

of abuses.

These recommendations were made part of the Indian Patents and Design Amendment Act 1950 which identified the essential pre-requisites for a nation to assimilate the benefits of a patent system. After the prolonged discussion the Patent Act 1970 was passed. The 1970 Patent Act recognized that

1. patents are granted to encourage inventions and to secure that the inventive works are to be produced on a commercial scale,
2. patents are not granted to enjoy a monopoly in important matters,
3. two kinds of patents are recognized; product patent and process patent,
4. No product patent can be granted to medicines, food items and chemicals except to their manufacturing process.

In TRIPS Agreement, member countries that do not provide for product patent in the same area of pharmaceuticals and agricultural chemicals are required to provide the means to receive product application for such product with effect from the coming in to force of the Agreement (from January 1, 1995) and on completion of certain condition grant exclusive marketing rights for a period of five years or until the patent Act did not provide for grant of patents in respect of agricultural products, chemicals pharmaceuticals and for grant of exclusive marketing rights (EMRS). The patent amendment Act 1999 added a new chapter with retrospective effect from 1-1- 1995, which deals with the exclusive marketing rights (EMRs) to sell or distribute an article or substance in India

The Patent Act too got amended several times like the Copyright Act in the year 1999, 2002 and in the year 2005. In the year 2002 the important changes have been made with respect to the Patent Act 1970 they are; a new definition 'capable of industrial application' is added this is defined as an invention capable of being made or used in an industry[121]. The definition of food is strengthened by adding the words' 'for human consumption'[122]. The definition of 'invention' has been simplified. Whereas the previous definition contained reference to art, process, method or manner of manufacture, machine, apparatus etc. including any new and useful improvements of any of them, the definition substituted by the 2002 Amendment Act simply states that invention means new product or process involving an inventive step and capable of industrial application[123]this is an improvement over the previous definition. A new definition of the Patent Co-Operation Treaty (PCT) has been added as the new amendment provides for an international application for patent, even outside India. Beside these there are other important amendments were also done with respect to the application for patents, the new amendment provides that an International application under the PCT and also an application before the controller in India can be filed simultaneously[124]the term of every patent granted after the commencement of the 2002 amendment act has been increased 20 years from the date of filling of the application for the patents..

The salient feature of the Patent (Amendment) Act 2005 was the introduction of product patent of medicine and Drugs from 1-1-2005[127]. To implement the TRIPS Agreement obligation the parliament has amended the patent act; apart from reintroducing the product patent of medicine and drugs which was permitted before 1970 the 2005 amendment has affected number of changes in the patent act 1970. The changes are (1) change in the definition of 'inventive steps', new invention and pharmaceuticals [128](2) introduction of requirement to communicate the adverse report of the

examiner and the gist of objections etc. to the applicant by the controller [129](3) substitution of new section 25 and 26 relating to opposition to the patent. (4) Substitution of 'granted' in place of 'granted and sealed' in case of patents[130]and (5) introduction of provision to grant compulsory license for export of patented pharmaceuticals products in certain exceptional circumstances[131], introduced substantial changes which have far –reaching consequences in the Patent Act. The amendment also brought into picture a new doctrine of exclusive marketing rights (EMRS). This TRIPS Agreement stipulates that patents would be available for any invention (whether product or process) in all fields of technology, if they are new involve inventive steps and capable of industrial application. It further provides that patent shall be available and patent rights shall be enjoyed without any discrimination as to the place of invention , the field of technology and whether products are imported or locally produced. It also provides protection of plant varieties either by patents or by an effective sui generis system or by combination thereof. As stated above the Patent Act 1970 was also amended in 2005

**B Copyrights:** Copyrights are those exclusive rights given to the owner/author for an original work thathe has created. "Original" works that are protected under Copyrights are Literary , Dramatic, Musical , Artistic Works , Cinematograph films and Sound Recording . Bundle of rights including rights of reproduction, communication to the public, adaptation and translation of the work. Copyright does not ordinarily protect titles, names, short word combinations, slogans, short phrases, methods, plots or factual information. The scope and duration of protection provided under copyright law varies with the nature of the protected work. Original literary, dramatic, musical and artistic works. Lifetime of the author or artist, and 60 years counted from the year following the death of the author is considered as the duration or the right conferred . For Cinematograph films sound recordings, photographs, posthumous publications, anonymous and pseudonymous publications, works of government and works of international organizations duration given was sixty years which is counted from the year following the date of publication. Broadcast reproduction right, a special right given to broadcasting organization for twenty- five years from the beginning of the calendar year next following the year in which the broadcast is made. Performer's right is a right given to any performer who appears or engages in any performance, in relation to such performance, for fifty years from the beginning of the calendar year next following the year in which the performance is made.

East India Company extended to India the English Copyright Act of 1872. In 1911 the law of copyright was codified in England through legislations like the Copyright Act 1911, the Imperial Copyright Act 1911. These legislations was the 'Law in force' in the Indian Territory.[105] The Indian Copyright Act of 1914 was a modified version of the British Copyright Act of 1911. Some of the important provisions of the act were (i) the registration of the authors work was not necessary (ii)the authors' right came into existence as soon as the work was created (iii) protection was given not to ideas but to the material forms in which the work was expressed (iv) only original works attracted the protection of copyright law although the general principle applied that all laws which put a restraint upon human activity and enterprise construed in a reasonable and generous spirit. (v) The term of copyright protection was fixed as the lifetime of the author and 25 years of his death. The Act of 1914 prescribed penalties for infringement of copyright which was not considered a criminal offence. With a view to consolidating and amending the old laws, the copyright Act was

re- enacted in 1957. The salient provision of the act of 1957were:

1. establishment of the copyright board;
2. expansion of definition of copyright;
3. right of the author to reacquire his right after 7 years but before expiry of 10 years of assignment
4. issue of license to a library to make copy of any books;
5. regulation of the activities of the performing arts societies including the fees or royalties charged.

The 1983 amendment to the Copyright Act 1957 provided compulsory licenses with respect to publication of foreign works in any Indian language for the purpose of systematic infrastructural activities at low price with the permission of Copyright Board. Act also empowered the copyright board upon a complaint to order revocation of the assigned copyright where either the terms are 'harsh' or where the publication of the work is unduly delayed. The board has also been given power to publish previously unpublished Indian works and for the protection of oral works.

The 1984 amendment the piracy became a global problem due to the rapid advances in technology and has assured alarming proportions all over the world, all the countries started to make efforts to meet the challenges by taking stringent legislative and enforcement measures forwarded certain Anti-piracy measures.

In a contemporary world there are three types of piracy they are, piracy of the printed word; piracy of sound recordings and piracy of cinematograph films.[108] To combat with this crime the bill of 1984 proposed certain amendments these are;

1. To increase the punishment provided for the infringement of the copyright, namely, imprisonment of 3 years with a minimum punishment of imprisonment of 6 month and a fine of up to Rs. 2 Lakhs with a minimum of RS. 50000.
2. To provide for enhanced punishment in case of second and subsequent convictions.
3. To provide for the declaration of the offence of infringement of copyright as an economic offence so that period of limitation provided in the code of criminal procedure, 1973 for offences will not be applicable to this offence.
4. To specifically make the provision of the Act applicable to video films and computer programmes
5. To require the producers of records and video films to display certain information in the record, video films and containers thereof.[109]

The 1999 amendment to the Copyright Act, 1957 to empowered the central government to make provision for the broadcasting organization and performers. They also empower the central government to restrict right of foreign broadcasting organization and performers. It is in the national interest of the country to provide protection to varied types of intellectual products for the better development of the society and its culture. Foreign works and the newly developed technologies should also be protected so that scope of learning of the people can be enhanced.

The Copyright Act 1957 is the oldest intellectual property legislation in India. The Copyright Act got amended nearly five times the recent one is the 2012 amendment. The amendments of the 2012

are significant in terms of range as they address the challenges posed by the internet and go beyond these challenges in their scope.[111] The 1980s' and the 1990's saw the digital revolution sweeping the world and the advent of internet over the World Wide Web. The global community responded to the challenges posed to the copyright system by the internet through two treaties framed in 1996, called WIPO Copyright treaty (WCT) and WIPO performances and Phonograms Treaty (WPPT), together known as the 'Internet Treaties' the treaties address the challenges relevant to the dissemination of protected material over digital networks such as the internet. The WCT deals with the protection for the authors of literary and artistic works. The WPPT extends copyright like protection to performers and producers of phonograms.

The Copyright (Amendments) Act 2012 introduced amendments to harmonise the copyright act 1957 with WCT and WPPT. The amendments Act goes much beyond the internet treaties and has introduced many changes in the copyright Act 1957. The amendments can be categorised into:

1. Amendment to rights in artistic works, cinematograph films and sound recordings.
2. WCT and WPPT related amendments to rights
3. Authors friendly amendments on mode of assignments and licenses to streamline business practices
4. Amendments to facilitate access to works further sub-classified into ;
    a) Grant of compulsory licenses
    b) Grant of statutory licenses
    c) Administration of copyright societies.
    d) Access to copyrighted works by the disabled
    e) Relinquishment of copyright
1. Strengthening enforcement and protecting against internet piracy including WCT and WPPT related provision
2. Reforms of Copyright Board and other minor amendments

Welcome reforms to administration of copyright societies and the copyright board. Over all the amendments have the signature of a reformist approach. The substantive aspects of Copyright law have brought natural conformity with the TRIPS Agreement. However, enforcement of the Copyright is not yet up to the mark of the TRIPS Agreement. Even 2012 amendment in Copyright Act has not made any development over enforcement of copyright infringement.

**C Trademark**

Trademark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours. Trademark can be sign, words, letters, numbers, drawings, pictures, emblem, colours or combination of colours, shape of goods, packaging or sound or any combination of the above as applied to goods or services. Validity is for 10 years; thereafter renewable perpetually for term of 10 years each.

The law relating to trademark has a long and chequered history of more than two hundred years ago in England the right of property in trademark was established by a series of decision of English

courts by 1838 and an action for infringement of a trademark was maintainable prior to 1875, before 1875 there was only three kinds of remedies under common law for the protection of trademarks. These remedies were actions for deception, passing off and injunction. The right in the trademark could be acquired only by public user and it was protected under the law of equity. This act was found unsatisfactory and was repealed by the patents, design and trademark act 1883. The 1883 act was amended in 1888 for introducing some alteration and minor changes. In the year 1905 the Trademark Act 1905 was passed which repealed the 1883 Act. The 1905 Act was amended in the year 1919 and 1938. The law of trademarks was consolidated by the 1938 Act.

In India there was no specific legislation on trademark law prior to the year 1940. However the affected people used to have recourse to the other legislation like Specific Relief Act, 1877 for settling down the dispute with respect to trademark. Section 54 of the Specific Relief act could be invoked for the reliefs in actions relating to trademark. The Indian Penal code, 1860 also provides for the legal protection of the trademark under section 479-489. It has made using a false property mark, counterfeiting property mark used by the other, counterfeiting a mark used by the public servant, making or possession of any instrument for counterfeiting a property mark making a false mark upon any receptacle containing goods and tampering with the property mark intent to cause injury punishable. All these offences have been declared to be non- cognizable and bail-able. The provision pertaining to trade marks law in the aforesaid statutes were considered to be inadequate in view of the growing industrialization and economic developments. There was a need for a special statute for the protection of trademark. The first statute Indian Merchandise Marks Act 1889 was brought to the statute book which was followed by the trademark act 1940 as a pure law on the subject. The rapid industrial growth proved that the 1940 was insufficient to meet the demands, beside this the Indian merchants faced difficulties in getting their trade mark registered in foreign countries where the production of certificate for home registration was a condition precedent for obtaining the registration.[136] It was felt necessary for the practical purposes to remove the uncertainties with regard to the jurisdiction of the High Courts to hear appeals against the decision of Registrar. Therefore, the parliament of India passed the Trade and Merchandise marks act 1958, the 1958occupied the field about 42 years and served its purpose. In view of developments in trading and commercial practice, increasing globalization of trade and industry to encourage investment flows and transfer of technology, need for simplification and harmonization of trademark management system and to fulfill the obligation under the TRIPS Agreement a comprehensive review of the 1958 act was felt necessary. The parliament of India therefore passed the Trademark Act 1999; the act introduced several changes in the Indian Trademark law which provided for the:

- Registration of trademark for services, in addition to goods. This is novel feature introduced by the 1999 Act.
- Registration of trademarks, which are imitation of well known trademark not to be permitted, besides enlarging the ground for refusal of registration , consequently the provision for defensive registration of trademark have been proposed to be omitted.
- Simplifying the procedure for registration of registered user and enlarging the scope of permitted use.
- Providing for the registration of collective marks owned by the association etc.

**D . Design**

Design means only the features of shape, configuration, pattern or ornament or composition of lines or colour or combination thereof applied to any article, whether two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye. Design does not include any mode or principle or construction oranything which is in substance a mere mechanical device, and does not include any trade mark, as defined in Section 2 (v) of the Trade and Merchandise Marks Act, 1958, property mark or artistic works as defined under Section 2(c) of the Copyright Act, 1957. Valid is for 10 years, extendable by 5 more years. Industrial Designs are of great commercial value because shape or configuration of the article can often be a great selling point

Great Britain was the first country to offer protection for the Designs. The Textile Design was the first to receive legal protection. In 1787, the first enactments for the protection of design was made in U.K. for the encouragement of arts of design and printing linens, cotton , calicoes and muslins , by vesting their properties in the designers , printers and proprietors for a limited period. However shortly thereafter the life of the design was extended and soon it was made perpetual. In 1839, the protection was enlarged to cover design for printing woven fabrics. An updating measure was taken in 1842 to amend the existing laws of the Design Act. The statute relating to Patents, Design and trademarks remained separate till in 1883. After 1905, the Patents and Design law remained together.

So far India is concerned the first legislation on the subject was the patents and Design Act, 1872. The Act was passed to extend similar privileges to the inventors of new patterns and design in British India, though for a much shorter period. It included the new term 'new manufacture' any new and original pattern or design or the application of such pattern or design to any substance or article manufacture. The Invention and the Design Act, 1888 which consolidated and amended the law relating to the protection of invention and design contained in a separate part. Ultimately the British Patent and the Design Act, 1907 had become the basis of the Indian Patent and Design Act 1911. In 1970 the patents act repealed the provision with respect to the patents law from the patents and design act 1911, there after the design act 1911 continued to be the only enactment dealing with the industrial design in India till the Design Act 2000 has been passed the provision of the act has got similarities with the 1911 Design Act. In the Design Act of 2000 certain changes had been made so that the legal system of the protection of industrial design requires to be made more efficient in order to ensure effective protection to the registered design. It is also intended that the law does not unnecessarily create any system which are not required by the act. To achieve this purpose the new Act incorporates certain amendments some of them are namely;

- It enlarges the scope of the definition of article and design and introduces definition of 'original';
- It contains provision for identification of non-register able designs.
- It revokes the period of secrecy of two years of a registered design.
- It enhances the quantum of penalty imposed for infringement of registered design.
- It contains provision for restoration of lapsed design; etc. [139]

The Act of 2000 increased the amount of penalty in case of piracy of a registered design from rupees five hundred to rupees twenty five thousand. In case the proprietors of a registered design chooses to claim damages then the amount which may be paid to him has been fixed for rupees fifty thousand instead of rupees one thousand. This provision will prove to be helpful in decreasing the ratio of infringement of registered design. The Act of 2000 introduced other important provision for avoidance of certain restrictive conditions in contract, leases and certain licenses in view of the TRIPS Agreement which provides for the control of anti –competitive in contracted license. This provision will prove helpful in removing the difficulties in granting licenses of registered design by proprietor.[140] The Trademark Act 1940 lays down specific law on this subject which was repealed by the Trade and Merchandise Marks Act 1958 that served its purpose for four decades. In view of developments in trading and commercial practices, increasing globalization of trade and industry, need to encourage investment flows and transfer of technology, need for simplification and harmonization of trade and to fulfil obligation of TRIPS Agreement, the Indian Parliament enacted the Trademark Act 1999 (the 1999 Act) repealing the 1958 Act is to amend and consolidation the law relating to trademark for goods and services and prevention of the use of Fraudulent marks. The most significant change which the new Act sought to bring about the registration of trademarks for services in addition to goods.

**E . Geographical Indication:**

Geographical Indication: Identifies agricultural or naturalor manufactured goods,as originating or manufactured in the territory of a country or region or locality in that territory, where a given quality, reputation or other characteristics of such goods is essentially attributable to its geographical origin. Prevents unauthorized use of a Registered Geographical Indication by others. Promotes economic prosperity of local producers of goods in a geographical territory

In addition to copyright, patents, designs, trademarks there are various sui- generis regimes that grant rights akin to intellectual property rights. Geographical indication, plant varieties and farmers right are examples of sui- generis rights. In India the Geographical indication of Goods (Registration and Protection) Act 1999 introduced a new concept of geographical names free from the concept of the distinctiveness. In this Act, geographical indication is defined as an indication used to identify the goods whether natural or manufactured goods emanating from a particular area or territory known for the particular quality or characteristics of the goods. Such geographical names if used by any person in relation to goods originating entirely from different places are likely to cause confusion or deception. The Geographical indication of Goods Act is designed to protect the use of such geographical indication from infringement by others and protect the consumers from confusion and deception through the process of registration of such indication by law.[144] The object of the geographical indication of goods act is precisely this. The protection of the Plant Varieties and Farmers Rights Act 2001 has also introduced another new concept in the field of IPRs. In view of the ever increasing population all over the world, the necessity for increasing agricultural production has become very important. This can be made possible only by creating new varieties of plant which will produce qualitatively and quantitatively higher yields of food grains, pulses, seeds and fruits of all varieties. Creation of such varieties has become possible by scientific research which involves expenditure of money, labour and intellectual effort. To encourage scientific research and creates incentive for producing new plant varieties the persons or organisation which produce such varieties should be rewarded either by granting them patent rights or by an effective sui generis

system. The government of India had decided to adopt a sui generis legislation to give protection to breeders of new varieties of plants.[146]

The intellectual property regime has been subject to criticism throughout its long history. These critiques have seemingly become more withering in recent years. An innovative industry continue to play a more significant role in the national economy, awareness of intellectual property has grown , along with the diversity of perspective troubled by the intellectual property law's implication . In an era where information can be immediately disseminated in infinite quantities around the globe, the notion that an innovation can be an object of possession has been changed. To such critics the concept the concept of property in information is little more than a bad metaphor. Others commentators are troubled that intellectual property extends the value of the market places to ideas and, in their belief, ultimately to knowledge and thought , some view intellectual property as a one –way ratchet ever favouring the expansion of rights . In recent years, for example the term of copyright protection has significantly increased the scope of patent protection has expanded to include business methods and other post – industrial innovations and trademark law has embraced the expansive dilution doctrine. Against these developments there seems to be little on the balance sheet favouring consumers. As innovators continue to develop new technologies, new forms of personal expression and new business strategies, the intellectual property law will continue to recreate 'Geographical indication' indicates that particular goods originate from a country, region or locality and have some special characteristics, qualities or reputation, which are attributable to its place of origin, prior to 1999 there was no specific legislation in India on geographical indication which could adequately protect the interest of the producers. Despite her being party to the TRIPS Agreement, India did not enact a law on geographical indication.

The enactment of the Protection of Plant Varieties and Farmers Right Act 2001 was an outcome of the India's obligation which arose from art 27(3)(b) of the TRIPS Agreement which obliges members to protect plant varieties either by patent or by effective sui generis system or by any combination thereof. India decided to protect plant varieties by a sui generis law i.e Plant Varieties Act. Integrated circuit plays a significant role for the advancement of technology, especially for electronic purpose and information technology. Integrated circuits are used in a large range of products including mobile phones, television, watches, radio, and washing machine data processing, equipment etc. There is a growing need to create those layout designs which reduce the dimension of the integrated circuit and simultaneously increase their function. The smaller the integrated circuit the less the material needed for its manufacture, and the smaller the space needed to accommodate it. The creation of a new layout-design of an integrated circuit involves enormous investment, both in terms of money and the time of highly qualified experts. In order to reward and encourage an adequate level of investment of human, financial and technological resources, and also to fulfil her obligation under the TRIPS Agreement, India has enacted the Semiconductor Integrated Circuit Layout Design Act 2000 (Layout-Design Act)[148].

**V Policy Recommendations:**

Policy recommendations are needed in area of

- **Drugs and pharmaceutical patents** : Issues of **Ever-greening and Incremental inventions** are major unresolved questions.
- **Patents for IT and electronics related inventions :**In view of yet to be resolved issues on

FRAND (fair,reasonable and non discriminatory) and SEP (Standerd Essential Patents) questions regarding infringements arise when standards are to be met in technical fields.

- **Software and related inventions :**Issues related to patentable subject-matter remains unresolved. : There is lack of clarity at international level as to whether these are to be regarded as Copyright or Patent.
- **Private Rights vs. Public Rights:Compulsory licensing ( CL)** is an important provision sought after by various jurisdictions for providing remedy against abuse of patent protection
- **Evolution of IPR laws in India**

**PATENT**

| YEAR | **HIGHLIGHTS** |
|---|---|
| 1856 | British implemented the first patent statute in India "On Protections of Inventions, provided certain exclusive privileges to inventors for a 14-year term. |
| 1888 | Inventions and Designs Act introduced to consolidate and amend previous legislations- 1872 Act for designs and 1883 Act for patents in conformity with amendments in the UK law. |
| 1911 | Enactment of the Indian Patents and Designs Act, 1911 . Establishment of Patent Office & The Controller of Patents; Increase in term of patent from 14 years to 16 years; Product Patents in all fields of technologies. |
| 1970 | Patents Act 1970; only Process patents for food, drugs, agrochemicals, alloys. 7 years term for food, drug and 14 years term for others; Compulsory license provisions. |
| 1999 | TRIPS Obligations; Filing of application for Product Patents in areas of drugs, pharma and agro-chemicals allowed as mailbox applications; EMR. |
| 2002 | Introduction of 18 months' Publication; Examination of applications by request; Establishment of Intellectual Property Appellate Board; Uniform term of 20 years irrespective of the field of invention. |
| 2005 | Product patents introduced in areas of drugs, pharmaceuticals and agrochemicals; Pre/Post-grant Opposition system. |
| Till 1940 | TRADEMARKS<br>No specific legislation for Trademarks, Common Law to resolve issues |
| 1940 | Trademarks Act & Registry |
| 1958 | Trade and Merchandise Act |
| 1999 | New Act in view of TRIPS agreement, new developments in trading practices- service, well-known marks registered |
| 2013 | Introduced provisions of Madrid Protocol |
| | DESIGNS |
| 1872 | Patterns & Designs Act |
| 1888 | Consolidated as Inventions & Designs Act |
| 1911 | Renamed as Indian Patents & Designs Act |
| 1970 | Patents Act was separated from Designs Act |
| 2001 | Design Act 2000 |

**GEOGRAPHICAL INDICATIONS**

**1999 Geographical Indications of Goods (Registration & Protection) Act,1999**

| | |
|---|---|
| **1914** | **Indian Copyright Act was enacted for the first time in 1914 primarily based on the U.K. Copyright Act, 1911.** |
| **1957** | **After Independence the Comprehensive Copyright Act was enacted in the year 1957 to consolidate the laws related to copyrights in India.** |
| **1994** | • **definition of "Literary work" consistent with definition of "Computers" and "Computer Programmes".**<br>• **harmonizing with Rome Convention, 1961 by providing protection to rights of Performers. Producers of Phonograms and Broadcasting organizations.**<br>• **the concept of Registration of Copyright Societies for Collective Management of the rights.** |
| **2012** | ■ **The copy Right (amendment) Act 2012 notified on 8-6-2012.**<br>■ **provisions in conformity with the WIPO Treaty and WIPO Performances and Phonograms Treaty.**<br>■ **Definition of "Copyright" as Exclusive Right , author of a work is the first owner of copyright.** |
| **Semiconductor Integrated Circuit Design Layout** | |
| **2000** | **Semiconductor Integrated Circuits Layout Design Act was enacted in 2000 to provide protection for semiconductor IC layout designs** |

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# INTELLECTUAL PROPERTY RIGHTS SYSTEMS IN INDIA

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**What are intellectual property rights?**

Intellectual property (IP) 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.

IP can be either registered or unregistered. With unregistered IP, you automatically have legal rights over your creation. Unregistered forms of IPinclude copyright, unregistered design rights, common law trade marks and database rights, confidential information and trade secrets

With registered IP, you will have to apply to an authority, such as the Intellectual Property Office in the UK, to have your rights recognized. If you do not do this, others are free to exploit your creations. Registered forms of IP include patents, registered trade marks and registered design rights. Copy right is also register able .International considerations India has been a World Trade Organization (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 in force in the UK.

**Intellectual property rights – systems in India**

**Copyright**

India is a signatory to the Berne Convention on copyright. However, it may be a good idea to register your copyright as doing so may help to prove ownership if there are criminal proceedings against infringers. In most cases though, registration is not necessary to maintain a copyright infringement claim in India. Registration is made, in person or via a representative, with the Copyright Office. Since 2016, copyright policy was moved to India's Ministry of Commerce and Industry. All IPRs are now administered by the Department for Industrial Property and Promotion (DIPP).Internet piracy of films, music, games and software is an issue in India, as is unauthorized copying of physical books.

**Patents**

India's Patents Act of 1970, 2003 Patent Rules and the 2016 Patent Amendment Rules set out the law concerning patents. As in the UK, there is no provision for utility model patents. The regulatory authority for patents is the Patent Registrar under the office 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

**Designs**

The laws governing designs are the Designs Act 2000 and the Designs Rules 2001. Designs are valid 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 and 2017.The regulatory authority for patents is the Controller General of Patents, Designs and Trade Marks under the Department of Industrial Policy and Promotion. The police now have more robust powers in enforcing trade mark law, including the ability to search premises and seize goods suspected of being counterfeit without a warrant. But these powers are tempered by the requirement for the police to seek the Trade Mark

Registrar's opinion on the registration of the mark before taking action. This adds to the delay and may result in counterfeit goods being removed or sold. 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 widespread 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 – it is advisable for rights owners to register their domain names in India as trade marks as soon as possible.

Registration takes up to two years. A trade mark in India is valid for ten years and can be renewed thereafter in definitely for further ten-year periods Registering and enforcing intellectual property rights in India To enjoy most types of intellectual property (IP) rights in India, you should register them.

For patents, individual registrations must be made in India, but for rights other than industrial designs you can apply under the terms of the Patent Cooperation Treaty, which is usually easier and quicker.

For trade marks, you should register them within India, either through the domestic trade mark system or under the Madrid system.

For copyright, no registration is required but registering copyrights with the copyright authorities

is advisable. 'Priority rights' under the Paris Convention can help in the local registration of trade marks, designs and patents by allowing rights previously registered elsewhere to become effective in India, if filed within a time limit. Potential problems faced in India and how to deal with them

An advantage for UK businesses operating in India is that the legal system is based on common law, as in the UK, so the fundamental processes are familiar.

Avoiding problems

The most important way to avoid problems when defending IP rights in India is to be prepared. To make sure that you can anticipate any potential issues, you should:

- Take advice from Indian IP rights experts at an early stage on how to protect your IP – prevention is better than cure
- Consult publications and websites on Indian IP rights and protection in general

- Carry out risk assessment and due diligence checks on any organization's and individuals you deal with
- Take professional advice from other experts – for example lawyers, local diplomatic posts, Chambers of Commerce and the UK India Business Council
- Talk to other businesses already doing similar business in India
- Consult agents, distributors and suppliers on how best to safeguard your rights
- Check with trade mark or patent attorneys to see whether there have been previous registrations of your own marks, or other IP, in India
- Stick to familiar business methods – don't be tempted to do things differently because you're trading ina different country.

India's intellectual property (IP) legislation covers every significant aspect of the protection of IP. The regulations relating to all forms of IP have been amended or reissued in recent years, mainly in response to India's accession to the World Trade Organization in 1995.Although Indian IP law is thorough and generally comparable with European IP laws, there are still significant concerns over IP enforcement. A major cause for concern in enforcement is bureaucratic delay, with a backlog of cases at both the civil and criminal courts. This means that cases can run for five years or more. There is also a lack of transparency, particularly at a local level. A significant feature of the IP environment in India is the large number of small players infringing IP rights. This means that seizures tend to be small, which requires a sustained and financially draining effort in order to make an impact.

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# IPR AND THE FIELD OF CREATIVITY

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Abstract

IPR also talks of Moral Rights

"It can be said that copyright works are in essence the expression of the author's personality as a whole, and that how a copyright work is used is a matter not just of economics, but also of the author's morality. Therefore, the Copyright Law stipulates three rights in the category of moral rights of the author -

**Right of making the work public**

The right to determine whether a copyright work is made public or not, and if it is to be made public, the manner in which it is made public.

**Right of determining the indication of the author's name**

The right to determine whether the name of the author is indicated with the copyright work or not, and if it is to be indicated, whether it is the author's true name or a pseudonym.

**Right of preserving the integrity**

The right to disallow the modification, distortion or mutilation of the author's copyright work.

Plagiarism, imitation, copying with a slightly different name are some of the issues in creative fields which are difficult to check and control.

This paper aims to throw light on imitation in the literary and artistic fields. Plagiarism, imitation, copying with a slightly different name, are some of the issues in creative fields which are difficult to check and control. There is a difference between adaptation and plagiarism. In the field of art, a writer, dancer, artist, director, musician, painter, sculptor etc., may be inspired by the work of another artist and may get similar ideas inciting him to create his own art. In such cases the artist is not imitating or plagiarizing but producing a newer version of an already existing art piece.

Plagiarism is a negative phenomenon and is a widespread problem. In the arts, plagiarism often shows up under different names and terms, such as *intermediality, synthesis of arts, fusion of arts, copying, and adaptation.*

Even in the higher seats of learning, faces of plagiarism often raise their ugly heads. In the field of research, theses are plagiarized and are approved. The most popular case in India is that of BS Rajput, the VC of Kumoan University who plagiarized theses and was charged by professors of Stanford University. As a result plagiarism of theses became punishable. The AICTE Chairman Anil

Sahasrabudhe stated that researchers indulging in plagiarism would be punished, to bring more credibility to research in the country. The UGC too adopted a set of regulations in the year 2018 to promote academic integrity and prevention of plagiarism in Higher Education institutions. Plagiarism cannot exceed more than 60% of the researcher's work.

Cut – Copy – Paste has become *sine qua non* for research in many educational institutions in India.

The film industry is one very popular technical art where there is ample scope of plagiarism. There are numerous cases pending with the film association regarding plagiarizing a plot or story of a film. Usually western film plots, music and dance forms are imitated by Indians. There are many tunes in Hindi films which are borrowed from composers like Beethoven and Mozart. An artist has to be creative to a large extent and he/she cannot just lift ideas from others.

Many generations of artists did similar things – they enjoyed the works of their fellow artists, sought inspiration in the works of others and transformed the artwork into something new. Other generations would come and criticize the masterpieces of the previous epochs, they would try to prove that they were not that perfect and would rewrite and re-establish the already-developed plots and stories. Most of them would adapt and copy, rework the stories that dated back to previous centuries

**Art theft** is the "obvious" stealing of artwork and publishing it as your own art. Without seeking consent from or giving credit to the source, the act is an indirect claim of the stolen piece. Art theft is also an act of plagiarism. On the other hand, **tracing** is an act of duplicating the original artwork either with little or no change at all. Like art theft, tracing also goes beyond the traced copy as it also involves enhancements. Even after tracing the original piece, putting color doesn't make it original.

According to Aristotle all art is imitation, he says, "For as there are persons who, by conscious art or mere habit, imitate and represent various objects through the medium of colour and form or again by the voice; so in the arts above mentioned, (tragedy, comedy, poetry, music) taken as a whole, the imitation is produced by rhythm, language, or 'harmony,' either singly or combined.

Thus in the music of the flute and of the lyre, harmony' and rhythm alone are employed; also in other arts, such as that of the shepherd's pipe, which are essentially similar to these. In dancing, rhythm alone is used without 'harmony;' for even dancing imitates character, emotion, and action, by rhythmical movement."

Yet, Aristotle talks on a higher plane and suggests that though all art is imitation it demands a creative mind and the artist imitates what is already created by God. Imitation in the modern sense is permissible to certain extent and the artist has to use various permutations and combinations to produce a novel creation. Immorality steps in when a person copies the work of another artist and displays or publishes it as his own, without any acknowledgement. It is here that IPR interferes.

Nyah Harper (Voice Community) in his article, *Is Copying Art Plagiarism?* says "However if you take inspiration and copy from many different artists you are not learning to be a clone of someone but taking various ideas to develop your own style. I spoken to an art tutor Harriet Davies, who said that taking different parts from different artists is a useful way of challenging yourself to expand your skills and learn.

IPR also talks of Moral Rights

"It can be said that copyright works are in essence the expression of the author's personality as a whole, and that how a copyright work is used is a matter not just of economics, but also of the author's morality. Therefore, the Copyright Law stipulates three rights in the category of moral rights of the author -

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The right to determine whether a copyright work is made public or not, and if it is to be made public, the manner in which it is made public.

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**Right of preserving the integrity**

The right to disallow the modification, distortion or mutilation of the author's copyright work."

So one has to check carefully and be scrupulous before declaring a work as his own creation. Innovations have inexhaustible possibilities. A writer or artist must attempt at creating something unique but never copy and reproduce.

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# IPR –IT & COMMUNICATION AND SERVICE SECTOR

# INTELLECTUAL PROPERTY RIGHTS AND INTERNET LAW

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Intellectual property is a term stating to a number of different types of legal controls over creations of mind, both artistic and commercial, and the equivalent fields of law. The Intellectual property law means the legal rights which result from intellectual commotion in the industrial, scientific, literary, and artistic fields. Countries have laws to safeguard intellectual property for two main reasons:

1. 1.To give statutory expression to the ethical and financial rights of creators in their creations and the rights of the public in admission to those creations.
2. 2.To promote, as a measured act of Government policy, creativity and the propagation and application of its consequences and to encourage fair trading which would pay to economic and social development. Intellectual property laws give rights to the producers of the goods or services for a certain period and after that they have to pay some amount for the restitution of the rights, in case if the amount is not paid then the rights will automatically be transferred to the Government of India.

**Intellectual Property rights are divided into two categories:**

1. Intellectual property consists of rights regarding inventions, trademarks, industrial designs and appellation of origin
2. Copyright of an Industrial design is that the decorative or artistic aspect of an article; it should include three-dimensional features like shape or surface, or of two-dimensional features like patterns, lines or color.

The design is a tool for product differentiation and appeals customers by greater visual appeal. It becomes a method of holding to be protected. Industrial designs are applied to a large form of products of industry or handicraft: watches, jewelry, fashion and other luxury items, industrial and medical implements, house ware, furniture, electrical appliances, vehicles and architectural structures, textile designs, toys etc. while, Copyright protects rights associated with creation of human mind within the fields of literature, music, art and audio-visual works. The owner of copyright has rights not only within the original work, but also in creative work that's derived from the initial work, e.g. its translation or adaptation or the enactment or production of a movie supported the initial work. Such rights regarding a copyright are called related rights. There are neighboring rights on copyright, which protect performances of performing artists, phonograms and broadcasts. Related rights and neighboring rights are terms used interchangeably.

The TRIPS Agreement of the WTO recognizes seven varieties of holding rights (IPRs):

1. Copyright and Related Rights;
2. Trademarks, Trade names and repair marks;

3. Geographical Indications;
4. Industrial Designs;
5. Patents;
6. Layout Designs of Integrated Circuits; and
7. Undisclosed Information

**Copyright and Internet :** We all know of the fact that the piracy within the cyber world is increasing day by day and therefore the cases associated with plagiarism of holding rights are in line towards the court. Technology on internet is growing so fast that it helps in transmission and use of all the protected materials in digital form over interactive networks and allows the conversion of such materials into binary form, which may be transmitted across the web, then re-distributed, copied and stored in perfect form and this process is termed digitalization. While the transmission of text, sound, images and computer programs over the web is already a typical place, now it's also becoming true for transmission of audiovisual works like feature films, because the technical constraints of narrow bandwidth begin to disappear. If we will see our music industry, which has repeatedly raising the problems regarding the web piracy and which is additionally suffering from large scale piracy as several websites host pirate music. The enforcement on this issue has been quite lax. it had been known that the prevailing and proposed amendments won't be able to curb piracy unless the copyright legislation is brought in tune with the data Technology Act, 2000 which provides for power to intercept, monitor or decrypt information through any computer source on certain grounds mentioned therein. So, it's very necessary to bring the copyright law in tune with the data Technology Act, 2000 thus far as internet piracy is anxious and a chosen authority for managing copyrights issues and piracy is to be created with sufficient policing powers.

**Internet Treaties of World Intellectual Property Organization (WIPO)**

There are two treaties which help the proper holders of the copyright which are concluded in 1996 at the planet holding Organization (WIPO) in Geneva.

1 WIPO Copyright Treaty (WCT) which entered into force on March 6, 2002 and deals with protection for authors of literary and artistic works, like writings and computer programs; original databases; musical works; audiovisual works; works of art and images and

2 WIPO Performances and Phonograms Treaty (WPPT) which entered into force on May 20, 2002 and protects certain "related rights" that's rights associated with copyright within the WIPO Performances and Phonograms Treaty and these rights are rights of performers and producers of phonograms.

The main purpose of those two treaties is to update and supplement the most important existing WIPO treaties on copyright and related rights, primarily so as to retort to developments in technology and within the marketplace. Since the Berne and Rome Conventions were adopted or lastly revised over 1 / 4 century ago and now new varieties of works, new markets, and new methods of use and dissemination have evolved. Among other things, both the WIPO Copyright Treaty (WCT) and therefore the WIPO Performances and Phonograms Treaty (WPPT) address the challenges posed by today's digital technologies, particularly the dissemination of protected material over digital networks like the web. For this reason, they need sometimes been cited because the "Internet treaties."

Both treaties require countries to supply a framework of basic rights, allowing creators to manage and be compensated for the varied ways during which their creations are used and enjoyed by others. Most significantly, the treaties make sure that the owners of these rights will still be adequately and effectively protected when their works are disseminated through new technologies and communications systems like the web. The treaties thus clarify that existing rights still apply within the digital environment. They also create new online rights to keep up a good balance of interests between the owners of rights and therefore the general public, the treaties further clarify that countries have reasonable flexibility in establishing exceptions or limitations to rights within the digital environment. Countries may, in appropriate circumstances, grant exceptions for uses deemed to be within the public interest, like for non-profit educational and research purposes.

The treaties also require countries to produce not only the rights themselves, but also two kinds of technological adjuncts to the rights. These are intended to make sure that right holders can effectively use technology to guard their rights and to license their works online. The first, referred to as the "anti-circumvention" provision which tackles the matter of "hacking" and requires countries to produce adequate legal protection and effective remedies against the circumvention of technological measures (such as encryption) employed by right holders to guard their rights and therefore the second kind of technological adjuncts safeguards the reliability and integrity of the web marketplace by requiring countries to ban the deliberate alteration or deletion of electronic "rights management information" means information which accompanies any protected material, and which identifies the work, its creators, performer, or owner, and therefore the terms and conditions for its use.

As per the Copyright Amendment Bill (2010) which isn't yet introduced within the Rajya Sabha, it's clearly mentioned as per Section 38 clause 2:- The Act is now proposed to be amended with the thing of constructing certain changes for clarity, to get rid of operational difficulties and also to deal with certain newer issues that have emerged within the context of digital technologies and therefore the Internet. The 2 World holding Organization (WIPO) Internet Treaties, namely, WIPO Copyright Treaty (WCT), 1996 and WIPO Performances and Phonograms Treaty (WPPT), 1996 have set the international standards in these spheres. The WCT and therefore the WPPT were negotiated in 1996 to deal with the challenges posed to the protection of Copyrights and Related Rights by digital technology, particularly with reference to the dissemination of protected material over digital networks like the web. The member countries of the WIPO agreed on the utility of getting the web treaties within the changed global technical scenario and adopted them by consensus. so as to increase protection of copyright material in India over digital networks like internet and other computer networks in respect of literary, dramatic, musical and artistic works, cinematograph films and sound recordings works of performers, it's proposed amend the Act to harmonies with the provisions of the 2 WIPO Internet Treaties, to the extent requisite and desirable.

The WCT deals with the protection for the authors of literary and artistic works like writings, computer programs; original databases; musical works; audiovisual works; works of creation and images. The WPPT protects certain "related rights" which are the rights of the performers and producers of phonograms. However, India has not yet signed the abovementioned two treaties. Moreover, the most object to form amendments to the Act is that it's considered that within the knowledge society within which we live today, it's imperative to encourage creativity for promotion of culture of enterprise and innovation in order that creative people realize their potential and it's necessary to stay pace with the challenges for a quick growing knowledge and modern society.

**Remedies for the Copyright Holder :** If we will see towards the event then internet access and usage still remain extremely low in developing countries as compared to developed countries; copyright, however, isn't the most blockade to access. Wider usage won't occur until improvements are made to basic communications infrastructure. Within the long run, the web could potentially bring great benefits to developing countries, like the peer-to-peer creation, sharing of information and data among all peoples of the planet. What has to be emphasized is that providing access in developing countries to copyright-protected online materials would end in neither lost revenues nor extra costs for rights holders in developed countries; further, because information could be a non-rivalrous consumption good, there would be no diminished access by developed countries.

Before the web revolution arrives in undeveloped and developing countries, there are worrying samples of information blockages being established, like the proliferation of user-pay passwords (or tollgates) and laws outlawing anti-encryption technologies. Moreover, the web also poses certain threats to undeveloped countries which could further stratify the planet into information-haves and information-have-nots. There are, however, variety of positive and free-access online initiatives that do exist and will be encouraged.

It is recommended that everyone Internet-based data shall be normally available to the general public (e.g. through libraries) should remain open and free for fair dealing and academic purposes (e.g. the making of non-profit educational course packs for students). The terms and conditions of digital licensing schemes should be subject to adjudication before national copyright tribunals. Governments in developed countries should provide financial assistance to groups that have created best practice models of free online access. Publications that are derived from government funded research should be freely available online and governments in developed countries, further as those in undeveloped countries, shouldn't enact similar legislation. Then it's going to are available in seen to the authorities that the proper of the right holders are protected and therefore the rules and therefore the regulations which has been framed earlier is coming into use.

Here Plagiarism is an intellectual dishonesty committed by retaining a published work of a creator without conceding the author or source of the conception.

**Books Referred:**

1. World Intellectual Property Organization Treaties
2. Information Technology Act 2008 (Professionals)
3. Indian Copy 1957(Professionals)

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# ROLE OF IPR IN INNOVATION AND MARKETING STRATEGIES

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"…Because its purpose is to create a customer, business has two – and only two functions: Marketing and Innovation. Marketing and innovation produce results, all the rest are costs:" **Peter F. Drucker**

**Abstract**

Intellectual property rights power innovation. Innovation represents the creation of new value for the world, whether that "value" is created through new technologies, new business models, new products and services, or new forms of social entrepreneurship.

Intellectual property plays a key role in driving innovation and economic growth. Everywhere we go, we are surrounded by intellectual property. Trademarks signal the origin of products to consumers. Designs specify how products look. Copyrights enable artistic creations, such as books, music, paintings, photos, and films. Patents protect technical inventions in all fields of technology. Intellectual property's role has evolved into a force that influences a wide swath of demand and making it an increasingly influential framework that affects not only innovation, but also trade, competition, taxes, and other areas. The reality is intellectual property is mainstream and pervasive. In today's economy, the generation and management of knowledge plays a predominant role in wealth creation, particularly when compared with traditional factors of production such as land, labour, and capital. The aim of this study is to understand the importance of innovation as a tool for the survival of business to face competition and acquire competitive advantage. This article also focuses on the importance of protecting intangible assets of the organisation while adapting marketing strategies.

Key Words: Intellectual Property, Innovation, Marketing Strategies

## INTRODUCTION

The competitive strategy of a private enterprise in a market-driven business environment, the term 'innovation' is used to refer to the process of bringing valuable new products (goods and services) to market i.e., from the idea/concept formulation stage to the successful launching of a new or improved product in the marketplace or the result of that process, so as to meet the explicit or implied needs of current or potential customers. In other words, through innovation an enterprise seeks to deliver unique/new value to its customers. In this context, 'marketing' is the understanding of that unique/ new value and communicating it to the current and potential customers of a business so that the product sells itself.

Technological innovation may be classified in several ways: product vs. process, radical (basic or fundamental) vs. incremental (improvement), and disruptive vs. sustaining (sequential and/or complementary). Other important types of (non-technological) innovations that do not result from scientific and/or technological R&D, but are often crucial for profitably marketing the products and services resulting from the investment made in R&D are: marketing innovation, institutional innovation, and complementary innovation.

Technological innovation is one of the important determinants of the firm's success. But differences of opinion persist amongst economists and policymakers about the exact role of intellectual property (IP) in relation to innovation. On the one hand, in theory, the IP system is considered to be absolutely necessary "to encourage creative intellectual endeavour in the public interest," and on the other, some observers believe that, in practice, the IP system hinders competition to the extent that it is often seen to be playing a negative role in innovation.

**Review of Literature**

- Csath (2012) argues that embracing open innovation is essential for SMEs to grow internationally and they need and educational system which encourages and appreciates creativity, criticism, self-discipline, self-motivation, desire for knowledge and life-long learning, openness and cooperation.
- Hermet et al. (2013) claimed that policy makers may not be aware of the importance of various networks for SMEs. Innovation support schemes from the public actors are useful to sensitize towards open innovation practices.
- Kamp and Bevis2012, Kim et al. (20!4) suggested that team size, perceived uncertainty, and fostering outbound openness are pivotal for the success of open innovation policy. They argue effective medium team size is appropriate to provide public support for the cooperation and collaboration.
- Eco – innovation is increasingly becoming an integral part even for SMEs. SMEs may embrace informal, systematic and open innovation approaches for eco innovation (Bocken et al. 2014)

**Methodology**

The present study focusses on technological innovation in a knowledge-driven, competitive business environment and influence of IPR in marketing strategies of a firm. It is a conceptual study based on secondary data drawn from various sources and consolidated to present a different point of view.

**Objectives**

1. To asses technological innovation as one of the important success tools of a business.
2. To study the influence of IPR in marketing strategies.

**Role of IP in Innovation**

Managing innovation better than its competitors is one of the main objectives of a business that wishes to survive and thrive in today's economy. Technological innovation as an interactive process made up of a number of distinct stages. It begins with the formulation of a novel idea/concept and, through a series of stages, ends in the successful launching and marketing of a new or improved product in the marketplace. In other words, it looks at practical IP issues of relevance to different stages in the whole

new product development process in which technological innovations may be introduced at different stages of the value chain from the producer to the end user. For the sake of simplicity, it focuses on the idea stage and the research and development stage.

**Intellectual Property, Inventions and Innovations**

Broadly speaking, the term 'IP' refers to unique, value-adding creations of the human intellect that results from human ingenuity, creativity and inventiveness. An IP right is thus a legal right, which is based on the relevant national law encompassing that particular type of intellectual property right. Such a legal right comes into existence only when the requirements of the relevant IP law are met and, if required, it is granted or registered after following the prescribed procedure under that law. In practically all countries the world over, a national legal system of intellectual property rights has evolved; this has been created over varying periods of time during the last 150 years or so. It has enabled the grant of property-like rights over such new knowledge and creative expression of mankind, which has made it possible to harness the commercial value of the outputs of human inventiveness and creativity. This is usually done by its orderly use, exchange or sharing it amongst various types of business partners in a complex network of strategic relationships that generally work harmoniously during the new product development process for creating and marketing new and improved goods and services in domestic and export markets.

The grant of a property right by the government, albeit generally for a limited period of time, over useful intangible intellectual output provides the owner of such legal property rights the *right to exclude* all others from commercially benefiting from it. In other words, the legal rights prohibit all others from using the underlying IP asset for commercial purposes without the prior consent of the IP right holder. The different types of IP rights include trade secrets, utility models, patents, trademarks, geographical indications, industrial designs, layout designs of integrated circuits, copyright and related rights, and new varieties of plants.

While innovations are concerned with the commercialization of new ideas; in contrast, an 'invention' may not be directly associated with commercialization. As such, innovation may be seen as a process of interaction and feedback during the various stages of the new product development process. An invention is considered as the generation of a new idea or knowledge, which aims to solve a specific technical problem. Inventions could relate to products or processes and are characteristically protected by trade secrets, utility models/petty patents or patents. Utility models/petty patents or patents are granted/registered under the relevant national/regional law by the relevant national or regional patent office. As not all inventions are commercialized, so it is clear that not all inventions result in innovations. A lot of new ideas are created or born but, quoting Brandt (2002), "Most die a lonely death, never seeing the light of commercial success."

Technological basic or fundamental innovations produce new markets and new industrial branches for a new product. Such an innovation is also described as a radical or disruptive innovation. An improvement innovation (also called an incremental, sustaining, sequential or complementary innovation) would lead to an improved product over its ancestor in terms of quality, reliability, ease of use, environmental protection, raw material use, labour cost, and so on. It may also include the application of new and better production processes or techniques that allow old or new products to be made more reliably, of better quality, or simply in larger quantities, or at a lower price. Trade secrets,

utility models/petty patents and patents are relevant for protecting, managing, exploiting and leveraging both basic and improvement innovations.

An innovative new or improved product that meets customer expectations offers an existing or new business, new market territory without competition for so long as it retains its innovative advantage.

The IP system plays a significant role in helping a business to gain and retain its innovation-based advantage. As a consequence, the competitive edge that an entrepreneurial business may gain with a basic or disruptive innovation is likely to be longer lasting than that obtained merely from an improvement innovation, assuming that the technological barriers to competitors taking advantage of similar innovations are approximately equivalent, since a basic innovation establishes a new class of product or service, entry of competitors require that the opportunity provided by that class is recognized by a potential competitor before it attempts to enter the market. In the case of an improvement innovation, not only are competitors for the class of product already in place, but since the improvement innovation typically amounts to a better, faster, or cheaper way to build the product, its advantages are far more quickly understood and replicated. Hence the need to use the tools of the IP system for both types of innovations, except that generally there is a need for devising an offensive IP strategy for a basic innovation versus a defensive IP strategy for an improvement innovation.

A survey of economic studies reveals that patents are the most preferred IP rights in relation to technological innovations. This seems to be due to the use of the term's 'innovation' and 'invention' as synonyms. This may explain why studies on innovation have, in many cases, treated patents as proxy input for innovation. To be specific, the *number of patents* owned by an enterprise has often been used as one of the main indicators for determining *innovation intensity* of that enterprise. In addition, patents are also used as a measure of *output of innovation*. However, while such an approach is useful, it does not look at the "big picture" about the important role of the whole IP system, including the subsystem of enforcing IP rights (comprised essentially of the police, customs authorities and the judiciary), in facilitating the success of innovation in the marketplace. In this article, however, the focus is limited to all IP related actions that must be taken within an enterprise at different stages of the new product development process or cycle for using the different tools in the IP system for market success.

Innovation as a process, therefore, requires effective participation of individuals from different sections/divisions of an enterprise, such as technical experts in R & D, marketing, management, finance, legal, etc., apart from outside consultants, suppliers, outsourced component manufacturers/service providers, business partners and lead users.

Empirical evidence indicates that generally small and medium-sized enterprises (SMEs) are more inclined to use trade secrets rather than patents as a form of protecting their inventions to stay competitive. The main reasons given by SMEs for shying away from patenting their inventions include high costs and complexity of the patent system. A study on patenting activity in Australia indicates that 44% of the firms used patents while 74% used trade secrets as a way of protecting their ideas. It also showed that size was an important factor in determining the propensity to patent, i.e. 35% of small firms with less than 20 employees used patents, while 75% of firms with more than 500 employees patented their knowledge.

**Role of IP in Marketing strategy :** Intellectual property rights play a crucial role in the marketing strategy of all kinds of an increasing number of companies, and it involves a set of processes, creations and communications offerings which have value for the clients, customers or society in general.

Marketing necessarily generates intangible assets that may be protected by intellectual property rights. In fact, this is the first significative aspect of the influence of intellectual property rights on marketing strategies: the protection of intangible assets in a marketing campaign.

Notwithstanding the above, marketing campaigns sometimes exceed legal limitations, especially concerning the respect of intellectual property rights duly protected by law. In this sense, the compliance of marketing strategies to what is allowed by law is also a crucial aspect where marketing and intellectual property must go hand in hand. An unlawful campaign can conceivably affect the communication strategy itself and has strong legal consequences.

**1. Types of intellectual property rights that may be involved in marketing campaigns**

New commercial names, logos, domain names, product names, slogans, flyers, white papers, brochures, newsletters, landing pages or website designs are some examples which are part of the marketing communication and strategy. Whether they are protected or not, in the particular case, by intellectual property rights will depend on whether or not they fulfil the respective requirements for protection. However, at least in theory, they all can be protected. The extension and the way of protection will differ according to the kind of asset in question.

**1.1. Trademark**

A trademark is a sign (word or figurative), which identifies products or services of a particular source from those of others. In the marketing advertisement it is a common occurrence to see new signs launched in the communication. These signs are usually sub-brands which, together or not with the main brand of the company, emerge as a brand-new communication to launch a new product, service or advantage for the relevant public. Being distinctive signals and respecting the principle of novelty for marks, they should be registered as trademarks.

A trademark is a useful tool in launching new product segments or entirely new products, technologically based or non-technologically based, i.e., through brand extension. In addition, trademarks can be very effective in penetrating new markets. Honda, for example, took advantage of its reputation in motorcycle engineering to penetrate the US car market.

Trademarks are also useful in extending commercial benefits beyond the life of a patent. The case of Aspirin® provides a good example. Developed in 1897 by Felix Hoffman, a research chemist working with Bayer Company in Germany, the drug was patented in 1899 by the Bayer Company. Knowing that patents have a limited duration, the Bayer Company embarked upon promoting a trademark for its new product. When the Aspirin® patent expired, the company continued to benefit from the sale of aspirin through its established trademark Aspirin®. The Bayer Company has also used the two-track IP strategy, i.e., using a trademark to protect market share after the expiry of a patent, for its Cipro® product (ciprofloxacin for treatment of infections, including anthrax).

The same concept should be applied to advertising slogans. Sometimes slogans have been refused as trademarks due to their lack of distinctiveness. In this sense, before trying to register a slogan as a trademark, it has to be ascertained whether there is a possibility of protection.

**1.2. Industrial Design**

Industrial designs protect the ornamental or aesthetic aspect of a product, including its colour, shape or lines. Industrial designs may consist of three- or two-dimensional features. In this sense, provided

that they are new and non-obvious, creative designs used in the marketing campaign should be protected by industrial design.

**1.3. Copyright**

The last relevant intellectual property issue that should be considered is the copyright. Copyright is an exclusive right that protects certain forms of original works. Under this intellectual property right can be included white papers or newsletters. Landing pages and website designs can be protected by copyright as well, however, in such cases there may be an overlap between a copyright and an industrial design which is not necessarily a bad thing since they complement each other. In fact, the copyright protection is, in most countries, longer than the legal protection offered by industrial designs.

Contrary to the other intellectual property rights, a copyright is protected automatically. In this sense, despite being highly advisable the registration of a copyright is no longer required. The copyright will be protected upon its creation, without any formalities.

**1.4. Other IP right: the impossibility of protecting the marketing strategy itself**

Other intellectual property rights can be mentioned; however, they usually have minor relevance in the intangible assets launched in the marketing campaign.

This is the case of patents or utility models. Through these intellectual property rights, inventions that are industrially applicable and that contain new and non-obvious technical advances can be protected. Considering the field and strict requirements involved, it is unlikely that inventions will play a role in a marketing campaign. The only foreseeable patentable invention that may have emerged through a marketing campaign is a software program, however this kind of protection is only possible in the US, since in Europe the software is protected by copyright.

It is also important to stress that the marketing strategy itself and the campaign methods used cannot be protected. These are ideas and, as such, are excluded from any kind of protection by intellectual property rights. Only the expression of those ideas, through the means mentioned above can be protected.

**2. Intellectual property marketing compliance**

A variety of communication material is usually launched in the marketing process. Apart from the protection which can be obtained through the above-mentioned intellectual property rights, there is also a risk of infringement of someone's intellectual property rights.

Bearing this in mind, it is of the utmost importance to undertake a previous effective intellectual property conformity compliance, thus protecting your business against litigation, lost profits and a damaged reputation.

Here are some examples of behaviours or situations that should be taken into account.

**2.1. Trademark clearance searches**

Before using any name, logo or slogan in marketing strategy it is highly advisable to do a trademark search in order to check if. Even though you may not wish your new brand name to be registered as a trademark, it has to be ascertained if there is any possibility of infringing third party rights.

**2.2. Carefully draw the line between competition and anti-competitive behaviour**

Everybody knows that fierce competition may lead to marketing exaggerations and distortions. Marketing departments use several means/methods to appeal to the clients and/or customers, and these means may sometimes exceed what is legally accepted.

In terms of intellectual property rights, there is a tendency today to use well-known trademarks without obtaining prior consent. Even where the business activity is not related to the company concerned, since there is no authorization this is considered an illegal use of a trademark. It does not matter if you did not intend to damage the trademark. Any use without consent of a well-known trademark should be considered unlawful.

Another issue is the use of comparative advertisement. Despite not being illegal, no company may use this strategy to take undue advantage of the reputation of a trademark, trade name or other distinctive sign of a competitor or the designation of origin of competing products.

And last of all, attention must be given to Keyword advertising. European trademark law allows proprietors of trademarks, considering under certain conditions, to forbid third parties from using signs which are identical with, or similar to, their trademarks for goods or services equivalent to those for which those trademarks are registered.

**Conclusion**

Innovation is not the same as invention. Innovation is a process, which begins from the conception of an idea to the launching of a new product/process in the market place. Intellectual property rights can be used effectively to facilitate successful innovation. Innovative technologies stand a better chance of successfully reaching the marketplace if IP is used strategically. Gauging the importance of IP in innovation by merely focusing on patents as input and/or output of innovation, does not do justice to the significant role that can be played by the other tools of IP. A broader approach to the contribution of IP in innovation is therefore needed.

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# INTELLECTUAL PORPERTY RIGHTS IN INDIA: SIGNIFICANCE OF COPYRIGHTS

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**ABSTRACT**

Intellectual property rights (IPR) have been defined as ideas, inventions, and creative expressions based on which there is a public willingness to offer the status of property. IPR provide certain exclusive rights to the inventors or creators of that property, in order to enable them to reap commercial benefits from their creative efforts or reputation. There are several types of intellectual property protection like patent, copyright, trademark, etc. IPR is prerequisite for better identification, planning, commercialization, rendering, and thereby protection of invention or creativity. Each industry should evolve its own IPR policies, management style, strategies, and so on depending on its area of specialty. This study concentrates on the Copyrights Law in India and protecting of copyrights in Indian perspective.

**KEYWORDS:** Intellectual Property Rights (IPR), WIPO, Copyright Act 1957

## INTRODUCTION

Intellectual Property refers to creation of the mind: Inventions, literary and artistic works, and symbols, names, images and designs used in commerce.

Intellectual Property is an Intangible creation of the human mind, usually expressed or translated into a tangible form that is assigned certain rights of property. Examples of Intellectual Property include an author's copyright on a book or article, a distinctive logo design representing a soft drink company and its products.

Intellectual Property Rights (IPR) can be defined as the rights given to people over the creation of their minds. They usually give the creator an exclusive right over the use of his or her creations for a certain period of time. These Rights help to protect creations of the mind that include inventions, literary or artistic work, images, symbols, etc.,

Intellectual property (IP) pertains to any original creation of the human intellect such as artistic, literary, technical, or scientific creation. Intellectual property rights (IPR) refers to the legal rights given to the inventor or creator to protect his creation for a certain period of time. It is very well settled that IP play a vital role in the modern economy. IPR is a strong tool, to protect investments, time, money, effort invested by the inventor/creator of an IP, since it grants the creator an exclusive right for a certain period of time for use of his creation. Thus IPR, in this way aids the economic development of a country by promoting healthy competition and encouraging industrial development and economic growth.

**Features of Intellectual Property:**

1. It is a form of intangible property.

2. It's existence distinct from the physical articles or goods which contain the rights.
3. In some cases the rights are capable of existence and enforcement with no tangible form.
4. The various rights might subsist in the same things. For example, a document might be subject to patent, design rights and trademarks. A pictorial trademark might also be subject to copyright.

**Categories of Intellectual Property Rights**:

Intellectual property broadly two categories:

(a) Industrial property and

(b) Copyright.

**Industrial property** consists of rights relating to inventions, trademarks, industrial designs and geographical indications.

**Copyright** protects rights related to creation of human mind and covers literary works, films, music, artistic and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs

The basic rights of ownership of intellectual property are known as "intellectual property rights" (IPR), which are primarily derived from legislation concerning patents, designs, copyrights and trademarks.

According to the World Intellectual Property Organizations, there are seven categories of Intellectual Property Rights:

1. Copyright and Related Rights
2. Trademarks, Trade names and Service marks
3. Geographical Indications
4. Industrial Designs
5. Patents

**Copyrights**

Copyright laws grant authors, artists and other creators' protection for their literary and artistic works (e.g. books, movies, music, paintings, photographs, and software). Copyright is a legal means of protecting an author's work. It is one of the types of intellectual property that provides exclusive publication, distribution, and usage rights for the author. This gives a copyright holder the exclusive right to control reproduction or adaptation of such works. The length of copyright protection may vary from country to country, but it usually lasts for the life of the author plus several decades.

**Patents**

A patent is an exclusive right granted for an invention –a product or process that provides a new way of doing something or that offers a new technical solution to a problem. A patent provides protection to patent owners for their inventions. Protection is granted for a limited period, generally 20 years. Patents provide incentives to individuals by recognizing their creativity and offering the possibility of

material reward for their marketable inventions. These incentives encourage innovation, which in turn enhances the quality of human life

**Trademarks**

A trademark is a distinctive sign that identifies certain goods or services produced or provided by an individual or a company. Its origin dates back to ancient times when craftsmen reproduced their signatures, or "marks", on their artistic works or products of a functional or practical nature. Over the years, these marks have evolved into today's system of trademark registration and protection. Protection is usually granted for ten years and is renewal as long as the trademarks continue to be used. Trademarks can be various types. A trademark may be a brand name, trade dress, service mark, certification mark or collective mark. For example, a brand name would be Coca-Cola; a trade dress would be the shape of the Coca-Cola bottle; a collective mark could be the CPA lettering after an accountant's name that designates an association such as Certified Public Accountants.

**Geographical indications:**

A geographical indication is a sign used on goods that have a specific geographical origin and possess qualities or a reputation due to that place of origin. Most commonly a geographical indication consists of the name of the place of origin of the goods. For Kancheepuram Silk Handicraft, Tamil Nadu, India. Geographical indications may be used for a wide variety of agricultural products.

**Industrial Designs:**

An industrial design right is an intellectual property right that protects the visual design of an objects. It is concerned with three-dimensional features, such as the shape or surface of an article, or two-dimensional features, such as patterns, lines or color. Industrial design is applied to a wide variety of products. From watches, jewelers, luxury items to industrial and medical implements; from house ware, furniture, electrical appliances to vehicles and architectural structures. In India, the Indian Design Act, 1911 has been replaced by the Design Act, 2000. The term for a design is 10 years from the date of registration. This period can be extended by 5 years if application is made before the expiry of 10 years.

**IPR LAW IN INDIA: AN OVERVIEW**

**Patents**: The Patents Act, 1970 as amended in 1999, 2002 and 2005

**Copyright:** The Copyright Act, 1957 as amended in 1983, 1984 and 1992, 1994, 1999

**Design**: The Designs Act, 2000

**Trade Mark**: The Trade Marks Act, 1999

**Layout Design of Integrated Circuits:** The Semiconductor Integrated Circuits Layout Design Act, 2000
**Protection of Undisclosed Information:** No exclusive legislation exists but the matter would be generally covered under the Contract Act, 1872

**Geographical Indications**: The Geographical Indications of Goods (Registration and Protection) Act, 1999 **Plant Varieties**: The Protection of Plant Variety and Farmers' Rights Act, 2001 3.

Patents, designs, trademarks and geographical indications are administered by the Controller General of Patents, Designs and Trademarks which is under the control of the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry. Copyright is under the charge of the Ministry of

Human Resource Development. The Act on Layout-Design of Integrated Circuits is administered by the Ministry of Telecommunication and Information Technology. Protection of Plant Varieties and Farmers' Rights Authority, Ministry of Agriculture administers the Act on Plant Variety

**COPYRIGHT ACT, 1957**

Copyright is a legal concept, enacted by most governments, giving the creator of an original work exclusive right to it, usually for a limited time. Generally, it is "the right to copy", but also gives the copyright holder the right to be credited for the work, to determine who may adapt the work to other forms, who may perform the work, who may financially benefit from it, and other related rights. It is a form of intellectual property (like the patent, the trademark, and the trade secret) applicable to any expressible form of an idea or information that is substantive and discrete. Copyright initially was conceived as a way for government to restrict printing; the contemporary intent of copyright is to promote the creation of new works by giving authors control of and profit from them. Copyrights are said to be territorial, which means that they do not extend beyond the territory of a specific state unless that state is a party to an international agreement. Today, however, this is less relevant since most countries are parties to at least one such agreement. While many aspects of national copyright laws have been standardized through international copyright agreements, copyright laws of most countries have some unique features. Typically, the duration of copyright is the whole life of the creator plus fifty to a hundred years from the creator's death, or a finite period for anonymous or corporate creations. Some jurisdictions have required formalities to establishing copyright, but most recognize copyright in any completed work, without formal registration. Generally, copyright is enforced as a civil matter, though some jurisdictions do apply criminal sanctions. Most jurisdictions recognize copyright limitations, allowing "fair" exceptions to the creator's exclusivity of copyright, and giving users certain rights. The development of digital media and computer network technologies have prompted reinterpretation of these exceptions, introduced new difficulties in enforcing copyright, and inspired additional challenges to copyright law's philosophic basis. Simultaneously, businesses with great economic dependence upon copyright have advocated the extension and expansion of their intellectual property rights, and sought additional legal and technological enforcement.

**Copyright protection - Indian perspective**

The Copyright Act, 1957 provides copyright protection in India. It confers copyright protection in the following two forms:

(A) Economic rights of the author, and (B) Moral Rights of the author.

**Economic Rights**

The copyright subsists in original literary, dramatic, musical and artistic works; cinematographs films and sound recordings. The authors of copyright in the aforesaid works enjoy economic rights u/s 14 of the Act. The rights are mainly, in respect of literary, dramatic and musical, other than computer program, to reproduce the work in any material form including the storing of it in any medium by electronic means, to issue copies of the work to the public, to perform the work in public or communicating it to the public, to make any cinematograph film or sound recording in respect of the work, and to make any translation or adaptation of the work. In the case of computer program, the author enjoys in addition to the aforesaid rights, the right to sell or give on hire, or offer for sale or hire any copy of the computer program regardless whether such copy has been sold or given on hire on

earlier occasions. In the case of an artistic work, the rights available to an author include the right to reproduce the work in any material form, including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work, to communicate or issues copies of the work to the public, to include the work in any cinematograph work, and to make any adaptation of the work. In the case of cinematograph film, the author enjoys the right to make a copy of the film including a photograph of any image forming part thereof, to sell or give on hire or offer for sale or hire, any copy of the film, and to communicate the film to the public. These rights are similarly available to the author of sound recording. In addition to the aforesaid rights, the author of a painting, sculpture, drawing or of a manuscript of a literary, dramatic or musical work, if he was the first owner of the copyright, shall be entitled to have a right to share in the resale price of such original copy provided that the resale price exceeds rupees ten thousand.

**Moral Rights**

Section 57 of the Act defines the two basic 'moral rights of an author. These are:

(i) Right of paternity, and

(ii) Right of integrity.

The **right of paternity** refers to a right of an author to claim authorship of work and a right to prevent all others from claiming authorship of his work.

**Right of integrity** empowers the author to prevent distortion, mutilation or other alterations of his work, or any other action in relation to said work, which would be prejudicial to his honor or reputation.

The response of Indian judiciary regarding copyright protection can be grouped under the following headings:

- ✓ Ownership of copyright
- ✓ Jurisdictional aspect
- ✓ Cognizance taken by the court
- ✓ Infringement of copyright
- ✓ Availability of alternative remedy
- ✓ Rectification of copyright.

**Ownership of copyright**: The ownership in copyright may vest in different persons under different circumstances.

**Jurisdictional aspect**: The question of territorial jurisdiction of the court to deal with copyright infringement was considered by the courts on several occasions.

**Cognizance taken by the court**: To prevent copyright infringement, timely cognizance taking by the appropriate court is absolutely essential

**Infringement of copyright**: A copyright owner cannot enjoy his rights unless infringement of the same is stringently dealt with by the Courts. The approach of the Indian Judiciary in this regard is very satisfactory.

Availability of alternative remedy: The availability of an efficacious alternative remedy prevents a person from invoking the writ jurisdiction of the High court.

**Rectification of copyright**: In the rectification proceedings, an entry in the Copyright Register pertaining to a particular copyright can be expunged by the Copyright Board.

**CONCLUSION**

It is obvious that management of IP and IPR is a multidimensional task and calls for many different actions and strategies which need to be aligned with national laws and international treaties and practices. It is no longer driven purely by a national perspective. IP and its associated rights are seriously influenced by the market needs, market response, cost involved in translating IP into commercial venture and so on. In other words, trade and commerce considerations are important in the management of IPR.

The provisions of the above mentioned two enactments show that the copyright protection in India is strong and effective enough to take care of the copyright of the concerned person. To meet the ever-increasing challenges, as posed by the changed circumstances and latest technology, the existing law can be so interpreted that all facets of copyright are adequately covered. Existing laws should be amended as per the requirements of the situation. The existing law can also be supplemented with newer ones, specifically touching and dealing with the contemporary issues and problems. Till the country has such a sound and strong legal base for the protection of Intellectual Property Rights, the judiciary should play an active role in the protection of these rights, including the copyright. The situation is, however, not as alarming as it is perceived and the existing legal system can effectively take care of any problems associated with copyright infringement.

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# INTELLECTUAL PROPERTY RIGHT (IPR) IN INDIAN SCENARIO

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**Abstract**

Global competitiveness has redefined business strategies worldwide and the focus has certainly shifted to examining how our knowledge resources can reposition our stand in the world market. It means that process of wealth creation is changing from resource based to knowledge based i.e. it now depends on brainpower and our ability to create, to sell, to explain and to solve problems. As a result, in future the wealth would more and more come out of our brains and less and less will it come out of the ground. And the goods and services being created by our brainpower would be marketed in the global village. Now a basic issue to be addressed is that how can this property of knowledge be protected, and prior to this we need to think that how the knowledge can be converted into property. Since knowledge is abstract and is not like a car or a house which can be locked and secured against theft. If anyone gains knowledge it does not reduce that available to others. There are two ways of turning knowledge into property. One way is secrecy, which is used to protect three types of information, namely trade secrets, know – how and rituals. Another way is Intellectual Property Laws, including Copyright, Patent, Registered Industrial Design and Trademark, legislation and conventions.

**Key words:** Reposition, Copyright, Patent, Trademark.

**Intellectual Property Rights – Defined**

Intellectual property rights are provided as a protection and incentive to the creators, whose creativity could otherwise be freely used by others. The society expects the creators to make their work available in the market where this work can be bought and sold. But while the society wishes to encourage creativity, it does not want to help the grooming of harmful market power. And for this reason, certain limits are built in the rights granted to the creator, in terms of time and space, by the state. Rights are granted for fixed period of time and protect only the fixation of creativity in material form.

**Intellectual Property Rights – Looking Back**

Prior to General Agreement on Tariffs and Trade (GATT), intellectual property rights were not subject to formal international trade negotiations. Rather, intellectual properties were subject only to

international conventions like Berne and Rome conventions concerning Copyrights. These conventions required 'national treatment', i.e. treat foreigners the same as nationals. As a result if the member nation opted to provide limited protection to the creators, then no greater protection was available to foreigners.

**Intellectual Property Rights – The Days Ahead**

Following the emergence of strong global and national intellectual property regimes the subject of intellectual property rights and their protection has become a central issue in economic development, scientific and technological development, protection of traditional knowledge and scientific and economic co – operation between industrialized and developing countries. IPR as an issue has become important because of the emergence of corporates' as dominant institutions. Today's world is a 'World of Opportunities and Threats' (WTO); wherein the knowledge dimension has acquired a new role in wealth creation. In this era of contemporary knowledge, the corporates' wish to establish their rights on this resource to ensure a proper 'Return on Investments / Invention / Innovation'. Where on one side these corporates' play a dominant role in discovering new knowledge, on the other side, these coporates' try to appropriate the knowledge of nations and communities. With the advent of globalization and a borderless world, nations have been weakened and corporates' have emerged as states in themselves. This has made attempts of piracy of people's knowledge easier. "How are we going to ensure that our Intellectual property is protected at an offshore location?" is a question often asked in board meetings of companies that are planning their offshore initiatives in India. The importance of IP exponentially increases in companies that are planning to execute some of their core projects offshore and in companies that need to provide access to classified company data to the offshore location for BPO/Call centre initiatives. It is important for companies to understand IP rights in India and the best practices that can be followed to protect the IP.

Intellectual Property will no longer be seen as distinct or self contained domain, but rather as an important and effective policy instrument that would be relevant to a wider range of socio – economic, technological and political concerns. Moreover, as technological advancements have become a requirement for sustained growth in the future, a new emphasis is emerging on research and development. It is for this reason that intellectual property and its protection have gained greater importance. Intellectual Property has now been recognized as an important tool for technical, industrial and economic development.

**Intellectual Property – Components**

Intellectual Property essentially includes the products or creations of mind. Traditionally intellectual property was divided into two groups:

**1. Industrial Property.** Industrial property includes Inventions (Process, Products and Apparatus); Industrial Designs (Shapes and Ornamentation) and Marks and Trade Names to distinguish goods.

**2. Copyrights.** Copyrights broadly include Literary Work, Musical Works, including any accompanying Words; Dramatic Works, including any accompanying Music; Pantomimes and Choreographic Works; Pictorial, Graphic and Sculptural Works; Motion Picture and other Audiovisual Works; Sound Recordings and Architectural Works.

The convention establishing the World Intellectual Property Organization (WIPO) concluded in Stockholm on July 14, 1967 (Article 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 endeavor,

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 Intellectual activity in the industrial, scientific, literary or artistic fields.

**Intellectual Property Regime – Indian Scenario**

A knowledge-based product requires protection so that the investments made by companies in Research and Development may be justified. It has been seen that developing countries, including India, provide a very weak intellectual property protection. India acknowledged in principle the case for strict IPR protection, but in India, this could be done only in phases suited by its own ground reality. The reality - absence of international IPR protection for some decades had spawned employment for millions, so an overnight clampdown on IPR violators would foment social unrest.

This has made the scene grim for companies investing / willing to invest in research and development efforts. India has lagged behind in formulating relevant laws, making it difficult to protect the country's biodiversity. We have a wealth of traditional knowledge and product's lying in the public domain that needs to be adequately protected. The Basmati controversy clearly underlines the need to have stringent IP laws. Had the Geographical Indication Law been there, Ricetec could not have branded its rice 'basmati rice lines and grains', as the law would have protected basmati on the basis of geographical indication, like France and Scotland did for Champagne and Scotch many years ago.

As globalization deepens further, it also increasingly encompasses the sharing, utilization and enjoyment of IP products like inventions, designs, books, etc. India is fast developing into a technology producing country, particularly in biotechnology, information technology and pharmaceuticals sector. Therefore, development of stringent and staunch IPR system is an urgent need. Keeping in view, this emergency the Indian corporates' are responding positively to TRIPS by gearing itself to increasing the R&D outlays. And as far as the government and legislation is concerned, the following work has been done in this direction, in order to provide a strong Intellectual Property protection system.

**Amendments / Introduction of New Legislation**

**1. Copyrights.** India's Copyrights Act, 1957 as amended by Copyright (Amendment) Act, 1999, fully reflects Berne Convention on copyrights. Additionally, India is party to the Geneva Convention for the protection of rights and procedures of Phonograms and to the Universal Copyright Convention. India is also an active member of World Intellectual Property Organization (WIPO) and UNESCO. The copyright act has been amended periodically to keep pace with changing requirements. The recent amendment has brought the copyrights law in line with development in Satellite broadcasting,

Computer software and Digital technology. The amended law has made provisions for the first time to protect performer's rights as envisaged in the Rome Convention. On the other hand, on the implementation front, several measures have been adopted to strengthen and streamline the enforcement of copyrights. These measures comprise setting up of a Copyrights Enforcement Advisory Council, training programs for enforcement officers and setting up special policy cells to deal with cases relating to infringement of copyrights.

**2. Trademarks.** With regards to Trademarks, the TRIPS agreement provides that the initial registration of trademarks and each renewal of registration shall be for a term of not less than 7 years. The registration shall be renewable for an indefinite period. Compulsory licensing of trademarks is not permitted. Keeping in view the requirement of TRIPS agreement, changes in trade and commercial practices, globalization of trade, need for simplification and harmonization of trademarks registration systems, a comprehensive review of the Trade and Merchandise Marks Act, 1958 was made and a Bill to repeal and replace the act has since been passed by the parliament and notified in the gazette on 30-12-99. This amendment not only makes the Trademarks law compatible to the TRIPS agreement, but also harmonizes it with international systems and practices.

**3. Geographical Indications.** The TRIPS agreement contains a general obligation that parties (countries) shall provide the legal means for interested parties (countries), to prevent the use of any means in the designation or presentation of good that indicates or suggests, that the good in question originates in a geographical area, other than the true place of origin, in a manner which misleads the public, as to the geographical origin of the good. There is no obligation under the agreement to protect geographical indications which are not protected in their country of origin or which have fallen into disuse in that country. A new law for the protection of geographical indications, viz. The Geographical Indications of Goods (Registration and Protection) Act 1999 has also been passed by the parliament and notified on 30-12-99.

**4. Industrial Designs.** Obligations envisages, in the TRIPS agreement, in respect of industrial designs are that independently created designs that are new or original shall be protected. Individual governments have been given the option to exclude from protection, designs dictated by technical or functional considerations, as against aesthetic consideration, which constitutes the coverage of industrial designs. The right accruing to the right holder is the right to prevent third parties not having his consent from making, selling or importing articles or embodying a design, which is a copy or substantially a copy of the protected design, when such acts are undertaken for commercial purposes. The duration of protection is to be not less than 10 years. A new law repealing replacing The Designs Act, 1911 has been passed by parliament in the budget session, 2000. This act has been brought into force from 11-05-01.

**5. Patents.** The basic obligation in the area of patents is that, invention in all branches of technology whether products or processes shall be patent able if they meet the three test of being new, involving an inventive step and being capable of industrial application. In addition to the general security exemption which applied to the entire TRIPS agreement, specific exclusions are permissible from the scope of patent ability of inventions, the prevention of whose commercial exploitation is necessary to protect public order or morality, human, animal, plant life or health or to avoid serious prejudice to the environment. Further, members may also exclude from patent ability of diagnostic, therapeutic and surgical methods of the treatment of human, animals and plants, other than microorganisms and

essentially biological processes for the production of plant and animals. The TRIPS agreement provides for a minimum term of protection of 29 years counted from the date of filing. India has already implemented its obligations under Articles 70.8 and 70.9 of TRIPS agreement. A comprehensive review of the Patents Act, 1970 was also made and a bill to amend the same was introduced in parliament on 20th December, 1999 and notified on 25-06-02 to make the patent law TRIPS compatible.

**Modernization of Intellectual Property Administration**

The Government, in a series of strategic responses to economic liberalization and globalization, has put on priority the modernization of IP Administration. Following steps have been taken:

1. Modernization of patent offices, located at Mumbai, Delhi, Chennai and Kolkata (Head Office), sanctioned at a cost of Rs. 75.79 crores in December, 1998. The components of project included, human resource development, computerization and re-engineering of work practices, clearance of backlog of pending applications and operational and financial autonomy.

2. Effective steps have been taken in terms of acquisition of additional accommodation for Delhi, Kolkata and Chennai offices and its renovation, computerization of operations, provision of additional staff, improvement of library facilities and novelty search facilities, etc.

3. Efforts have been made to improve the working of the patent offices within the resources available and that the problem of backlog is also being attacked through 50% higher monthly target for disposal of patent applications per examiner.

4. A steering committee, comprising representatives of Patent Offices, NIC, NID, NPC, Finance Wing, etc., regularly monitors the progress of implementation.

5. Website of Patent Office (http://patentoffice.nic.in ) was launched. Work manual of the office is put in use. Information brochures on different aspects of intellectual property, including patents, have been released. On-line search facilities have also been established.

**Measures to Strengthen the Enforcement of IP Laws**

Number of measures to strengthen the enforcement of copyright law has been taken by the Government of India. The summary of the same is as follows:

1. The Government has brought out A Handbook of Copyright Law to create awareness of copyright laws amongst the stakeholders, enforcement agencies, professional users like the scientific and academic communities and members of the public. Copies of the Handbook have been circulated free-of-cost to the state and central government officials, police personnel and to participants in various seminars and workshops on IPR.

2. National Police Academy, Hyderabad and National Academy of Customs, Excise and Narcotics conducted several training programs on copyright laws for the police and customs officers. Modules on copyright infringement have been included in their regular training programs.

3. The Department of Education, Ministry of Human Resource Development, Government of India has initiated several measures in the past for strengthening the enforcement of copyrights that include constitution of a Copyright enforcement Advisory Council (CEAC), creation of separate cells in state police headquarters, encouraging setting up of collective administration societies and organization of

seminars and workshops to create greater awareness of copyright laws among the enforcement personnel and the general public.

4. Special cells for copyright enforcement have so far been set up in 23 States and Union Territories, i.e. Andhra Pradesh, Assam, Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Meghalaya, Orissa, Pondicherry, Punjab, Sikkim, Tamil Nadu, Tripura and West Bengal.

5. The Government also initiates a number of seminars/workshops on copyright issues. The participants in these seminars include enforcement personnel as well as representatives of industry organizations. As a consequence of the number of measures initiated by the government, there has been more activity in the enforcement of copyright laws in the country. Over the last few years, the number of cases registered has gone up consistently.

**Conclusion**

Today possession of land, labour and capital are just not enough for a country to succeed. Creativity and innovation are the new drivers of the world economy. The policies adopted by a country shall determine the nations well being. Development of a country's intellectual Capital is the most important task in these regards. An effective intellectual property rights system lies at the core of the countries development strategies. Within knowledge based, innovation driven economies, the intellectual property system is a dynamic tool for wealth creation, providing an incentive for enterprises and individuals to create and innovate a fertile setting for the development of, and trade in, intellectual assets, and a stable environment for domestic and foreign investments. Although India has compiled with the obligations of TRIPS by amending the IP laws, certain issues are still needed to be taken care of. And there is a need for a constant thinking over the core issue of IP protection, in order to respond to situations arising out of global competition.

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# INDIA'S PATENT REGIME AND TRIPs

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This paper discusses about India's patent regime and it's importance of India's trade.

The intellectual property rights concerning the trade that includes patents, utility models, trademarks and brands industrial design s were governed by the Paris convention of1863 which was revised up-to 1967 it was firmly liberal and left to the subject matter of patents terms of patent and duration of protection around to be decided by the concerened national governments.

It legally protects the property rights of an individual or business firm or a nation against illegal usage by others ,the scope of agreement was also widerned to cover patents, copyright s and protection .in the field of food medicinesdrugs and chemical products the TRIPs agreement provides for granting product patents. Patent rights are available for 20 years, in case of copy right and protection will be available for 50 years.

Patent policies in all countries that involve finding thebalence between protecting the rights of innovators and ensuring access to to resources at reasonable price.

Patent amendment act 1970 emphasized the public interest over monopoly rights

This policy was based on granting process patents rather than products patents. 1990,1995,1999patent policies were amended for exclusive marketing rights in2002 indaia passed patent act to meet the WTOsdeadline for introduction of product patents

In 2004 Government of India promulgated the patent ordinanceon December 26.this was followed by the patent act2005 passed by the parliament in March. They extension of IPR took place on january1st 2005 MNCs could well hike there prices of these drugs making some of them out of reach Of The common people, condition S of shortage andscsrcity of some patented drugs of MNCs could also emerge particularly like in small town S impacting there health Of The masses

They extension cord IPR to agriculture and has a serious relationship consequences for their own idia patenting ofplant breeding and seed production of are largely in there public domain. Seed of multiplication and is in there hands of National and state seed corporation. They Government is must bear there responsibility for of ensuring that they supply of of adequate I quantities of seeds at reasonable price. Patenting I has been extended family not only to plant varieties but to them large area of microorganisms as well in this category of all living creatures of as bacteria virus, I fungad, algae small plants and animals

Features of this act are including payent scope new inventions, initiative steps, protective rights to generic producers, licensing laws exports to poor countries patents in all the fields agriculture pharmasuiticals and industrial revolution biotechnology likely to be developed a and India must stand with the advanced countries which is going to dominate the global economy in the coming years.

Patents in all these three fields agriculture, pharmasuiticals, industrial design biotechnology linked to my microorganisms I are either already with their multinational corporations companies or either already with their MNCs likely to be acquired taste at a much faster and rate vis-a-vis there developing countries. In the field of of medicine S drugs and chemical products and then TRIPS agreement provides for for granting product product patents where as earlier on process patents were used to be granted. Such product patents terms will be available for for 20 years. In theatre case of copy right and protection will be available for for 50 years.

Thus far India got patent rights to many products in agriculture and industry and biotechnology and pharmacy and field,by maintaining a transparency and also commitments for liberalisation of international airport trade.

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# BENEFITS OF IPR –MSME SECTOR

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"Knowledge Has Become The Primary Ingredient Of What We Make, Do, Buy, And Sell."
- Thomas Stewart (Intellectual Capital (1997).

**Introduction:**

Intellectual Property Rights are legal rights, which result from intellectual activity in industrial, scientific, literary & artistic fields. These rights are Safeguard creators and other producers of intellectual goods & services by granting them certain time-limited rights to control their use. Protected IP rights like other property can be a matter of trade, which can be owned, sold or bought. These are intangible and non exhausted consumption.

Today is the era not only the survival of the fittest but also the survival of the faster and stronger. The latter two in marketing lexicon are termed as 'competitive advantage.' One way to gain competitive advantage by the MSMEs is the use of IPR which have become a precious commodity in today's world

Small and medium enterprises (hereinafter referred to as SMEs) are the backbone of developing economies. SMEs represent over 90% of enterprises in these economies. The driving force behind these SMEs is the large number of innovations which has led to the growth of the national economy through employment creation, productive investments and value-added exports.

The paper focuses on benefits of IPR TO MSMEs

Awareness of IPR benefits to the MSMEs is mainly on two fronts.

Firstly, how they can protect their creations i.e. to protect their own intellectual property rights and secondly, how they can avoid violating intellectual property rights of others. Furthermore, this increased awareness will encourage MSMEs to make better use of IPR system and make it an integral part of their business strategy.

Intellectual property enables MSMEs to have exclusivity over the exploitation of their innovative products, their creative designs and their brands, thus creating an appropriate incentive for investing in improving their international competitiveness.

The protection of IPR helps increase the competitiveness of MSMEs in a variety of ways. It helps in:

1. Preventing competitors from copying or closely imitating a company's products or services.
2. Avoiding wasteful investment in research and development (R&D).
3. Creating a corporate identity through a trademark and branding strategy.
4. Negotiating licensing, franchising and other IP based contractual agreements.
5. Increasing the marketing value of the company.
6. Acquiring venture capital and enhancing access to finance.
7. Obtaining access to new markets.

**Major initiatives taken under the scheme :**

1. Setting up a Intellectual Property Facilitation Centre (IPFC) for MSMEs with financial assistance up to Rs.65.00 Lakh per centre. This awareness programme may be organized by eligible implementing agencies like expert agencies and prominent Industries Association etc.
2. Awareness/ Sensitisation Programmes on IPR with financial assistance is upto Rs.1.00 Lakh per programme of one day duration each. This awareness programme may be organized by eligible implementing agencies like Industries Association, Chambers etc.
3. Interactive Seminars / Workshops IPR with financial assistance is upto Rs.2.00 Lakh per programme. This awareness programme may be organized by eligible implementing agencies like industries Association, Chambers etc.
4. Specialized training for Government official and Enterprenuer to trend them on IPR related issues. For short-term training programme financial assistance is upto Rs.6.00 Lakh per programme is being provided and for long-term training programme financial assistance is upto Rs.45.00 Lakh per programme.
5. These initiatives are proposed to be developed through Public-Private Partnership (PPP) mode to encourage economically sustainable models for overall development of MSMEs. Under this programme financial assistance will be provided for taking up the identified initiatives. Eligible applicants/beneficiaries will have to contribute minimum 10% of the GoI financial support for availing assistance under the scheme.

## CONCLUSION

Thousands of small and medium enterprises (SMEs) in India are reported to be losing millions in revenues due to lack of awareness about IPRs (intellectual property rights). About 40,000 IP applications are filed in India annually and 85 per cent of these are filed by multinational corporations, leaving a sizable number filed by SMEs, but most innovations across the world are done by SMEs.

The need for and significance of IPR for MSME can be best put in the words of Josh Billings:"Necessity is the mother of invention, but IP right is the father."

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# AN OVERVIEW OF INTELLECTUAL PROPERTY RIGHTS IN INDIA

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Intellectual Property Rights are the rights given to persons over the creations of their minds: inventions, literary and artistic works and symbols, names and images used in commerce. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time. Almost all businesses own some form of IP, which could be a business asset.

Common types of IP include:

Copyright – this protects written or published works such as books, songs, films, web content and artistic works;

Patents – this protects commercial inventions, for example, a new business product or process;

Designs – this protects designs, such as drawings or computer models;

Trade marks – this protects signs, symbols, logos, words or sounds that distinguish your products and services from those of your competitors. IP can be either registered or unregistered.

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 in force in the UK.

Treaties and reciprocal agreements: India is also a signatory to the following international IP agreements:

The Paris Convention – under this, any person from a signatory state can apply for a patent or trade mark in any other signatory state, and will be given the same enforcement rights and status as a national of that country would be;

The Berne Convention – under this, each member state recognises the copyright of authors from other member states in the same way as the copyright of its own nationals;

The Madrid Protocol – under this, a person can file a single trade mark application at their national office that will provide protection in multiple countries;

The Patent Cooperation Treaty – this is a central system for obtaining a 'bundle' of national patent applications in different jurisdictions through a single application.

Registering and enforcing intellectual property rights in India

To enjoy most types of intellectual property (IP) rights in India, you should register them. For patents, individual registrations must be made in India, but for rights other than industrial designs you can apply under the terms of the Patent Cooperation Treaty, which is usually easier and quicker.

For trademarks, you should register them within India, either through the domestic trade mark system or under the Madrid system.

For copyright, no registration is required but registering copyrights with the copyright authorities is advisable.

'Priority rights' under the Paris Convention can help in the local registration of trade marks, designs and patents by allowing rights previously registered elsewhere to become effective in India, if filed within a time limit.

The IPR framework in India is stable and well established from a legal, judicial and administrative point of view and is fully compliant with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). India is committed to a number of international treaties and conventions relating to IPRs. Number of awareness programs enumerating the types of intellectual property rights and its protection are being conducted by the Government, targeting audience from industry, universities, and schools.
During the last few years, Indian IP offices have undergone major improvements in terms of upgradation of IP legislation, infrastructure facilities, human resources, processing of IP applications, computerization of the IP offices, IP databases, quality services to stakeholders, transparency in functioning and free access to IP-data through a dynamic website.
State of the art, integrated and IT- enabled office buildings have been setup in the last few years in Delhi, Kolkata, Chennai, Mumbai and Ahmedabad, housing offices of Patents, Designs, Trademarks and Geographical Indications.
The Patent Office is headquartered in Kolkata with branches in Delhi, Chennai, and Mumbai. The Trade Marks Registry, headquartered at Mumbai has branches in Ahmedabad, Chennai, Delhi, and Kolkata. The Design Office is located in Kolkata and the GI Registry is in Chennai. Separate facilities house the International Searching Authority (ISA) / International Preliminary Examining Authority (IPEA) in Delhi; an Intellectual Property Office Archives Centre has been setup at Ahmedabad.
The procedure for filing and processing of IP applications has been simplified, E-filing facilities and incentives for Small and Medium Enterprises (SMEs) and Startups are some of the other initiatives in the area of promoting IPRs in India.

The extension of intellectual property rights to agriculture via patenting of plant varieties has serious consequences for India. Patenting of plant varieties will transfer all the gains to multinational companies. Almost all new varieties will belong to MNCs simply by virtue of their financial resources.

Under TRIPs patenting has been extended not only to plant varieties but to the large area of microorganisms as well. Microorganisms refer to very small forms of life. There are vital economic sectors that are linked to microorganisms the most important being agriculture, pharmaceuticals and industrial biotechnology

Patents in all the three fields of agriculture, pharmaceuticals and industrial biotechnology linked to micro organisms are either already with the MNCs or are likely to be acquired at a much faster rate vis-à-vis the developing countries

Thus MNCs belonging to developed countries are likely to dominate the global economy that will emerge in the coming years.

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# THE NEED FOR INTELLECTUAL PROPERTY RIGHTS STRATEGIES AT ACADEMIC INSTITUTIONS

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**ABSTRACT**

Intellectual property rights help protect creations of the mind that include inventions, literary or artistic work, images, symbols, etc. If you create a product, publish a book, or find a new drug, intellectual property rights ensure that you benefit from your work. These rights protect your creation or work from unfair use by others. In this article, we will discuss different types of intellectual property rights and learn how they can help researchers.

Universities and other public research organizations are increasingly protecting their inventions – from genetic inventions to software – helping raise additional funding for research and spurring new start ups. The rise in university patenting has occurred against a broader policy framework aimed at fostering a greater interaction between public research and industry in order to increase the social and private returns from public support to R&D. The general strengthening of intellectual property protection world-wide as well as the passage of legislation aimed at improving technology transfer are additional factors that have facilitated the expansion of patenting in academia in OECD countries.

## INTRODUCTION

Intellectual property rights help protect creations of the mind that include inventions, literary or artistic work, images, symbols, etc. If you create a product, publish a book, or find a new drug, intellectual property rights ensure that you benefit from your work. These rights protect your creation or work from unfair use by others. In this article, we will discuss different types of intellectual property rights and learn how they can help researchers.

Universities and other public research organizations are increasingly protecting their inventions – from genetic inventions to software – helping raise additional funding for research and spurring new start ups. The rise in university patenting has occurred against a broader policy framework aimed at fostering a greater interaction between public research and industry in order to increase the social and private returns from public support to R&D. The general strengthening of intellectual property protection world-wide as well as the passage of legislation aimed at improving technology transfer are additional factors that have facilitated the expansion of patenting in academia in OECD countries.

Indeed, in 1980, the United States passed what is widely considered landmark legislation, the Bayh-Dole Act, which granted recipients of federal R&D funds the right to patent inventions and license them to firms. The main motivation for this legislation was to facilitate the exploitation of government-funded research results by transferring ownership from the government to universities and other

contractors who could then license the IP to firms. Although patenting in US universities did occur prior to the passage of Bayh-Dole Act, it was far from systematic.

At the end of the 1990s, emulating the US policy change, many other OECD countries reformed research funding regulations and/or employment laws to allow research institutions to file, own and license the IP generated with government research funds. In Austria, Denmark, Germany and Japan, the main effect of these changes has been the abolishment of the so-called "professor's privilege" that granted academics the right to own patents. The right to ownership has now been transferred to the universities while academic inventors are given a share of royalty revenue in exchange. There has also been debate in Sweden on whether to follow a similar path and transfer ownership to institutions. For now at least, the status quo remains and policy efforts are focusing on developing the ability of universities to provide professors with support for patenting.

In Canada, where rules on IP ownership by universities vary across Provinces, efforts have nevertheless been made to harmonize policies at least with respect to R&D funded by federal government Crown Contracts. In Ireland and France, where institutions normally but not always retain title, the government has chosen an alternate path: issuing guidelines for IP management at institutions in order to foster more consistent practices. Such reforms are not only confined to the OECD countries. China has recently made legislative reforms to allow universities to protect and claim IP, but implementation of such reforms remains a challenge. One lesson from all this is that despite the importance of patent legislation in fostering technology transfer, different national systems may require different solutions.

**Institutional ownership of IP is not sufficient**

Encouraging universities to commercialize research results by granting them title to IP can be useful but it is not sufficient to get researchers to become inventors. The key is that institutions and individual researchers have incentives to disclose, protect and exploit their inventions. Incentives can be "sticks" such as legal or administrative requirements for researchers to disclose inventions. Such regulations are often lacking in many countries, even in those where institutions can claim patents. Government rules that prevent universities from keeping royalty income from licenses are another disincentive to institutions. Incentives can also be "carrots" such as royalty sharing agreements or equity participation in academic start-ups. Recognition of patent activity in the evaluation and recruitment of faculty can also provide incentives for young researchers. Tsinghua University in China offers its young researchers prizes for inventions that are commercialized.

Given the diversity of research institutions and traditions, it is important that incentives are set at the institution level, but national guidelines can help bring about coherence and the sharing of good practices. As important as incentives is the need for research institutions to clarify IP rules and disseminate them among faculty, staff as well as graduate students- who are increasingly involved in public research activities.

**Building critical mass in IP management**

To bridge the gap between invention and commercialization, universities have established "technology transfer offices" (TTOs), on campus or off-campus intermediaries that carry out a wide range of functions, from licensing patents to companies to managing research contracts. Results from an OECD

report on patenting and licensing at public research organizations2 show that there is a large diversity in the structure and organization of TTOs within and across countries (e.g. on or off -campus offices, arm's length intermediaries, industry sector-based TTOs, and regional TTOs) but the majority appear to be dedicated on-site institutions and integrated into the university or research institution. Many of the TTOs are in their infancy; most are less than 10 years old and have less than five full-time staff. Still, the number of new TTOs is growing, to the order of 1 per year per institution.

In terms of performance, the report also found enormous variations in terms of the size of patent portfolios as well as revenues obtained from licensing. In 2000 the United States had a huge lead over other OECD countries in academic patenting: universities and federal labs received over 8 000 patents (5% of total patenting, rising to 15% in biotechnology). Academic patenting in other countries, as measured by the number of patents granted to public research institutions, ranged from the low hundreds in Japan, the Netherlands and Switzerland, to close to 1 000 at German public labs and Korean research institutions in 2000-2001. While leading universities and public research organizations in countries such as the United States, Germany and Switzerland may earn millions of dollars or euros in licensing revenue, the gains are highly skewed – a few blockbuster inventions account for most revenue. Furthermore, income from licensing academic inventions remains quite small in comparison to overall research budgets. Academic patenting is thus more about boosting research and transferring technology to industry than about making a profit. In fact, evidence from the US show that the break even point for TTOs is between 5 to 7 years.

A main barrier to the development of TTOs is access to experienced technology transfer professionals. Not only are the skills sets of such professionals in short supply but sometimes government employment rules and pay-scales prevent public institutions from being able to provide competitive salaries to such professionals. Governments are nevertheless trying to help universities build IP management capacity. Denmark and Germany have both invested several millions of euro to spur the development of technology transfer offices clustered around certain regions or sectors such as biotechnology. The UK government has increased expenditures on the training of intellectual property management at universities. Even in the United States and Japan, universities pay reduced patent application fees. National patent offices are also involved in reaching out to universities to provide training in intellectual property.

Start-ups versus licensing to other firms

One of the questions facing technology transfer managers and inventors is whether to license a technology or to create a start-up firm to commercialize it. Governments and university managers, especially in some European countries, have tended to favour start-ups as opposed to licensing strategies. Part of this stems from the rise in government funded venture funds that aim to promote new firm creation. The key question, however, is: which is the best channel for transferring the technology to the marketplace? The answer in fact depends on the technology in question, the market for such a technology, the skills set of the staff and researchers involved the invention, access to venture capital, and finally the mission of the institution. Certain "platform" technologies with a wide range of applications may be commercialized via a start-up company for example while others may be licensed to larger firms with the business capacity to develop the invention further and integrate it into its R&D and business strategy.

**Balancing IP protection with the need to maintain public access**

Despite the relatively small amount of (formal) academic patenting activity that takes place, the increased focus on patenting academic inventions and licensing them to companies has raised a number of concerns common to countries throughout the OECD area and beyond. These concerns range from the impact of patenting on the traditional missions of universities, the effect on the direction of research, on the actual costs and benefits of patenting and licensing, to the effects on the diffusion of and access to publicly funded research results.

What has been the impact of IP and technology transfer activities on the direction of research? Quantitative studies tend to show that patenting has led universities to conduct more applied research. By making university research more responsive to the economy, is there a danger that basic research will suffer? On the one hand, several studies in the United States have found that universities and individual researchers that have seen the largest increases in patenting are also those which experienced the greatest gains in academic publications. On the other hand, the rate at which academic patents are cited in other patents fell (relative to the average) between the early 1980s and late 1990s in the United States and is now lower than the citation rate of patents granted to business. This could suggest a possible drop in the quality of public research – or at least of its patented component. Alternatively, it may reflect the inexperience of newly founded technology transfer offices.

**Exclusive versus non-exclusive licensing**

Should universities and other public research organizations grant exclusive licenses to firms for inventions that have benefited from public funds?

Licensees often require exclusive licenses as they offer more protection for the necessary development to be conducted before a university-provided invention can become a marketed product. The issue is particularly crucial for start-ups which have few assets other than their IP. On the other hand, by definition, exclusive licenses limit the diffusion of technologies. The OECD report has found that the mix of exclusive and non-exclusive licenses granted by public research organizations is fairly balanced, and that exclusivity is often granted with restrictions on the licensee side. Research institutions often include clauses in license agreements to protect public interests and access to the IP for future research and discovery. Licensing agreements in many institutions include a commitment to exploit the invention on the part of the licensee, particularly if the license is exclusive, and to agree on milestones in order to assure that commercialization will take place. Such safeguards can be used to ensure that technology is transferred and that licensed patents are not used simply to block competitors.

As academic inventions arise in areas closer to basic research, scientists and policy makers are also concerned that patenting certain inventions could block downstream research. One example is that of research tools, in which granting a patent could inhibit diffusion by increasing the costs and difficulty of using such tools in applied research. In response, the National Institutes of Health in the United States (NIH) have espoused a policy that discourages unnecessary patenting and encourages non-exclusive licensing (see link). Such guidelines are now being emulated by funding agencies and research institutions in other countries.

**Research exemption**

Another area of debate concerns the use of the so-called "exemption for research use" that has been in use in universities in both the United States and in EU countries, either formally or informally. Traditionally, universities have been exempted from paying fees for patented inventions they use in their own research. The rationale is that universities fulfill a public mission. As more public research is carried out with business and generates monetary rewards, the divide between public mission and commercial aims becomes less stark. The extent and status of this exemption differs across countries and is often ill-defined. This research exemption – or rather its interpretation – has recently been the subject of policy debate and litigation: recent court decisions in the United States have restricted its meaning.

**Conclusion**

Making universities and other public research organizations more active in protecting and exploiting their IP means not only actively promoting faculty and student research, but also determining how best to pursue any relationship with business clients while protecting the public interest. Many of the concerns or issues related to balancing IP protection with public access will take time to resolve. The growing reliance of public research institutions on various sources of funding, including from industry and contract research, as well as demands by society for greater economic and social returns on investment in public R&D, have made academic patenting a reality that is more likely to increase than decrease. At the same time, it should be recalled that intellectual property is but one of several channels for transferring knowledge and technology from publicly funded research which include publication, the movement of graduates, conferences as well as informal channels. While research institutions and firms are working to find solutions to problems as they arise, governments and research funding agencies have a role to play in providing guidelines on academic patenting and licensing and in fostering debate.

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# THE BASICS OF INTELLECTUAL PROPERTY

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**Abstract**

Intellectual property is one of those ideologically loaded terms that can cause an argument just by being uttered. The term wasn't in widespread use until the 1960s, when it was adopted by the World Intellectual Property Organization, a trade body that later attained exalted status as a UN agency. Intellectual property is generally characterized as non-physical property that is the product of original thought. Typically, rights do not surround the abstract non-physical entity rather, intellectual property rights surround the control of physical manifestations or expressions of ideas. It refers to creations of the mind: inventions, literary and artistic works, symbols, names and images used in commerce. It is the recent branch of law that has gained more importance with the growth of ICT.

**Keywords:** Intellectual property, intellectual property rights, ideas, inventions, literary and artistic works.

## Introduction

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. These rights are outlined in Article 27 of the Universal Declaration of Human Rights, which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions. The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Both treaties are administered by the World Intellectual Property Organization (WIPO).

A category of intangible rights protecting commercially valuable products of the human intellect (Garner, 2009). Intellectual property is all about the results of human creativity. Its subject matter is formed by new ideas generated by man. Their application to human needs and desires can be of considerable benefit to mankind. New ideas can be embodied in familiar things such as books, music and art, in technical machinery and processes, in designs for household objects and for commercial ventures, and in all other sources of information (Colston, 1999).

Intellectual property are explained by many theories over a time. The first is a natural theory of property which defends the claims that natural facts determine what is property and who owns what. The second approach is in fact a broad class of theories that understand property as a social construction validated in terms of its instrumental capacity to produce or secure other ethical goals. The third approach is a labour theory that grounds property claims in productive activity (Das, 2008)

**Types of Intellectual Property**

Intellectual property is divided into two categories: Industrial Property includes patents for inventions, trademarks, industrial designs and geographical indications. Copyright covers literary works (such as novels, poems and plays), films, music, artistic works (e.g., drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs.

**Patents**

A patent is an exclusive right granted for an invention – a product or process that provides a new way of doing something, or that offers a new technical solution to a problem. A patent provides patent owners with protection for their inventions. Protection is granted for a limited period, generally 20 years. Patents provide incentives to individuals by recognizing their creativity and offering the possibility of material reward for their marketable inventions. These incentives encourage innovation, which in turn enhances the quality of human life.

Patent protection means an invention cannot be commercially made, used, distributed or sold without the patent owner's consent. Patent rights are usually enforced in courts that, in most systems, hold the authority to stop patent infringement. Conversely, a court can also declare a patent invalid upon a successful challenge by a third party.

**Patent Rights**

A patent owner has the right to decide who may – or may not – use the patented invention for the period during which it is protected. Patent owners may give permission to, or license, other parties to use their inventions on mutually agreed terms. Owners may also sell their invention rights to someone else, who then becomes the new owner of the patent. Once a patent expires, protection ends and the invention enters the public domain. This is also known as becoming off patent, meaning the owner no longer holds exclusive rights to the invention, and it becomes available for commercial exploitation by others.

**Protection of inventions**

An invention must, in general, fulfill the following conditions to be protected by a patent. It must be of practical use; it must show an element of "novelty", meaning some new characteristic that is not part of the body of existing knowledge in its particular technical field. That body of existing knowledge is called "prior art". The invention must show an "inventive step" that could not be deduced by a person with average knowledge of the technical field. Its subject matter must be accepted as "patentable" under law. In many countries, scientific theories, mathematical methods, plant or animal varieties, discoveries of natural substances, commercial methods or methods of medical treatment (as opposed to medical products) are not generally patentable.

**Trademark**

A trademark is a distinctive sign that identifies certain goods or services produced or provided by an individual or a company. Its origin dates back to ancient times when craftsmen reproduced their signatures, or "marks", on their artistic works or products of a functional or practical nature. Over the years, these marks have evolved into today's system of trademark registration and protection. The system helps consumers to identify and purchase a product or service based on whether its specific characteristics and quality – as indicated by its unique trademark – meet their needs.

Trademark protection ensures that the owners of marks have the exclusive right to use them to identify goods or services, or to authorize others to use them in return for payment. The period of protection varies, but a trademark can be renewed indefinitely upon payment of the corresponding fees. Trademark protection is legally enforced by courts that, in most systems, have the authority to stop trademark infringement. In a larger sense, trademarks promote initiative and enterprise worldwide by rewarding their owners with recognition and financial profit. Trademark protection also hinders the efforts of unfair competitors, such as counterfeiters, to use similar distinctive signs to market inferior or different products or services. The system enables people with skill and enterprise to produce and market goods and services in the fairest possible conditions, thereby facilitating international trade.

Trademarks may be one or a combination of words, letters and numerals. They may consist of drawings, symbols or three dimensional signs, such as the shape and packaging of goods. In some countries, non-traditional marks may be registered for distinguishing features such as holograms, motion, color and non-visible signs (sound, smell or taste). In addition to identifying the commercial source of goods or services, several other trademark categories also exist. Collective marks are owned by an association whose members use them to indicate products with a certain level of quality and who agree to adhere to specific requirements set by the association. Such associations might represent, for example, accountants, engineers or architects. Certification marks are given for compliance with defined standards but are not confined to any membership. They may be granted to anyone who can certify that their products meet certain established standards. Some examples of recognized certification are the internationally accepted "ISO 9000" quality standards and Eco labels for products with reduced environmental impact.

**Industrial Design**

An industrial design refers to the ornamental or aesthetic aspects of an article. A design may consist of three-dimensional features, such as the shape or surface of an article, or two-dimensional features, such as patterns, lines or color. Industrial designs are applied to a wide variety of industrial products and handicrafts: from technical and medical instruments to watches, jewelry and other luxury items; from house wares and electrical appliances to vehicles and architectural structures; from textile designs to leisure goods.

To be protected under most national laws, an industrial design must be new or original and nonfunctional. This means that an industrial design is primarily of an aesthetic nature, and any technical features of the article to which it is applied are not protected by the design registration. However, those features could be protected by a patent.

Industrial designs are what make an article attractive and appealing; hence, they add to the commercial value of a product and increase its marketability. When an industrial design is protected, the owner – the person or entity that has registered the design – is assured an exclusive right and protection against unauthorized copying or imitation of the design by third parties. This helps to ensure a fair return on investment. An effective system of protection also benefits consumers and the public at large, by promoting fair competition and honest trade practices, encouraging creativity and promoting more aesthetically pleasing products.

Protecting industrial designs helps to promote economic development by encouraging creativity in the industrial and manufacturing sectors, as well as in traditional arts and crafts. Designs contribute to the expansion of commercial activity and the export of national products.

Industrial designs can be relatively simple and inexpensive to develop and protect. They are reasonably accessible to small and medium-sized enterprises as well as to individual artists and crafts makers, in both developed and developing countries.

In most countries, an industrial design must be registered in order to be protected under industrial design law. As a rule, to be registrable, the design must be "new" or "original". Countries have varying definitions of such terms, as well as variations in the registration process itself. Generally, "new" means that no identical or very similar design is known to have previously existed. Once a design is registered, a registration certificate is issued. Following that, the term of protection granted is generally five years, with the possibility of further renewal, in most cases for a period of up to 15 years.

**Geographical Indication**

A geographical indication is a sign used on goods that have a specific geographical origin and possess qualities or a reputation due to that place of origin. Most commonly, a geographical indication consists of the name of the place of origin of the goods. Agricultural products typically have qualities that derive from their place of production and are influenced by specific local geographical factors, such as climate and soil. Whether a sign functions as a geographical indication is a matter of national law and consumer perception. Geographical indications may be used for a wide variety of agricultural products, such as, for example, "Tuscany" for olive oil produced in a specific area of Italy, or "Roquefort" for cheese produced in that region of France.

The use of geographical indications is not limited to agricultural products. They may also highlight specific qualities of a product that are due to human factors found in the product's place of origin, such as specific manufacturing skills and traditions. The place of origin may be a village or town, a region or a country. An example of the latter is "Switzerland" or "Swiss", perceived as a geographical indication in many countries for products made in Switzerland and, in particular, for watches.

Geographical indications are protected in accordance with national laws and under a wide range of concepts, such as laws against unfair competition, consumer protection laws, laws for the protection of certification marks or special laws for the protection of geographical indications or appellations of origin. In essence, unauthorized parties may not use geographical indications if such use is likely to mislead the public as to the true origin of the product. Applicable sanctions range from court

injunctions preventing unauthorized use to the payment of damages and fines or, in serious cases, imprisonment.

**Copyright and Related Rights**

Copyright laws grant authors, artists and other creators protection for their literary and artistic creations, generally referred to as "works". A closely associated field is "related rights" or rights related to copyright that encompass rights similar or identical to those of copyright, although sometimes more limited and of shorter duration. The beneficiaries of related rights are: performers (such as actors and musicians) in their performances, producers of phonograms (for example, compact discs) in their sound recordings and broadcasting organizations in their radio and television programs. Works covered by copyright include, but are not limited to: novels, poems, plays, reference works, newspapers, advertisements, computer programs, databases, films, musical compositions, choreography, paintings, drawings, photographs, sculpture, architecture, maps and technical drawings.

The creators of works protected by copyright, and their heirs and successors (generally referred to as "right holders"), have certain basic rights under copyright law. They hold the exclusive right to use or authorize others to use the work on agreed terms. The right holder(s) of a work can authorize or prohibit: its reproduction in all forms, including print form and sound recording; its public performance and communication to the public; its broadcasting; its translation into other languages; and its adaptation, such as from a novel to a screenplay for a film. Similar rights of, among others, fixation (recording) and reproduction are granted under related rights.

Many types of works protected under the laws of copyright and related rights require mass distribution, communication and financial investment for their successful dissemination (for example, publications, sound recordings and films). Hence, creators often transfer these rights to companies better able to develop and market the works, in return for compensation in the form of payments and/or royalties (compensation based on a percentage of revenues generated by the work).

**Benefits of protecting copyright and related rights**

Copyright and related rights protection is an essential component in fostering human creativity and innovation. Giving authors, artists and creators incentives in the form of recognition and fair economic reward increases their activity and output and can also enhance the results. By ensuring the existence and enforceability of rights, individuals and companies can more easily invest in the creation, development and global dissemination of their works. This, in turn, helps to increase access to and enhance the enjoyment of culture, knowledge and entertainment the world over, and also stimulates economic and social development.

Copyright and related rights protection is obtained automatically without the need for registration or other formalities. However, many countries provide for a national system of optional registration and deposit of works. These systems facilitate, for example, questions involving disputes over ownership or creation, financial transactions, sales, assignments and transfer of rights.

Many authors and performers do not have the ability or means to pursue the legal and administrative enforcement of their copyright and related rights, especially given the increasingly global use of

literary, music and performance rights. As a result, the establishment and enhancement of collective management organizations (CMOs), or "societies", is a growing and necessary trend in many countries. These societies can provide their members with efficient administrative support and legal expertise in, for example, collecting, managing and disbursing royalties gained from the national and international use of a work or performance. Certain rights of producers of sound recordings and broadcasting organizations are sometimes managed collectively as well.

**Conclusion**

Intellectual Property and its associated rights are seriously influenced by the market needs, market response, cost involved in translating IP into commercial venture and so on. In other words, trade and commerce considerations are important in the management of IPR. Different forms of IPR demand different treatment, handling, planning, and strategies and engagement of persons with different domain knowledge such as science, engineering, medicines, law, finance, marketing, and economics. Each industry should evolve its own IP policies, management style, strategies, etc. depending on its area of specialty. IPR is prerequisite for better identification, planning, commercialization, rendering, and thereby protection of invention or creativity.

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# AN OVERVIEW OF INTELLECTUAL PROPERTY RIGHTS IN INDIA

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**ABSTRACT**

An intellectual property right refers to the general term for the assignment of property rights through patents, copyrights and trademarks. These property rights allow the holder to exercise a monopoly on the use of the item for a specified period. The four primary types of intellectual property (IP) that can be legally protected: patents, trademarks, copyrights, and trade secrets. Each has their own attributes, requirements and costs. The protection of intellectual property rights (IPRs) has changed over the last two decades from an obscure national regulation issue to a hotly debated global issue. It's a very complex issue to summarize, as there are quite a few strands. The IPR Policy recognizes the abundance of creative and innovative energies that flow in India, and the need to tap into and channelize these energies towards a better and brighter future for all.

This paper is an attempt to underline those challenges and issues that India is facing in offering IP Rights to companies in INDIAN jurisdiction. Though, there are Many Challenges we will list only few that are of utmost important.

**Keywords:** Intellectual property rights (IPR), patent, copyright, IPR Policy, TRIPS

## INTRODUCTION

Intellectual property refers to an invention from the human intellect that is protected for the creator's use under the law as a patent, copyright, trademark, or trade secret. In the Information Age, intellectual property is the foundation that ensures future innovations make the leap from the drawing board to the marketplace, where they can be used to improve our lives and tackle the challenges confronting our society.

IP is the original concepts and ideas conceived of and developed by employees, or workers and advisors under contract to do so, that become corporate assets. This includes things like: Inventions, work processes, articles, blog posts, case studies, and other content, books, illustrations, photos, music, logos, product and business names, taglines, slogans, movies, games. They are things or ideas you have created that support your business..

Common types of IP include:

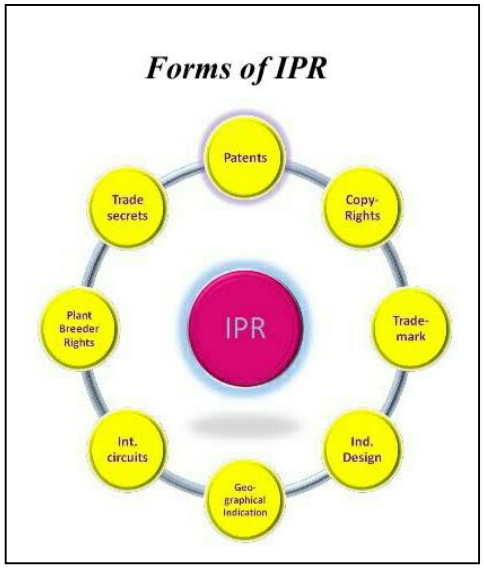
- **Copyright –** This protects written or published works such as books, songs, films, web content and artistic works
- **Patents –** This protects commercial inventions, for example, a new business product or process;
- **Designs –** This protects designs, such as drawings or computer models;
- **Trademarks –** This protects signs, symbols, logos, words or sounds that distinguish your products and services from those of your competitors.

**IP can be either registered or unregistered.**

With unregistered IP, you automatically have legal rights over your creation. Unregistered forms of IP include copyright, unregistered design rights, common law trademarks and database rights, confidential information and trade secrets.

With registered IP, you will have to apply to an authority, such as the Intellectual Property Office in the UK, to have your rights recognized. If you do not do this, others are free to exploit your creations. Registered forms of IP include patents, registered trade marks and registered design rights. Copyright is also register able.

**TYPES OF IPR IN INDIA**




**PATENT**

- ✓ A patent is granted for an invention which is a new product or process involving an inventive step and capable of industrial application.

- ✓ "New invention" means the subject matter has not fallen in public domain or that it does not form part of the state of the art;
- ✓ Inventive step is the feature(s) of the invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art.
- ✓ Capable of Industrial application means that the invention is capable of being made or used in an industry.

COPYRIGHT

- ✓ Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work.

**TRADEMARK**

- ✓ A trademark means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one undertaking from those of other undertakings.
- ✓ A trademark can be a sign, words, letters, numbers, drawings, pictures, emblem, colours or combination of colours, shape of goods, graphic representation or packaging or sound or any combination of the above as applied to goods or services.

**DESIGN**

- ✓ A design refers only to the features of shape, configuration, pattern, ornamentation, composition of colour or line or a combination thereof, applied to any article, whether two or three dimensional or in both forms by any industrial process or means which, in the finished article, appeal to and are judged solely by the eye.

**GEOGRAPHICAL INDICATION**

- ✓ A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production.

INTEGRATED CIRCUITS

- ✓ The aim is to provide protection of Intellectual Property Right (IPR) in the area of Semiconductor Integrated Circuit Layout-Designs and for matters connected therewith or incidental thereto.

PLANT BREEDER RIGHTS

- ✓ Protection granted for plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants.

**TRADE SECRETS**

- ✓ The subject matter of trade secrets is usually defined in broad terms and includes sales methods, distribution methods, consumer profiles, advertising strategies, lists of suppliers and clients, and manufacturing processes. While a final determination of what information constitutes a trade secret will depend on the circumstances of each individual case, clearly unfair practices in respect of secret information include industrial or commercial espionage, breach of contract and breach of confidence.

**National Intellectual Property Rights Policy**

It was approved by the Indian cabinet on 12 May 2016 to ensure compliance to the Doha Development Round and TRIPS Agreement. With its seven objectives, it aims at creating a ""Creative India; Innovative India"

The National IPR Policy is a vision document that aims to create and exploit synergies between all forms of intellectual property (IP), concerned statutes and agencies. It sets in place an institutional mechanism for implementation, monitoring and review. It aims to incorporate and adapt global best practices to the Indian scenario. This policy shall weave in the strengths of the Government, research and development organizations, educational institutions, corporate entities including MSMEs, start-ups and other stakeholders in the creation of an innovation-conducive environment, which stimulates creativity and innovation across sectors, as also facilitates a stable, transparent and service-oriented IPR administration in the country.

The Policy recognizes that India has a well-established TRIPS-compliant legislative, administrative and judicial framework to safeguard IPRs, which meets its international obligations while utilizing the flexibilities provided in the international regime to address its developmental concerns. It reiterates India's commitment to the Doha Development Agenda and the TRIPS agreement.

While IPRs are becoming increasingly important in the global arena, there is a need to increase awareness on IPRs in India, be it regarding the IPRs owned by oneself or respect for others' IPRs. The importance of IPRs as a marketable financial asset and economic tool also needs to be recognized. For this, domestic IP filings, as also commercialization of patents granted, need to increase. Innovation and sub-optimal spending on R&D too are issues to be addressed.

The broad contours of the National IPR Policy are as follows:

**Vision Statement:**

An India where creativity and innovation are stimulated by Intellectual Property for the benefit of all; an India where intellectual property promotes advancement in science and technology, arts and

culture, traditional knowledge and biodiversity resources; an India where knowledge is the main driver of development, and knowledge owned is transformed into knowledge shared.

**Mission Statement:**

Stimulate a dynamic, vibrant and balanced intellectual property rights system in India to:

- ✓ Foster creativity and innovation and thereby, promote entrepreneurship and enhance socio-economic and cultural development, and
- ✓ Focus on enhancing access to healthcare, food security and environmental protection, among other sectors of vital social, economic and technological importance.

**OBJECTIVES OF IPR POLICY IN INDIA**

The Policy is a comprehensive document that lays down seven objectives which have been elaborated with actionable steps to be undertaken by the identified nodal ministry/ department:

1. **IPR Awareness: Outreach and Promotion** - To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society.
2. **Generation of IPRs** - To stimulate the generation of IPRs.
3. **Legal and Legislative Framework** - To have strong and effective IPR laws, which balance the interests of rights owners with larger public interest.
4. **Administration and Management** - To modernize and strengthen service-oriented IPR administration.
5. **Commercialization of IPRs** - Get value for IPRs through commercialization.
6. **Enforcement and Adjudication** - To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements.
7. **Human Capital Development** - To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs.

**ABOUT IPR IN INDIA**

The plan will be reviewed every five years in consultation with stakeholders.

In order to have strong and effective IPR laws, steps would be taken — including review of existing IP laws — to update and improve them or to remove anomalies and inconsistencies.

- ✔ The policy is entirely compliant with the WTO's agreement on TRIPS.
- ✔ Special thrust on awareness generation and effective enforcement of IPRs, besides encouragement of IP commercialization through various incentives.

- ✔ India will engage constructively in the negotiation of international treaties and agreements in consultation with stakeholders. The government will examine accession to some multilateral treaties which are in India's interest, and become a signatory to those treaties which India has de facto implemented to enable it to participate in their decision making process, the policy said.
- ✔ It suggests making the department of industrial policy and promotion (DIPP) the nodal agency for all IPR issues. Copyrights related issues will also come under DIPP's ambit from that of the Human Resource Development (HRD) Ministry.
- ✔ Films, music, industrial drawings will be all covered by copyright.
- ✔ The Policy also seeks to facilitate domestic IPR filings, for the entire value chain from IPR generation to commercialization. It aims to promote research and development through tax benefits.
- ✔ Proposal to create an effective loan guarantee scheme to encourage start-ups.
- ✔ It also says "India will continue to utilize the legislative space and flexibilities available in international treaties and the TRIPS Agreement." These flexibilities include the sovereign right of countries to use provisions such as Section 3(d) and CLs for ensuring the availability of essential and life-saving drugs at affordable prices.
- ✓ The policy left the country's patent laws intact and specifically did not open up Section 3(d) of the Patents Act, which sets the standard for what is considered an invention in India, for reinterpretation.

**CHALLENGES IN IPR**

On the other hand, the impact of IPR in India is limited and currently faces challenges. Violations are rife because of poor enforcement of rights and court cases that could run on for years. This is a sore point, particularly for large multinational corporations in areas like pharmaceuticals and agriculture.

The Indian government, for its part, has been reluctant to enforce IPR to protect the interest in Indian citizens in some instances. For example, under the provision of compulsory licensing, the government can force the patent owner or get someone else to mass-produce an essential drug in an emergency

IPR protection in agriculture is a sensitive topic in India. Under the TRIPs agreement, subsidies like minimum support prices for agricultural produce and those for fertilizer etc. have to be phased out. Since issues of food security and livelihoods are involved here, political parties are unlikely to allow this to happen anytime soon. There has also been some resistance from farmers to the patenting of seeds by multinational corporations.

Traditional knowledge and products acquired over the centuries using local know-how have been kept out the reach of patents. The government has created a database of such products and processes in the Traditional Knowledge Digital Library.

**IPR LAWS IN INDIA**

The Intellectual Property Law in India comprises of various acts based on the kind of Intellectual Property we wish to protect. Listed as below:

1. The Patent Act, 1970 (Patents | Intellectual Property India) For protection of Inventions
2. The Trademark Act, 1999 (Trade Marks | Intellectual Property India) for protection of a word, phrase, symbol, and/or design that identifies and distinguishes the source of the goods of one party from those of others.
3. Indian Copyright Act, 1957 (Copyright Office) for protection of original works of authorship including literary, dramatic, musical, and artistic works, such as poetry, novels, movies, songs, computer software, and architecture.
4. The Geographical Indications of Goods (Registration & Protection) Act, 1999 (GI | Intellectual Property India) for protection of products that have a specific geographical origin and possess qualities or a reputation that are due to that origin.
5. The Designs Act, 2000 (Designs | Intellectual Property India) for protection of the 'overall appearance of the product resulting from one or more visual features.' The visual features encompass the shape, configuration, pattern and ornamentation of the product but do not extend to the functionality.
6. The Protection of Plant Variety and Farmers Rights Act, 2001 for protection of plant varieties.
7. Trade Secrets: In India there is no specific legislation for protection of confidential information and trade secrets. But, the related cases are prosecuted on the principles of equity, common law for breach of confidence/ contractual obligations.

And there are few more laws which are involved such as Semiconductor Integrated Circuits Layout-Design Act, 2000 and Biological Diversity Act, 2002. The Department of Industrial Policy and Promotion (DIPP) is entrusted with matters concerning the specialized UN agency on IPRs, the World Intellectual Property Organization (WIPO), including coordination with other concerned Ministries or Departments

**CONCLUSION**

Intellectual property rights are monopoly rights that grant their holders the temporary privilege for the exclusive exploitation of the income rights from cultural expressions and inventions. There must be good reasons for a society to grant such privileges to some of its individuals, and therefore the proponents of these rights have provided three widely accepted justifications to defend the interwoven global intellectual property rights regime we have in place today.

Even if we accept that the creative process is a collective process it is still useful to grant these monopoly rights to creators and inventors, as with these incentives more innovation would happen than without, which is better for all and better for the worst off.

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# NATURE AND SCOPE OF INTELLECTUYAL PROPERTY RIGHTS

**Dr. K. Sreelakshmamma**

**Introduction**

As the global economy has increasingly become based on knowledge and innovation, the question of intellectual property rights (IPR) has become central to the debate on global economics. The advanced industrial countries have a comparative advantage in innovation and knowledge production, a tough IPR regime is in their interests. It would also ensure a flow of funds – mostly in the form of patent and copyright royalties. The advanced industrial countries have an interest in the rapid growth of all other countries: growth in emerging markets and developing can be complementary to that of the advanced countries. Indeed in recent years, emerging markets and developing countries have been the engine of global economic growth. A better IPR regime – which fosters more innovation and more access to knowledge – would facilitate growth in developing countries, reducing the knowledge gap, which remains a critical distinction been developed and developing counties. An attempt is made in this paper to review the nature and scope of IPRs and status of IPRs in Higher Educational Institutions in India.

Intellectual property is so broad that which has many aspects and stands for groupings of rights which individually constitute distinct rights. However, its conception differs from time to time and also subject to various influences. The changes in information technology, globalization and generality have affected the contents of intellectual property. For example, in olden days-because of religion creation of life, say plants or animals were not protected. Hence, defining IP is difficult as its conception changes. It is diverse, challenging and has application in own day today life. Intellectual property is a section of law which protects creations of the mind, and deals with intellectual creations.

As a concept, it "was originally designed to cover ownership of literary and artistic works, inventions (patents) and trademarks" The concept of intellectual property now covers patents, trademarks, literary and artistic works, designs and models, trade names, neighbouring rights, plant production rights, topographies of semi conductor products, databases, when protected by a *sui generis* right, unfair competition, geographical indications, trade secrets, etc.

**The Concept of Intellectual Property**

Broadly IP means the legal property which results from the intellectual activity in the industrial, scienetifc and artistic fields. So countries have laws to protect intellectual property for two main reasons. One is to give statutory expression to the moral and economic rights of creators in their creations and such rights of the public in access to those creations. Secondly to promote, as a deliberate act of government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development of the nation. However, IP law aims at safeguarding creators and other producers of intellectual goods and services by granting them certain time- limited rights to control the use made of those productions. These rights do not apply to the physical object in which the creation may be embodied but instead to the intellectual creation as such. IP is traditionally divided into two branches: "industrial property and copyright". 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".*

It is a bundle of legal rights resulting from intellectual creativity in industrial, scientific, artistic and literary fields. This definition is from the point of view of rights. IP is legal protection accorded to works of the mind in distinction from manual work. So the legal protection is accorded to incorporeal ownership. With regard to protection of IP rights, there were historical, philosophical and epistemological problems. Historically, reservation exists as to the protection of such rights as they don't exhibit essential characteristics of property, i.e. material existence. They consider corporeal chattels only as propriety. For them property should be subject to appropriation/occupancy/.

**Scope of Intellectual Property Rights**

It includes copyright, patent, trademark, geographic indication of origin, industrial design, trade secrets, database protection laws, publicity rights laws, laws for the protection of plant varieties, laws for the protection of semi-conductor chips (which store information for later retrieval), etc. The conventional mode of classification of intellectual property is as industrial property and copyrights. Industrial properties include inventions (patent), property interest on minor invention and commercial interests (Trade Marks, trade names, geographical indications, and industrial design), plant breeder rights, biodiversity, etc.

1, A patent is a type of intellectual property right which allows the holder of the right to exclusively make use of and sale an invention when one develops an invention. Invention is a new process, machine, manufacture, composition of matter.

2. A Copyright is an intellectual property which does not essentially grant an exclusive right over an idea but the expressions of ideas which makes if different from patent law.. Copyright is a field which has gone with artistic, literary creativity- creativity in scientific works, audio-visual works, musical works, software and others. The neighbouring rights are different from copyright but related with it – performers in a theatre, dancers, actors, broadcasters, producers of sound recorders, etc. It protects not ideas but expressions of ideas as opposed to patent.

3. Third one is Industrial Design Law which is a design kind of intellectual property which gives an exclusive right to a person who has created a novel appearance of a product. It deals with appearance:

how they look like. Appearance is important because consumers are interested in the outer appearance of a product. It is exclusively concerned with appearance, not quality. The principles which have been utilized in developing industrial design law are from experiences of patent and copyright laws. It shares patent law because there are scientific considerations. It subsists in a work upon registration and communication. It makes them close to patent law since they are also founded in patent law. Most of the time the duration is 20 years like the patent law trademark Rights law.

4. The Trademarks Rights Law is fourth one. It is a regime of the law giving protection to graphic representation to words or logos or depending on the jurisdiction question such as sound or smells which are distinctive in nature and serve as source identification. There is also a recent phenomenon which is representing goods in their smell and sound. It is to be found on the goods associated with them. It enables the customer to identify the goods from others. They serve as a source identifier. Trademarks perform communication function.

**Nature of Intellectual Property:**

Intellectual properties have their own peculiar features. These features of intellectual properties may serve to identify intellectual properties from other types of properties. It can be briefly described as follows.

1. Any intellectual property issued should be resolved by national laws. Because intellectual property rights have one characteristic which other national rights do not have. In ownership of intellectual property of immovable properties, issues of cross borders are not probable. But in intellectual properties, it is common. A film made in Hollywood can be seen in other countries. The market is not only the local one but also international.

2. It is giving an exclusive right to the owner. It means others, who are not owners, are prohibited from using the right. Most intellectual property rights cannot be implemented in practice as soon as the owner got exclusive rights. Most of them need to be tested by some public laws. The creator or author of an intellectual property enjoys rights inherent in his work to the exclusion of anybody else.

3. Since they are rights, they can obviously be assigned (licensed). It is possible to put a dichotomy between intellectual property rights and the material object in which the work is embodied. Hence I P can be bought, sold, or licensed or hired or attached.

4. Different intellectual property rights subsist in the same kind of object. Most intellectual property rights are likely to be embodied in objects, because they are individual.

5. IPs are vulnerable to the deep embodiment of public policy. Intellectual property attempts to preserve and find adequate reconciliation between two competing interests. On the one hand, the intellectual property rights holders require adequate remuneration and on the other hand, consumers try to consume works without much inconvenience.

6. Several persons may have legally protected interests evolved from a single original work without affecting the interest of other right holders on that same item. Because of the nature of indivisibility, intellectual property is an inexhaustible resource. This nature of intellectual property inexhaustible resource. This nature of intellectual property derives from intellectual property's territorial nature.

**IPR in Academics in India**

Filing for IPRs not only helps innovators to protect their investigations, but also provides better collaborations and funding opportunities. India's research output had an annual growth rate of 9% from 2013 to 2017. This was considered to be most productive periods in Indian research scenario. In 2019 India's position rose to 35 from 44 (2018) in IPR Index. Ironically, increased research did not amount to increase in IP applications which continued to be limited, In 2017-18 3,50,546 applications were received by the office under the Department of Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Trade which was slightly better than 2016-2017, when the total applications were 3,50,467. The annual review of intellectual patent system administered by the World Intellectual Property Organisation (WIPO) claimed that only 6 per cent of the Patent Cooperation Treaty (PCT) application originated from India's were filled by Universities in India. This implies that young researchers need to know more about IP rules and rights.

**Need for Increased IPRs:**

As a result of increasing focus on innovations, research and cross border collaborations, there is need to learn more about intellectual property rights to safeguard their interventions among students. As countries turn to innovations and creativity for sustainable development, need to understand the importance of IPRs has increased. The demand for IP is increasing especially in developing countries. Currently the research is transnational and transforms into services or products. IPRs help in protecting as well as commercializing the inventions. If the innovations are patented and takes up for commercialisation by the start-ups, it will give a competitive advantage to the inventors and entrepreneurs.

**Integrating IPRs in Curriculum:**

IPRs have various items including patent, trademark, designs and copy right where some aspects are more talked about in the academic community than others., Experts believe that the foundational awareness regarding the rights of the creator need to be developed in students from the school level. Students will go on to get into the professional world where they will develop and exercise IP right, hence it must be made a part of academic curriculum at school and university level with increasing sophistication in the pedagogical studies course in all the Higher Educational Institutions (HEIs). IITs continue to file maximum patents with 540 applications in 2017-2018 followed by Amity University with 119 applications. The IPR eco-system in non-premier institutes across the country needs prolonged efforts to make students aware of the importance and filling procedures.

**Conclusion**

The academic community needs a higher level of sensation and exposure to patenting and technology commercialization. All academic and research institutions should also develop in-house expertise for assessment and filling of provisional patent applications as well as commercialisation of patented technologies.

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# PATENT FILING AND DRAFTING PROCEDURE IN INDIA FOR A NEW PRODUCT

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**ABSTRACT**

Background and Aim: A patent is a legal right to grant of Patent to the Patentee for his new idea, method, product, etc. for a limited time period by the government. The patent law in any country provides safety to the inventor for his discovery. Patent safety means the other person cannot manufacture and distribute the product without taking prior permission from the patentee. Methods: In this work the Patent law for Patent grant in India is discussed. The patent law is quite similar in all countries. The difference is mainly in the patent filing procedure.

The patent system is divided into two parts, first is patent filing procedure and the second is the patent grant procedure. The procedure starts with the filing of an application for the grant of patent. This is followed by the second step which includes the search, publish and examination. If the application fulfills all the requirement of the patent law, then the patent is granted. In different countries there are different criteria for an invention to be a patentable, but in all the countries the clause of novelty is there. The clause novelty states that "the invention must be new" if your invention is already known you cannot get a patent despite being fulfilled criteria, such as industrial application and must be non-obvious.

**KEYWORDS**: Patent, IPO, ISA.

## INTRODUCTION

A patent is a legal right for any discovery, ideas approved for a narrow period of time to the patentee by the government in exchange of his discovery. A patent gives safety to the patentee for his/her new discovery. The safety is approved for 20 years. Patent safety means the other person cannot manufacture and distribute the product without taking permission from the patentee. When the patent time limit expires the production also comes to an end and the patentee no longer holds the right to the discovery. Any discovery, related to the product and process that is useful for industrial application and is new can be patented. The patent filing procedures differ from one country to another.

**PATENT FILING PROCEDURE IN INDIA**

**Invention**- Section 2 (1) (j) of the Patent Act, 1970 (the Act) defines the invention as "Invention means a new process and product which is non-obvious and useful for industry".

**Novelty**- Section 2 (1) (1) of the Act defines new inventions as "new invention means any technology and invention which is not available in any country or any published document before the filing of patent application" is known as a novelty.

**Inventive step** –Section 2 (1) (a) of the Act defines inventive step as "inventive step means a feature of an invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art".

**Industrial applicability**- Section 2 (1) (AC) of the act defines industrial applicability as "industrial applicability means that any method or technology being made which is useful to the industry."

**Inventionnot Patentable**- Section 3 of the act mention different types of invention which will not qualify for a patent even if they satisfy the requirement of section 2 (1) (j) of the actnamely.

a) Any invention which is against the naturallaw

b) Any invention which produces harmful effect to plant, animal or humanlife

c) Anydiscoveryrelatedtoabstracttheoryandscientificprinciple

d) A technique ofagriculture

e) Any method for the surgical, medicinal or other care of human beings

f) Presentation ofinformation

g) Topography of integratedcircuits

Any "invention falling within subsection (1) of the Atomic Energy Act, 1962 (33 of 1962) are not patentable under section 4 of theact.

**TYPES OF PATENT APPLICATION**

The application for patent can be of following types:

- Ordinary application
- International/PCT application
- Convention application
- Application for addition
- Divisional application

1.**Ordinaryapplication**: It is also called non-provisional application. This application contains the claims and the complete specification. It is submitted in the patent office without any reference to other application. In the patent application, name and address of first and true inventor must be given.

The important documents of the patent application are:-

Form 2 "Complete or Provisional specification"

Form 3 "Statement and undertaking"

Form 5 "Declaration as to inventor ship"

- Priority document
- Power of attorney

**2. International/PCT application:**PCT application is also known as international application. It was introduced in the year 1970. The main purpose of this application is to give safety to the inventor for his idea or discovery in the world. In PCT, there are 148 countries. Instead of filing several regional or national application the applicant can file a PCT application and protects his invention in these 148 countries.

In PCT national phase application the applicant must attach a complete specification which includes title, drawing, abstract description and claims. 31 months' time period is fixed for entering into the national phase from the priority date. PCT national phase application can be examined any time before this time limit.

**Indian Patent Office (IPO) as Receiving Office**

- The receiving office sends the search copy of the applicant to the **International Searching Authorities**(**ISA**).
- An applicant can file an international application in a language other than the language which is accepted by the ISA for carrying asearch.
- A dialect acknowledgment by theISA
- PublicationLanguage
- A dialect acknowledged by the receiving office under rule 12.1 (a), unless the global application is documented in a published language.
- The office is competent only if the international search has been carried out by Swedish patent office or by Austrian patent and registration offices.

**Convention application section 135 of the act**

According to the act, convention application is defined as the application filed by the applicant in one or more convention countries. After filing the application in convention country the applicant again files the same application at the patent office of India within 12 months.

**Application for addition section 54 of the act**

The application is filed by the applicant in the IPO if any improvement or modification is made to the invention. The time period is the same for granting the patent and it is not extended.

**Divisional application section 16(1) of the act**

This application is used when the applicant claims more than one invention and law does not allow multiple patent in one invention. The applicant sends a request application to the patent office before the grant of patent and divides the application in two parts**.**

this approach, it is not mandatory for the applicant to submit the complete specification in the first part of application. In the second part of application the applicant must submit the complete specification within the specified time period. If the applicant does not submit the complete specification in a given time period then the application is rejected by the IPO.

**Person entitled to apply for patents section 6 of the act**

A) According to the section 134, application seeking the grant of patent can be filed by the following person:

- First the true inventor of the invention
- First and true inventor assignee a person who represent the invention on his/her behalf.
- Legal representative of the inventor

B)Under sub-section (1) of the act the applicant can make a patent application either alone or joint with other person. [10] this approach, it is not mandatory for the applicant to submit the complete specification in the first part of application. In the second part of application the applicant must submit the complete specification within the specified time period. If the applicant does not submit the complete specification in a given time period then the application is rejected by the IPO.

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B) Under sub-section (1) of the act the applicant can make a patent application either alone or joint with other person.

**TYPES OF PATENTSPECIFICATION**

There are two types of specifications

1. Provisional Specification :section 9 of the act
2. Complete specification: section 9 of the act

1.**ProvisionalSpecification**: This is filed when the applicant feels that his discovery/idea has reached the stage that it can be disclosed in the form of a written report. In this case provisional application is submitted to the patent office and it helps to preserve the priority date of the application.

After receiving the provisional specification, the patent office gives an application number to the patent application.

**2.Complete Specification:** It is very important document in a patent application for the grant of patent, the applicant must submit it within 12 months from the date of filing of provisional application. In this application, applicant gives a complete description of his invention. The submission of complete specification period can be extended by 3 months.

**Content of specification section 10 of the act**

1. **Title**: The title of the patent should describe the subject matter in the patent application.
2. **FieldofInvention**: The field of invention is a general wide statement telling about the technology of the invention.
3. **Background**: The background is used to describe the statement of the technology, the known prior art, the disadvantage/needs that are being overcome before the invention described in the patent. The background identifies the key feature of the invention that were lacking in the prior art.
4. **Summary**: The inventions are represented in a summarized form in this section. The information in this section is related to the step taken to solve the problem which was discussed in the background of invention. This section also describes the advantage of the invention.
5. **Description**: It starts with the background of previous invention and also includes information about the present invention like process and products or its parts. It must be written in detail as per the rules of the act.
6. **Claims**: Claims must be clear and brief.
    a. It must describe the technical features of the invention.
    b. Important features of the invention must be stated in the independent claims.

c. Use Arabic numerals for numbering the claims.

d. Only one independent claim should be present in the same category of the application

7. **Abstract**: It is short summary of invention and its uses. It should preferably be written in 150 words and should consist of following.

1. Invention description

2. Description of the important component and their work

8. **Drawing**: The drawing of a patent specification describes the invention by using chemical or mechanical structures, charts and detailed relationship of features. The drawing contains references as (numeric and alphabetic) that relate the features described in the specification to the features or portion shows in the drawing.

**FEES FOR FILING**

There are two elements for cost of getting patent / filing patent in India:

- The Government fees for Forms, requests and renewals.
- Professional Charges for patent professional, patent agent / attorney

Government fees too, are different for an individual inventor and a company. and fees for patent application also defers based on number of claims and pages in the specification. So, a lot of factors need to be considered when talking about costs involved in getting patent. Filing patent on your own, without help from patent agent, then it can cost much lesser as only fees being paid to government fees for patent filing and prosecution.

| No | Description | Natural Person (Individual inventors) | Other than Natural person (companies) | | Comment |
|---|---|---|---|---|---|
| | | | Small Entity | Other than small entity | |
| 1 | Application for grant of patent | **1600** | 4000 | 8000 | Mandatory |
| 2 | Early publication fee | **2500** | 6250 | 12500 | Optional |
| 3 | Request for examination of patent application | **4000** | 10000 | 20000 | Mandatory |
| 4 | For every Extra sheet over 30 sheets | **160/sheet** | 400/sheet | 800/sheet | Mandatory |
| 5 | For every Extra claim over 10 claims | **320/claim** | 800/claim | 1600/claim | Mandatory |

**FLOW CHART OF FILLING APPLICATION IN INDIA**

**PUBLICATION:**After filing the application form, the applicant is required to publish a journal which


contains name, address, abstract, abstract and procedure of invention to the patent office. This should be done within 18 months after filing the application form or from the date of priority, to the patent office. After this procedure the patent application is open for public inspection. Before publication it is not open for public inspection.

**EXAMINATION**:The applicant who has filed for the patent undergoes the procedure of examination in which all the documents, application forms, claims forwarded by the applicant are tested. After testing of the reports, a First Examination Report is published and sent by the patent office to the applicant or his agent stating the objection to which the applicant or his agent has to reply within 6 months. In case the applicant fails to reply to the report and an extension of 6 more month is given to the applicant.

**OPPOSITIONTOTHEPATENT**:After the First Examination Report the patent office search for the same patent type in their offices to ensure that the patent applied for invention is valid there is no other claim or there is no other patent holder of that invention already in the past.

**GRANTOFPATENT**: When all the criteria are met the patent is issued to a person for 20 years. If there is opposition to the patent another can file within a year of publication of patent.

## CONCLUSION

The patent law in any country provides safety to the inventor for his discovery. Patent safety means the other person cannot manufacture and distribute the product without taking prior permission from the patentee. In different countries there are different criteria for an invention to be a patentable but in all the countries the clause of novelty is there. The clause novelty states that "the invention must be new" if your invention is already known you cannot get patent despite being fulfilled criteria, such as industrial application and must be non-obvious. The patent filing procedure is first step in which the applicant drafts the specification which provides complete information about the invention. This includes title, drawing, description, abstract and claim.

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# TAX INCENTIVES OF IPR

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**ABSTRACT:**

All forms of properties, whether tangible or intangible, gives benefit to its holders and so income tax is levied on the income derived from such properties. Intellectual Properties qualifies as an intangible property which gives monetary benefits to its holders and in present days have become a huge source of income due to long term protection and effective enforcement mechanism. This paper states what income tax is, how it is levied on intellectual property, what are the exemptions available to the tax payer of intellectual property as well as the decision of the Indian Courts on the subject. It also discusses the step taken by the Central Government to avoid imposition of Double Taxation followed by suggestion in the concluding paragraph.

Keywords: Intellectual Property, Income Tax and IP, Imposition of Tax on Intellectual Property

**Introduction:-**

In recent times, Intellectual Property (IP) protection has got major attention in the technologically advanced contemporary world. Various nations are budgeting more in the area of protection of IP rights due to compulsions of the international agreement, the Trade Related Aspects of the Intellectual Property Rights (TRIPs) within the system of the World Trade Organisation (WTO). Intellectual Property is a key component or head under international taxation. The cross border movement of multinational companies with their Intellectual Property rights (IPRs) offers much scope for the taxation of these rights and thus a considerable income for technology receiving countries. India opened its economy in 1991 with a bundle of tax reductions in customs and central excise duties, lowering the corporate tax, widening the tax net and is also one of the founding members of the WTO in 1995.

**Taxation Policy in India:-**

India has a well-developed tax structure with a three-tier federal structure, comprising the Union Government, the State Governments and the Urban/Rural Local Bodies. Income tax comes under the category of direct taxes and is collected by the Central Government. The Act categorizes the income of a person under different heads and provides for the manner of computation of taxable income of each head. These are:-

i. Salaries

ii. Income from house property,

iii. Profits and gains of business or profession,

iv. Capital gains, and

v. Income from other sources

**Intellectual Property Taxation and Tax Deduction:-**

In relation to general tax law in India, there is no specific definition of intellectual property in the Income Tax Act, 1961. However, the Act differentiates between tangible and intangible assets in the definition of "block of assets" which is used for the purpose of computing depreciation on a class of assets and which may comprise of both of those types of assets. 'Intangible assets' are defined to include 'know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature. Thus, Intellectual Property assets under the Income Tax Act can be understood as those properties or assets which comprises of know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature.

A 'resident' tax payer is charged income tax on income derived, received, accrued or arose in India as well as from his global income, subject to a double taxation relief in respect of foreign incomes taxed abroad. In the case of a non-resident, income-tax is charged only on incomes received, accruing or arising in India or which are deemed to be received, accrued or arisen in India. Sec. 5(2) of the Income Tax Act, 1961 provides that a resident is taxable in India on incomes:-

i. Received or deemed to be received in India;

ii. Which accrue or arise to him in India or are deemed to accrue or arise to him in India;

iii. Accrues or arises to him outside India.

Intellectual Property is depreciable asset2 for the purpose of computation of income. Section 9(1) (vi) provides for taxation of income by way of royalties. Royalty means consideration (including any lump sum consideration but excluding consideration which would be the income of the recipient chargeable under the head capital gains) for:

i. The transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or processor trade mark or similar property

ii. The imparting of any information concerning the working of or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property;

iii. The use of any patent, invention, model, design, secret formula or process or trade mark of similar property;

iv. The imparting of any information concerning technical industrial, commercial or scientific knowledge, experience or skill;

v. The use or right to use, any industrial, commercial or scientific equipment but not including the amount referred to in sec. 44BB.

vi. The transfer of all or any rights (including the granting of licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting, but including consideration for the sale, distribution or exhibition of cinematographer films, or

vii. The render in of any service in connection with the activities referred to in sub-clauses

(i) To (v). Thus, where the transfer is made for a lump-sum consideration once and for all, such transfer falls within the category of capital gains and are assessable to tax.

Exemptions:-

i. If the royalty is payable in respect of any right, property or information used or services utilised for the purposes of a business or profession carried on by person outside India or for the purposes of making or earning any income from any source outside India it is not taxable.

ii. Income by way of royalty as a lump sum consideration for the transfer outside India, or the imparting of information outside India in respect of, any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process or trade mark or similar property, if such income is payable in pursuance of an agreement made before the 1st day of April, 1976, and the agreement is approved by the Central Government, is not taxable.

iii. Income by way of royalty of lump sum payment made by a person, who is a resident, for the transfer of all rights including the granting of a licence in respect of computer software supplied by a non-resident manufacturer along with a computer or computer-basedequipment under any scheme approved under the Policy on Computer Software Export, Software Development and Training, 1986 of the Government of India.

**iv.** Expenditure on acquisition of patents and copyrights are dealt with under Section 35A of the Income Tax Act. If they are purchased for a lump sum consideration with an enduring benefit, the purchaser is entitled to claim depreciation over a period of time.If it is paid as periodical payments, then it can be claimed as expenditure fully incurred for the purpose of business. Upon any expenditure which was incurred after 1966 and after 1998, on the acquisition of patent rights or copyrights for the purpose of business, deductions will be allowed for each of the previous years on an amount equal to the appropriate fraction of the amount spread over 14 years.

**Deductions on Expenditure**

Section 35AB explains the deductions on expenditure on know-how. Where the assesse has paid in any previous year, any lump sum consideration for acquiring any know-how for the use of his business, one-sixth of the amount so paid shall be deducted in computing the profits and gains of the business for that previous year, and the balance amount shall be deducted in equal instalments for each of the

five immediately succeeding previous years. It means that the expenditure will be deductible in six equal instalments for six years. If, where the know-how referred to in sub-section (1) is developed in a laboratory, university or institution referred to in sub-s (2B) of s 32A, one-third of the said lump sum consideration paid in the previous year by the assesse shall be deducted in computing the profits and gains of the business for that year, and the balance amount shall be deducted in equal instalments for each of the two immediately succeeding years. Other deductions for scientific research are provided in s 80 GGA.

In computing the income chargeable under the head 'profits and gains of business or profession,' Section 37 of the Act, enables the deduction of any expenditure laid out or expended wholly and exclusively for the purpose of the business or profession, as the case may be. The fact that an item of expenditure is wholly and exclusively laid out for purposes of the business, by itself, is not sufficient to entitle its allowance in computing the income chargeable to tax.

In the case of any company or person resident in India who receives income outside India by the use of any patent, invention, design or registered trade mark and such income is received in convertible foreign exchange in India, a deduction of an amount will be allowed equal to:

Forty per cent for an assessment year on first year; Thirty per cent for an assessment year on second year; Twenty per cent for an assessment year on third year; Ten per cent for an assessment year on forth year;

No deduction shall be allowed in respect of the assessment year on fifth year, and any subsequent assessment year, in computing the total income of the assessee.

**Specific Provision for Copyright Products:**

Section 80QQA provides for income from copyrights. "In the case of an individual resident in India, being an author, the gross total income of the previous year relevant to the assessment year commencing on 1 April, 1980, or to any one of the nine assessment years next following that assessment year or 1 April, 1992 or to any one of the four assessment years next following that assessment year, any income derived by him in the exercise of his profession on account of any lump sum consideration for the assignment or grant of any of his interests in the copyright of any book, or of royalties or copyright fees (whether receivable in lump sum or otherwise) in respect of such book, a deduction to the amount of 25 per cent will be allowed on such amount."

No deduction will be allowed if the book is either in the nature of a dictionary, thesaurus or encyclopaedia or is one that has been prescribed or recommended as a text book, or included in the curriculum, by any university, for a degree or post-graduate course of that university..

**Specific Provision for Patented Goods and Services:-**

Royalty on Patents are provided for in s 80RRB. "Where in the case of an assessee, being an individual, who is resident in India, a patentee, in receipt of any income by way of royalty in respect of a patent registered on or after the 1st day of April, 2003 under the Patents Act, 1970, and his gross total income of the previous year includes royalty, be allowed a deduction, of an amount equal to the whole of such income or three lakh rupees, whichever is less." In the case of compulsory license is granted in respect

of any patent under the Patents Act, 1970, the income by way of royalty for the purpose of allowing deduction under this section shall not exceed the amount of royalty under the terms and conditions of a license settled by the Controller under that Act.

**Revenue Recognition:**

Expenditure incurred on acquisition of Intellectual Property are either treated as revenue expenditure or capital expenditure. When a person receives revenue arising out of transfer of such intellectual property or by way of franchising or licensing, revenue is generated. When a person transfers right to Intellectual Property and he loses the right to IP, such revenue generation is capital income. On the other hand, when a person licenses out an IP without the right to further sub-license the right and the person retains right in such property, any income from such property are revenue income.

In Assam Bengal Cement Companies Ltd. v. CIT,5 Supreme Court observed that:

'If the expenditure is made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business it is properly attributable to capital and is of the nature of capital expenditure. If, on the other hand, it is made not for the purpose of bringing into existence any such asset or advantage but for running the business or working it with a view to produce the profits, it is a revenue expenditure. The aim and object of the expenditure would determine the character of the expenditure whether it is a capital expenditure or revenue expenditure.'.

Transfer of right or license of rights from one country to another withholding tax has evolved such that the country from which the asset is transferred will not lose the right to revenue. In India, such withholding tax with regard to transfer in international border is considered under Section 195 of the Income Tax Act of 1961. The main consideration that is taken into account in deciding such transfer is whether it is a transfer of capital asset which attracts capital gain tax, or whether it is transfer of revenue income in the hands of the non- resident so as to deduct normal tax which is maximum marginal rate of tax.

**Double Taxation Avoidance Agreements (DTAA), Taxation of NRIs and International Taxation:-**

Section 90 of the Income Tax Act, has authorised the Central Government to enter into Double Tax Avoidance Agreements (DTAA) with other countries. A non-resident Indian becomes liable to pay tax in India in respect of income arising here by virtue of its being the country of source and then again, in his own country in respect of the same income by virtue of the inclusion of such income in the 'total world income' which is the tax base in the country of residence. The objective of the DTAA may be to prevent and discourage taxation which may contribute to the free flow of international trade, international investment and international transfer of technology. India has already entered into similar DTAA with more than 60 countries. These agreements give the right of taxation in respect of the income of the nature of interest, dividend, royalty and fees for technical services to the country of residence. However, the source country is also given the right but such taxation in the source country has to be limited to the rates prescribed in the agreement. The rate of taxation is on gross receipts without deduction of expenses. Income derived by rendering of professional services or other activities of an independent character are taxable in the country of residence except when the person deriving income

from such services has a fixed base in the other country from where such services are performed. Such income is also taxable in the source country if his stay exceeds 183 days in that financial year.

Royalties earned by Non Resident Indians (NRIs) has been defined as any income arising out of any transaction of intellectual property rights viz. patent, invention, model, design, secret formula, process or trade mark and similar property. It also includes transfer of information concerning technical, industrial, commercial or scientific knowledge or skill.However, transfer of the asset is liable to be taxed in the hands of the recipient as 'Capital Gain.' Royalty is taxable in the hands of NRIs if the same are received in or accrued in India which is the place of accrual. If it is used for business in India and any income accruing out of it will be taxed. However this is not applicable in case of a lump sum royalty payment made by a resident for transfer of right in respect of computer software which is supplied by a NRI manufacturer along with the supply of computer or computer-based equipment under any scheme approved under the policy on Computer Software Export, Software Development and Training 1986 of the Government of India. Such a lump sum payment is treated as the business income of the manufacturer. Fees for technical services are taxable in the hands of non- residents if the same is received in India or it accrue in India. The income from agreements entered into in 1976 were taxed at the rate of 20 percent and from 1976 and before 1997 were charged at the rate of 30 percent and after 1997 were charged at the rate of 20 per cent of gross receipts. In the case of computer software permitted for importation, these are charged at 20 percent.

If any income is accruing through a permanent business connection or establishment in India, such income is taxable. This particular provision is subject to controversies. The representative offices of foreign companies cannot be taxed, because according to the RBI permissions rules, they cannot carry on any business or cannot be treated as a permanent establishment. The Bangalore Bench of the Income Tax Appellate Tribunal (ITAT), considered an interesting question in the case of sales of imported software in Sonata Information Technology Limited v. Addl. CIT7 and examined the characterization of computer software income in international transactions. In the case mentioned, the assessee was an Indian company engaged in the business of distribution of computer software and had entered into distribution agreements with several overseas vendors which authorised the assessee to distribute computer software to end-users in India. The assessee contended that it had acquired copyrighted articles and so considered the income represented by payments for software purchase to be business profits of the overseas vendors taxable only under Article 7 of the respective DTAA. In the absence of a Permanent Establishment (PE) of the overseas vendors in India, the same was not taxable in India. The Tribunal held that the assessee had purchased software and not any intellectual property rights. Selling software is not exempted from any tax and can be only considered as a sale of goods. Hence, the supplier is not liable to pay withholding tax.

Again the question of international taxation was considered by the Supreme Court in Ishikawajima Harima-Heavy Industries Ltd. v. Director of Income Tax, Mumbai.8 Ishikawajma Harima Heavy Industries Ltd, a Japanese company along with others formed a consortium and entered into an agreement for a turnkey project with Petro net LNG for setting up a Liquefied Natural Gas receiving, storing and de-gasification unit in Gujarat. The agreement was for the development, designing, engineering and procuring of equipment and to erect and construct storage tanks. The contract involved offshore and onshore supply of equipment as well as offshore and onshore supply of services. The Appellant applied to the Authority for Advance Ruling (AAR) and sought a ruling on its tax

positions, for which the authority ruled that the offshore supply of materials and services are taxable in India. The Appellant filed a Special Leave Petition before the Supreme Court. As per the DTAA between India and Japan, business income may be taxed in India only when the non-resident has a Permanent Establishment (PE) in India and only to the extent that such incomes could be directly or indirectly attributable to the activities of the PE in India. The PE has nothing to do with the offshore supply of materials and cannot be taxed. The Court observed that the services have to be rendered in India as well as utilized in India to be taxable in India.

Sections 44D and 115A provide for special methods for calculating income by way of royalties and technical services of foreign companies and non-resident Indians. The rate of tax fixed under s 44D is 20 percent of the gross amount.10 Any income by way of dividends, interests, income from mutual funds is charged at the rate of 20 percent. Under s 115A, income by way of royalty or fees for technical services is charged at the rate of 20 percent. Royalties include consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book to an Indian concern or in respect of any computer software to a person resident in India.

The activities of multinational companies are another area of taxation. Section 92 of the Finance Act, 2002 made 'interest arises from international transaction' taxable. Section 92B provides for international transactions between associated enterprises in case of 'arm's length' transactions on sale of raw materials and intangible assets. Sections 9A to 92F of the IT Act deal with income arising out of international transactions between associated enterprises or subsidiaries. These special provisions are meant for avoiding under-pricing or over pricing by multi-national companies in business transactions with their subsidiaries or collaborators. It is the duty of the companies to keep 'transfer pricing' records for the purpose of income tax.

When shares are transferred to a non-resident Indian for consideration of transfer of technical know-how or services rendered in India or profits are made in India, the income to that extent is taxable in India. If payments of royalty are made by way of a free issue of equity shares, the value thereof will be liable to tax. It is only those shares which are issued at the time of incorporation of the Indian company in lieu of a lump-sum payment for the technical know- how delivered abroad, that will be exempt from income-tax except capital gains. If the shares issued in consideration for technical know-how at the time of the incorporation of the Indian company are subsequently sold, the capital gains realised there from would be subject to tax.11 The intellectual property acquired has to be accounted along with plant and machinery as a depreciable asset. If the licensing or transfer is for a recurring amount and for a limited period, then it is considered as revenue receipts. If any income is accruing for less than three years, it is considered as short term capital and taxed at the rate of 30 per cent. Any long term capital is taxed at the rate of 20 percent.

**Conclusion:-**

The horizon of taxing the income from intellectual property rights are increasing day by day. The provisions need to be codified for better assessment and administration. Presently, intellectual property rights are indirectly taxed at many levels. Barriers to scientific progress should be removed. Double taxation avoidance agreements are not working properly in favour of the industry. There is no incentive for the employees who are instrumental in innovation and inventions. The investment needed for innovation is so high that there is no guarantee of returns to corporates and individuals. The tax policy

may encourage employee stock option and equity based compensation in start-up companies to give incentives to employees who are instrumental in innovation. Empirical evidence may be collected to check the relationship between IP taxation at different levels in India and its effect on innovation and IP creation and acquisition. Transaction cost of IP creation should be minimised by adopting different policies for startup low-end enterprises and big companies. More and more technology ventures should be groomed with tax deductions on research and development.

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# AN OVERVIEW OF INTELLECTUAL PROPERTY RIGHTS IN INDIA

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**ABSTRACT:**

Intellectual property rights (IPR) have been defined as ideas, inventions, and creative expressions based on which there is a public willingness to bestow the status of property. IPR provide certain exclusive rights to the inventors or creators of that property, in order to enable them to reap commercial benefits from their creative efforts or reputation. There are several types of intellectual property protection like patent, copyright, trademark, etc. Patent is a recognition for an invention, which satisfies the criteria of global novelty, non-obviousness, and industrial application. IPR is prerequisite for better identification, planning, commercialization, rendering, and thereby protection of invention or creativity. Each industry should evolve its own IPR policies, management style, strategies, and so on depending on its area of specialty. Pharmaceutical industry currently has an evolving IPR strategy requiring a better focus and approach in the coming era.

Keywords: Drug, intellectual property, license, patent, pharmaceutical

## LAW GOVERNING INTELLECTUAL PROPERTY:

WIPO (World Intellectual Property Organization) was established by the WIPO Convention in 1967 The WIPO is a specialized agency of the United Nations. It promotes the protection of IP throughout the world. Its headquarters are in Geneva, Switzerland. There are many big and small intellectual property law firms worldwide, like in India, USA, UK, Chicago etc., providing qualitative help to inventors and creators of product. In India intellectual property rights are safely protected and controlled by well- established statutory and judicial framework. Apart from that, there are many attorneys and law firm of intellectual property in India in various states.

What is intellectual property?

Intellectual Property is a property that arises from the human intellect. It is a product of human creation.

Intellectual Property comprises of following:

- Literary & Artistic Works
- Industrial Property
- They are books, paintings, musical compositions, plays, movies, radio/tv programs, performances, & other artistic works.

How do you protect your intellectual property?

- By Patented objects
- By Trademarks
- By Industrial Designs
- By Trade Secrets
- By Layout-designs
- By Geographical Indications

Why do you need to protect your intellectual property?

- Company Value
- Entry Barriers
- Legal Monopoly
- Avoid freeriding
- Avoid Infringement
- Financial leveraging
- Advance of man kind
- Goodwill
- Counterfeiting
- Works or Art

**Intellectual Property Rights in India:**

Intellectual Property Rights are legal rights governing the use of creations of the human mind. The recognition and protection of these rights is of recent origin. Patents, designs and trademarks are considered as industrial property. As per International Convention for the protection of industrial (Paris Convention) the protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations or origin and the repression of unfair competition when copyrights, Geographical indicators, layout Designs and confidential information were included to industrial property, they all become intellectual property.

With the trade related Aspects of Intellectual Property Rights (TRIPS) Agreement of World Trade Organization (WTO), the intellectual property rights attained the authority to enforce the law internationally. According to TRIPS, the intellectual property rights are:

1. Copyright and Related Rights

   - Rights of artists, painters, musicians' sculptors, photographers, and authors for copyright in their works
   - Rights of computer programme whether in source or object code for a copyright in their programme and compilation data
   - Rights of performers producers of phonogram's and broadcasting organizations in respect of fixation on their programme for copyright in their work.

2. Right of traders in their trade marks.

3. Right of manufacturers & producers on geographical indication in relation to such products and produce.

4. Right of designers for their distinctive design striking to the eye.

5. Patents:

   - Right of the inventor for patent is his invention.
   - Rights of plant breeders and farmers.
   - Rights of biological diversity.

6. Right of computer technologist for their layout design of integrated circuits.

7. Right of businessmen for protection of their undisclosed information on technology and management.

**Copyright & Related Rights:**

- The subject-matter of copyright is the literary, dramatic and musical or artistic work, a cinematograph film and a sound recording.
- Literary work includes computer programme, tables and compilations including computer databases.
- The object of this right is not the material thing produced, but the form impressed upon it by the maker.
- The picture, in the abstract sense of the artistic form made by visible by that paint and canvas, belongs to him who made it.

**Benefits of copyright & related rights:**

- Copyright and related rights protection is an essential component in fostering human creativity and innovation.
- Giving authors, artists, and creators incentives in the form of recognition and fair economic reward increases their activity and output and can also enhance the results.

- By ensuring the existence and enforceability of rights, individuals and companies can more easily invest in the creation, development and global dissemination of their works.
- This, in turn, helps to increase access to and enhance the enjoyment of culture, knowledge, and entertainment the world over, and also stimulates economic and social development.

**Case laws under copyright & related rights:**

Some of the biggest copyright infringement cases have been between some of the most well-known companies in the world, they are as follows:

**Apple vs Microsoft:**

The battle between these tech giants started with a simple question: who invented the graphical user interface (GUI)? The company that controls the interface of the next major operating system will have the ability to set the standards for application software, so it's unsurprising that Apple tried to stop Windows from becoming a major operating system.

**TRADITIONAL KNOWLEDGE:**

When community members innovate within the traditional knowledge framework, they may use the patent system to protect their innovations. However, traditional knowledge as such - knowledge that has ancient roots and is often informal and oral - is not protected by conventional intellectual property systems. This has prompted some countries to develop their own sui generis (specific, special) systems for protecting traditional knowledge.

**INDUSTRIAL DESIGNS:**

Industrial design means only the features of shape, configuration, pattern, ornament or composition of lines or colors applied to any article whether in two dimensional or three dimensional or both forms, by any industrial process or means whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction and does not include any trademark.

Trademarks:

- Trademark is anything which identifies the origin of the goods or services.
- It can be a name, symbol, logo, color, sound etc.
- Trademark symbolizes the value or goodwill associated with the goods and its specific source.
- It distinguishes one firm from others.

Benefits of trademarks:

- Trademark registration primarily helps to build and retain loyal customer base while deterring competitors from using similar names or selling their products or services using your name.
- It also prevents any confusion clearly identifying from which business house a product or service originates.
- A trademark registration, in essence, protects the goodwill earned by your business.

- A registered trademark proprietor of a business has the right to sue against any person or legal entity for any infringement and obtain an injunction to cease from any such infringement and also pay financial compensation in the form of damages or on the account of profits made.
- A Trademark is the intellectual property of a business needs to be cautiously protected with proper registration as this will be needed in the future if you plan to franchise the brand or enter into any commercial business arrangement based on the strength of your brand.

PATENTS:

The subject-matter of a patent-right is an invention. He whose skill or labor produces the idea of a new process, instrument or manufacture has that idea as his own in law. He alone is entitled to use it and to draw from it the profit inherent in it.

Benefits of patents:

- A patent gives you the right to stop others from copying, manufacturing, selling or importing your invention without your permission. See protecting intellectual property.
- You get protection for a pre-determined period, allowing you to keep competitors at bay.
- You can then use your invention yourself.
- Alternatively, you can license your patent for others to use it or you can sell it. This can provide an important source of revenue for your business. Indeed, some businesses exist solely to collect the royalties from a patent they have licensed - perhaps in combination with a registered design and trade mark.

**GEOGRAPHICAL INDICATIONS:**

A geographical indication is a name or sign used on certain products which corresponds to a specific geographical location or origin (e.g. a town, region, or country). India, as a member of the World Trade Organization (WTO), enacted the Geographical Indications of Goods (Registration and Protection) Act, 1999 has come into force with effect from 15 September 2003. GIs have been defined under Article 22(1) of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement as: "Indications which identify a good as originating in the territory of a member, or a region or a locality in that territory, where a given quality, reputation or characteristic of the good is essentially attributable to its geographic origin

**Benefits of graphical indications:**

- Boosts Exports
- Economic Growth
- Prevents Misuse of GI Tag
- Boosts Tourism

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO):

The World Intellectual Property Organization (WIPO) is one of the 17 specialized agencies of the United Nations, located in Geneva, Switzerland. The Organization has External Offices at Rio de Janeiro in Brazil, Tokyo in Japan, Singapore and New York. The mission of WIPO is to promote innovation and

creativity for the economic, social and cultural development of all countries, through a balanced and effective international intellectual property system.

WIPO currently has 185 Member States, and 68 intergovernmental organizations (IGOs) and 232 International non-governmental organizations (NGOs) and 63 National NGOs that are accredited as observers at WIPO meetings.

The core tasks of WIPO are:

- Working with Member States to support a balanced evolution of international IP law
- Administering treaties ü assisting governments and organizations in developing the policies, structures and skills needed to harness the potential of IP for economic development
- Servicing global registration systems for trademarks, industrial designs and appellations of origin and a global filing system for patents
- Delivering arbitration, mediation and other dispute resolution services
- Promoting respect for IP
- Providing a forum for informed debate and for the sharing of IP knowledge ü identifying IP-based solutions that can help confront global challenges and maximize the benefits of the IP system for all

WIPO's Goals:

The strategic goals defined in WIPO's revised Program and Budget are:

- A balanced evolution of the international normative framework for IP
- Provision of premier global IP services
- Facilitating the use of IP for development
- Coordination and development of global IP infrastructure
- World reference source for IP information and analysis
- International cooperation on building respect for IP
- Addressing IP in relation to global policy issues
- A responsive communications interface between WIPO, its Member States and all stakeholders
- An efficient administrative and financial support structure to enable WIPO to deliver its programs

COMMERCIALISATION OF INTELLECTUAL PROPERTY RIGHTS(IPR)

- Intellectual property may be commercialized by sale or assignment, or by entering into various types of contractual business relationships such as licensing.
- The business vehicle by which this is done may be by way of partnership, joint venture or
- IPRs play a crucial role as the legal vehicle through which either the transfer of knowledge or the contractual relationship is affected.
- Alternatively, knowledge may be exploited in-house, in which case the role of IPRs is to block imitating competition.
- Commercialization can be defined as the process of turning an invention or creation into a commercially viable product, service or process.

- Commercialization may require additional R&D, product developments, clinical trials or development of techniques to scale-up production prior to taking the results of research to market.
- This is important because not all inventors or creators wish or have the resources, skills and appetite for risk to commercialize their own inventions or creations.
- Public research organizations (PROs) usually fall into this category.

**CONCLUSION:**

Intellectual property rights are monopoly rights that grant their holders the temporary privilege for the exclusive exploitation of the income rights from cultural expressions and inventions. There must be good reasons for a society to grant such privileges to some of its individuals, and therefore the proponents of these rights have provided three widely accepted justifications to defend the interwoven global intellectual property rights regime we have in place today.

We have also seen that for free market proponents monopoly rights are hardly to be justified, as they are based on state interference, and that even egalitarians could subscribe to the abolition of intellectual property rights, as they do not contribute to more equality.

There are many good reasons to question the justifications for intellectual property rights and therefore it is time to start the political discussion about the abolition of these rights to create a world in which intellectual property is common property.

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# AN OVERVIEW OF INTELLECTUAL PROPERTY RIGHTS – INDIAN SCENARIO

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**ABSTRACT**

Under WTO regime with globalization, the competitiveness among the developed and emerging economies has redefined the concept of the structure of corporate governance and business strategies all over the world economies. What are those changed business strategies? What kind of paradigm shift is taking place for a country to be positioned as developed in the world trade or markets? Certainly now the focus is shifted from wealth creation through an economy's physical endowments (resources) to knowledge resources i.e. it depends on economy's brain power (intelligence) to create, invent the products that are unique even obvious and have utility. Now the realization is, resources are available in every country, but the new strategy how best these resources can be utilized by brain power before the others put them to use? How this brain power/intelligence can create unique goods and services that can be marketed in the global village.

**Introduction**

The paper revolves round the question how this knowledge created property has to be protected to make an economy to reposition itself in the international trade? Knowledge is intangible and there is every chance for the others to use it. So knowledge has to be converted into property. This property can be maintained as secrecy. But then others cannot benefit out of that and the country who has created this property cannot acquire wealth out of that. The economies and their governments can protect their intellectual property through legislation, copy rights, patents, registered industrial designs and can sell their intellectual property in the form of goods and services.

**Intellectual Property Rights Definition**

Let us understand the exact definition of Intellectual Property Rights (IPRs). It is intangible property created by human intellect related to plant varieties and micro organisms. If any plant variety or micro organism is invented and claimed as prior art of having the 3 main features such as non obvious, novel and having utility such varieties can be provided patents. The other types of properties are copyrights, trade marks, geographical indicators, layout designs and trade secrets.

**How to promote and protect Intellectual Property?**

The development of human race depends upon new inventions which can give boost to technological upgradations. Hence these inventions are to be encouraged.

1. To have more research and innovations

2. To induce the inventor to disseminate information instead of keeping his brain power as a secret
3. To reward the inventor for the expenditures incurred in the process of inventions
4. For investments on the new lines that may not be profitable if there are many competitors.
5. To promote inventions of economic growth, which in turn create employability & wealth

While all these reasons emphasize the need for providing intellectual property rights, on the other side, the society also should not be restricted because of harmful monopoly market power exercised by the innovator/patentee. Therefore in the Dunkel Draft under the provision of Trade Related Intellectual Property Rights, though the rights are guaranteed by the law to the creator, these rights granted are having certain limits in terms of time and space by the State. Rights are granted only for a fixed period of time and protection is provided to the creativity, which is in the material form.

The present paper highlights various types of IPRs such as patents, trademarks, industrial designs, geographic indicators, copy rights with their regulations and legal implications. The paper tries to emphasize that India definitely has something to contribute with its abundant human resources and brain power not just for her own people but throughout the globe. A brief discussion is given on India's participation in IPR related activities across the world.

IPR – Indian Scenario:

As the business scenario over the globe getting more and more dynamic with intensifying competition, innovations and creativeness is the pivotal for any economy to survive on the global trade. India is no exception. Infact India is well recognized for its intellectual skills in the fields of software, missile technology mission to reach Moon and Mars and other many areas.

But unfortunately India lags in the creation of IPR assets like registered patents, trademarks etc. According to US Chamber of Commerce India was placed at 36$^{th}$ place among 50 countries in 2019. But the report 2020 shows India ranks 40 out of 58 countries on Global Intellectual Property Index showing an improvement. Still there is a long road ahead for India to strengthen the country's promoting innovative eco system and enhance its competitiveness on increasingly knowledge based global economy. Lack of IPR awareness results in the death of inventions, risk of infringement, economic loss and decline of intellectual resources. Therefore there is acute need for the dissemination of IPR information to boost the traditional and indigenous inventions and in the other areas of research & technology.

Classification of Intellectual Property Rights:

IPRs are classified as under.

1. Patents: It is a legal right issued to the inventor by the concerned government allowing the inventor to sell the product or service for a fixed period of time excluding others to copy it. Of all the IPRs patents are more valuable.

The patentability of any invention has to fulfill the following criteria.

a. Non obvious: Invention of an extraordinary skill which was not seen or discovered before hand has the eligibility to be patented.

b. Usefulness: When people refer to a patent, they are usually referring to aushty patent.

c. Novelty: It should be prior art. It should not have been published, invented or made available in the domestic country or anywhere in the globe.

2. Copy rights: Musical works, literary works, web content, dramatics, architectural works, any other audio visual works come under copyrights.

3. Designs: Drawing and computer models are taker under designs. According to the Designs Act 2000 and 2001 designs are valid up to maximum period of 10 years and can be renewed for further 5 years.

4. Trade Marks: Signs, symbols, logos, words , sounds that differentiate one's products or services from those of other competitors.

These intellectual properties have to be registered at IP Office in UK to have the rights protected. If it is not done by the inventor/owner others may copy and can exploit the actual invention of the product or service.

Registered forms of Intellectual properties are patents, trade marks, designs and copyrights.

**WTO – INDIA – IPR:**

India has become signatory of WTO and thus signatory to Dunkel Drafts in which Trade Related Intellectual Property Rights are one of the important provisions along with A.O.A, TRIMS, sanitary phytosanitary conditions. Article 27 of TRIPS Agreement makes it obligatory for members to provide protection for plant varieties mainly seeds either by patents or by evolving their own effective suigeneries system. Besides plant varieties closely related with agricultural sector are requirement of patent protection for living neuron organisms.

Patents will be given to years of life period from the base period (1986-90). TRIPS provide 10 year transition period from introduction of product patent from process patent rights that is change over from Suigeneries (UPOV 1979) to patent system called UPOV 1991 (union for protection of new plant varieties). Suigeneris system exempted the former to use the patented seeds for next harvest also by the prior permission of plant breeders: Such breeders have to be paid royalty. If any other country is using these ancient and indigenous products we have several of such varieties Ex. Haldi, neem, basmati, Rangon ki Bela, Errand, Dudhi and many more herbal plants. But India's ancient medicinal use Haldi/Turmeric was in troubled waters when it was sought to be patented under American Law in 1995 to the Mississippi medical centre for healing the wounds. EHRs were also granted to sell and distribute.

Infact Turmeric is tropical herb grown in India specially eastern side. It is a well known fact that in India Turmeric was used as a medicine for several health issues. It is one of the important ingredients in every food item of Indian Cuisine. It is used as a healing powder for bleeding, it is used to treat common cold and cough as a paracetomal and used in skin infections. It is also used as core ingredient in beauty products.

Though we the Indians are using turmeric for infinite number of uses since ages has become a uphill task to the Indian Counsel for Scientific and Industrial Research (CSIR) to provide documented

evidences for proving turmeric is our prior art to United States Patent and Trade marks Office (USPTU). This is all because India could not put in place a suigenerie system through suitable legislation.

There are other examples of bio piracy by America such as Bastmati Rice. America has provided patent right to an MNC Rice k e k by bringing simple generic modifications to our Basmati as Basmati and Turmeric ……..

Danger also links with regard to Tulasi plant. These are few cases of bio piracy of India's herbal and plant varieties and to prevent huge losses. India has to put in place its bio diversity laws very strict and has to approach the dispute panel of WTO.

TRIPS can be made favorable to us if we can prove our plant varieties such Rangon ki Bela, Dudhi, Errand Karela, neem, amla and many herbal products all beed to be revoked along with turmeric, Tulasi and Basmati as our own inventions. Only thing is we have to keep our patent laws strongest so that we can claim EMRs. If India is able to put in place a suigeneris system through suitable legislation. TRIPS is a boon to Indian Agriculture.

India has to be very careful in granting EMRs to the corporations which have agri chemical patent based on Indegenous Knowledge System of India according to clauses 70.8, 70.9 of TRIPS. We should have system on place to tackle the bio piracy problems. India has to implement our national bio diversity legislations very stringently. If India is able to put in place its suigeneris system through suitable legislation. TRIPS can prove boon to Indian Economy.

Neem Patent: According to noted environmentalist Vandana Shiya the Need tree of India is a classic case of bio piracy by transnational corporations.

Neem tree is a tree for all seasons. Humanity is dependent on plants for their living. Of all the plants Neem has the astonishing versatility, Neem with its scientific name as Azadonachta Indica.

In 1971, after an extensive research we received a product patent from the US Environmental Protection Agency for a pesticidal need extract called Margo san – 0. Later we sold the product patents for a multi-national chemical corporations. WR Grase and Co. In the scenario where the (In 1994 the European Patent office also granted a patent reluting fungicides) people are going against the chemical fertilisers and pesticides the Patent owned by Grace & Co and Japanese Termo Corporation, Nature Plant Institute of US commercialized the products and are made richer creating monopolies for themselves.

Patents like this excluding the country of origin are confiscating and an indigenous knowledge. In this case the Indian farmers are at a heavy loss. The Indian people especially rural India is deprived of its ancestral knowledge acquired from decades of Indian Culture and the traditional plant material. It is grown in arid regions of India. The neem's bark, leaves, flowers, seeds, its fruits, pulum, in a nutshell every part of the tree is used in the manufacturing of medicines , personal care for letrres. Its multiple uses are due to its chemical property astringency especially for medical purposes from the biggest health issues like lepracy to diabetes, skin problems, stomach disorders, ulsers. Neem twigs are used as an antiseptic tooth brush in rural India. All the EMCG companies use the extract of Neem tree. In the manufacturing of soaps and tooth paste since it is focused as antiseptic. It is also used in the construction material. In the agricultural sector it is used as pesticide.

After India got independence, Tata energy research institute, the Indian Agricultural Research Institute, KVDC have conducted considerable research on the properties and its compounds. But unfortunately

Indians could not get the property ownership of any research result because Indian Law does not allow the agricultural and medicinal products to be patented from the view point of social welfare.

Many implications and uses of Neem tree got the attention of American Importer Robert Lovsen in 1971. In Sanskrit it is called as Sarva Roga Nivarini means it can cure all the diseases.

American company of wood manufacturers American MNC.

Cheurm – energy exploring company through oil & natural gas.

UPs – uninterrupted power supply. Thorough Ups system provide power.

Ultimately because of the technical board at the European Patent Office revoked the patents after 10 years of legal proceedings. It is intriguing to note ultimately the European Patent Office revoked the patent with a term of 20 years after 10 years legal battling. The annulment was based on the point that the fungicidal impact of neem seeds is the indigenous knowledge of India and usage of all parts of Neem tree are part of Indian culture from times immemorial. But still the product lacks the qualities like non obvious and innovative.This is best case to show how the country of origin is betrayed while the benefits are enjoyed by the MNCs.

Protection of IPR is critical to innovation and growing Indian Economy. Yet threats from MNCs are expanding. The government has to put increased focus on protecting Intellectual Property Rights by making Indian bio piracy laws more stringent such as facilitating the individuals and industries with the information on the registration of patents and trade marks. Thus India remains one of the world's most challenging major economies with respect to protection and enforcement of Intellectual property rights ensuring the benefits are enjoyed by the country of origin (India).

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# INTELLECTUAL PROPERTY RIGHTS IN INDIA : ISSUES AND CHALLENGES :: ROLE OF JUDICIARY

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**Introduction**

Intellectual property rights play a very crucial role across all sectors. The agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement which is administered by the World Trade Organization. It sets down the minimum standards for various intellectual property regulations.

**Definition**

The World Intellectual Property Organization (WIPO) defines intellectual property as the "creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce". In essence, intellectual property refers to a brand, an invention, a design, or any other kind of creation that a business or an individual has legal rights over. This intellectual property can include ideas, inventions, words, slogans, original works of authorship, and any proprietary information.

There are four stages in the life cycle of any intellectual property: (*i*) creation, (*ii*) protection, (*iii*) utilisation, and (*iv*) enforcement.

**Developments**

The Annual Report (2017-2018) issued by the Indian Patent Office highlights:

a) increase of 5.3% in filing as compared to the previous year;

b) increase in examination rate by 108.2%;

c) number of patents granted increased by 32.5%;

d) domestic filing of patent applications increased to 32.5% as compared to 29.2% in 2016-17.

Article 300-A of the Constitution of India guarantees that no person shall be deprived of property save by authority of law. This provision in reference to IP ensures the right of the inventor/author over his or her invention/work.

In the last five years, the current government, led by Prime Minister Narendra Modi, has striven hard to bring about perceptible change in the IP landscape. Starting with rolling out National Intellectual Property Rights policy and establishing a Cell for IPR Promotion and Management (CIPAM) to work towards accomplishing IP policy objectives. In addition to clear backlog of patent and trademark applications, the government has undertaken a massive digitisation exercise, recruiting a large number of examiners leading to an exponential increase in the examination and grant of patents. To encourage start-ups to seek protection of their IP and to file patent applications, facilitators have been appointed. Despite government efforts, multinational corporations continue to push for better protection of their IP. The expectations appear to be summarised in a Special 301 Report issued by The Office of the United States Trade Representative (USTR) putting India on the "priority watch list". The report mentions

"Over the past year, India took steps to address intellectual property (IP) challenges and promote IP protection and enforcement.

**Role of Judiciary**

The judiciary interprets IP statutes while adjudicating upon IP disputes. It is through the process of pronouncement and the interpretation of the laws involved therein that the judiciary leaves its imprint on the march of trade and commerce and consequently the nation's progress. A country having agreed to be a party to the TRIPs and to WTO regime is bound to legislate in harmony with the international agreements phasing out the pre-existing IP legislations. These new laws not only call for the change in the existing IP laws but also in many cases take up the need for setting up new and modernised institutions. Many IP laws are at times just rushed through without giving due weightage to the long-term implications of the new provisions. The judiciary would have an important role to play in interpreting these laws and in case of conflict striking a judicious balance between the interest of the nation and the demands of global justice.

The judiciary will be called upon to protect the right once created. The exploiting of intellectual property may involve licensing and cross-licensing arrangements, assignments, transfer of property and so on. Legal implications arise out of such instances. Provisions of statutes like the Indian Contract Act, the Indian Stamp Act, the Transfer of Property Act and now the Securitisation Act are attracted in their applicability to the licensing arrangements. The provision of compulsory licensing has its own peculiarities. The judiciary would be faced with the challenge of striking a judicious balance between monopoly rights guaranteed under a patent and the social needs and commercial advancements. Enforcing the intellectual property is an important stage in the lifeline of an intellectual property. This stage prevents others from unauthorised use and exploitation of protected intellectual property during the period of the protection. Misappropriation and infringement of intellectual property is a crime and the statutes governing IP list out as to what constitutes an infringement. However, there is a serious need for sensitivity in handling such matters because there is a dearth of judicial precedents and lawyers may often have to cite foreign cases to explain, advance and support their respective submissions. This inflicts a huge amount of pressure on the court to consider the true context in which a foreign jurisdiction had passed its order and also to try and evaluate the appropriate extent of the action in respect of India.

Piracy is developing in the business society as an evil and so is counterfeiting. Laws are there; the need is for a proactive and tactful judiciary to handle such issues with competence, promptness and firmness. Almost 70% of Indian population is in its working age. With the demand for a global work force increasing day by day, India is also the largest supplier of knowledgeable workforce. The direct implication of this is that these very eligible people shall be the minds that will be used in the creation of the technology of tomorrow. Without the proper system to promote and protect creativity, this window of opportunity may soon close for India. IP provides jobs. It is a large contributor to the economy as well. The onus will come on the judiciary to uphold the effectiveness of any IP system and ensure that creation of IP along with enforcement IPRs is maintained effectively. Any slackness is likely to have an adverse effect on the culture associated with investment; job-creation opportunities and GDP growth. These are the few reasons why the National Initiative Against Piracy and Counterfeiting (NIAPC) under the umbrella of FICCI have felt concerned and taken the initiative in organising such a Round Table.

**ISSUES AND CHALLANGES**

The challenge comes not only from creating the laws but also their implementation considering the Indian government has to strike a balance between the needs of the country's citizens and the rights of patent holders.

Intellectual property is a product of human intellect and the rights granted on it allow its owner to benefit from the fruits of this intellectual endeavour by creating a monopoly over it. Such benefit is not always a natural right but requires recognition by a statute.

In India, intellectual property rights recognised under statute are:

- The Patents Act, 1970;
- The Trade Marks Act, 1999;
- The Copyright Act, 1957;
- The Designs Act, 2000;
- The Geographical Indications of Goods (Registration & Protection) Act, 1999;
- The Semiconductor Integrated Circuits Layout Design Act, 2000;
- The Biological Diversity Act, 2002;
- The Protection of Plant Varieties and Farmers' Rights Act, 2001.

Intellectual property rights (IPRs) play a key role in every sector and have become the basis for crucial investment decisions. IPRs are exclusive rights and therefore there is always a challenge to strike a balance between the interests of innovators and the interests of the society at large. Another important factor is having an adequate legal framework to protect the interests of innovators and inspire confidence that their intellectual property will be protected, in turn triggering further innovation

In general terms, it refers to the kind of property that results from the fruits of mental labor, and includes four primary areas: copyrights, trademarks, patents, and trade secrets. It also includes industrial design and geographical indications or appellations. Here's a simple breakdown:

- Patents protect inventions of tangible things.
- Copyrights protect various forms of written and artistic expression.
- Trademarks protect a name or symbol identifying the source of goods or services.
- Trade secrets protect secret processes, distribution methods, and other confidential information.
- Industrial design constitutes the ornamental or aesthetic aspect of an article.
- Geographical indications represent the specific geographical origin and possess qualities essentially attributable to that place of origin such as the name of the place of origin of goods.

Patent rights in India can be enforced through civil courts. However, there are no special IP courts set up to deal with cases.

**Backlog and time for final decision**

The basic challenge in the enforcement of patent rights is the time it takes for the court to make a final decision. A patent lawsuit ordinarily takes approximately five to seven years to be finally decided after trial, if contested by the other party. The Commercial Courts Act is helping to speed up the process with case management hearings and time bound trials. However, the backlog of cases at the court and shortage of judicial officers have an impact on the time it takes for a final decision on a case.

**Subject matter experts**

Section 115 of the Indian Patent Act provides for appointment of a scientific advisor to assist the courts in providing opinions on technical aspects of a matter. The provision has not been frequently made use of by the courts. The appointment of a technical expert in patent infringement suits will not only help to improve the quality of the decision but also reduce the time period for final decision.

The problems that hurt the justice system in India today are many and varied. Many of them are to be addressed by the governments, the legislatures and the society and require large resources and a strong political will. However, there are some challenges which need the attention of the judges, as they can be resolved to some extent within the resources that the judiciary now commands. Among them are problems which call for enhanced professional competence, improved methods of court management and higher levels of integrity and accountability. These are matters which the newly-established National Judicial Academy is attempting to address by way of continuing education for judges, upgradation of training curricula, methods and materials, research and dissemination of information on better methods of judicial administration and promotion of institutional capacity building for judicial reform in enlarging access to justice.

A few of the activities which have already been completed by the Academy so far are:

(*i*) A project on gender-justice sensitisation training for District Judges;

(*ii*) Advanced course on criminal justice administration;

(*iii*) National consultation on standardising curriculum for induction training of civil judges (junior division);

(*iv*) National consultation on training in gender issues for equal justice to women;

(*v*) Course on constitutional adjudication for Senior District Judges.

The topic of issues with intellectual property rights, the main issue is not the different kinds of legal issues. The primary issue is awareness of the rights and laws and treating them with sufficient importance. The intellectual property rights system in India has very strong laws. However, there are many loopholes as it is not implemented effectively. The reason that this happens is because intellectual property issues are not given any priority. It is a major challenge to convince the judiciary as well as the law enforcement officials to consider intellectual property rights issues on par with other economic offences.

Plagiarism is a prominent issue when it comes to intellectual property rights problems. Plagiarism is the act of stealing another person's intellectual property and using it as one's own without giving any credit to the original author or inventor..

**Changes in IPR laws**

The law-makers while introducing new laws and amending old ones are no more governed only by the need of our nation, especially in areas which have acquired an international colour. The law-makers today are influenced by the need to bring the laws in shape with the international conventions and agreements to which India is a party. The opening up of the domestic economy to the world is followed by a profound impact on our domestic laws.

Our legislatures are called upon to amend our laws in conformity with the international treaties. Under the World Trade Organisation obligations, each member-State is required to provide for a minimum level of protection of IPR embodied in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). The recent changes in IPR laws reflect India's compliance with the obligation under the TRIPs Agreement. For example, the Copyright Act, 1957 has been amended to include computer program as literary work as required by Article 10 of the TRIPs Agreement. The Trade and Merchandise Marks Act, 1958 has been replaced with the Trade Marks Act, 1999 which includes protection of well-known marks, certification marks and collective marks. It now provides for registration of trade mark for services as well. This is in compliance with Article 16 of the TRIPs Agreement. Other recent legislations include the Geographical Indications of Goods (Registration and Protection) Act, 1999, the Designs Act, 2000 and the Protection of Plant Varieties and Farmers' Rights Act, 2001. The preceding five years have seen many new IPR enactments. With globalisation, liberalisation and privatisation, the ambit of IPR has grown multifold and its importance has amplified, having a profound impact on commercial interests.

**Economic importance of IPR**

Intellectual property is important for a common businessman. The country's economy is opening up. Industries of our country are going far and away into different countries to open up business. Foreign entrepreneurs are fast entering into domestic economy. We need to protect our businessmen. In recent times, one of the most valued asset a person has is the intellectual property. For example, for a businessman, it is his trade mark; for an author, copyright over his work; for a fabric manufacturer, his design; for our inventors, the patent; for our industrialists, their trade secrets. In every nook and corner of commercial world, big or small it might be, intellectual property has grown multifariously.

Additional opportunities to improve IP dispute resolution

A careful analysis of the role and responsibilities of all actors within the national IP ecosystem can help identify additional opportunities to improve IP dispute resolution. Such an exercise necessarily involves identifying the processes by which IP rights are granted in the jurisdiction in question, bearing in mind that the need for a specialized IP court may be greater if IP rights are granted without a complete examination of their validity when they are registered. An assessment of the entire IP ecosystem is critical because the efficiency of IP dispute resolution mechanisms in any jurisdiction depends not only on the judiciary, but also on other players, especially the lawyers who plead before the courts.

An efficient IP dispute resolution ecosystem should also seek to eliminate vexatious IP infringement actions against innocent third parties. Procedural tools can be developed to help ensure that courts are not unnecessarily burdened with meritless claims and remain available to litigants entangled in non-frivolous IP disputes.

In sum, the balance of competing interests, which is at the core of the substantive IP system, should also be reflected in the mechanisms by which IP disputes are resolved. This will ensure that all interests are considered in an equitable manner. It follows that any decision to establish a specialized IP court should only be taken after careful analysis of the prevailing situation in a given jurisdiction

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# GST IMPLICATIONS ON IPR ON GOODS AND SERVICES IN INDIA

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**Abstract**

Intellectual property (IP) 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. The common types of IP are Copyright, Patents, Design and Patent. will flourish a common Indian market and reduce the cascading effect of the tax on the cost of goods and services. After implementing of GST it resulted in a complete overhaul of the Indian indirect tax system with wide-ranging implications including tax structure, tax incidence, tax computation, tax payment, compliances, and credit utilization and reporting. It is also expected that supply chain and other operational planning opportunities and efficiencies may be available, depending on a company's facts. However, in the short- term/transitional phase, all goods and services sector industries are facing a number of challenges, including possibly negative financial impacts, the need to assess existing supply chain structures, the need for reconfiguration of IT systems and more.

## Introduction

The GST rate on Intellectual Property Right is 18% (9% CGST and 9% SGST/UTGST) or 18% IGST. Temporary or permanent transfer or permitting use or enjoyment of Intellectual Property Right (IPR) where as transfer of copyrights mean the transfer of the inherent right of the ownership from the original author to any other person which attracts a GST rate of 12% (18% in case of trademarks) whereas, when such literary, dramatic, musical, artistic or film work is produced into a CD and then sold, it results in the transfer of such copyrighted work, but the rights of ownership still remains with the original author. Such transfer attracts a rate mentioned in the HSN code for different kinds of products.

## Review of Literature

1. Prather Das (2017) examined that GST has brought about a positive change by doing away with the need to classify transactions as either relating to goods or services since all transactions would now be concurrently levied tax by both the Centre and the States (provided transaction is intra-state supply; inter-state to be levied exclusively by Centre).

2. Vijay Pal Dalmai (2019) inferred that Intellectual Property has been taxed and classified as "Service" under GST law and also mentioned notification pertains to taxation of services at specified rates.

Objectives of the study

1. To demonstrate the role of GST in India on IPR.
2. To explain the role of Appellate Authority for advance ruling in GST.
3. To list out the activities treated as supply of goods and services in GST.

Role of GST in India

Intellectual property (IP) 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.

Common types of IP include:

Copyright – this protects written or published works such as books, songs, films, web content and artistic works;

Patents – this protects commercial inventions, for example, a new business product or process;

Designs – this protects designs, such as drawings or computer models;

Trade marks – this protects signs, symbols, logos, words or sounds that distinguish your products and services from those of your competitors.

Copyright Act, 1957, Trade Marks Act, 1999, India's Patents Act of 1970, Designs Act 2000

IP can be either registered or unregistered.

The regulatory authority for patents is the Controller General of Patents, Designs and Trade Marks under the Department of Industrial Policy and Promotion. The police now have more robust powers in enforcing trade mark law

Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods other than Information Technology software is taxable @ 12% of GST and Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of Information Technology software are taxable @ 18% under Serial No- 17(i) and 17(ii) respectively of the Notification No- 11/2017 Central tax Rate dated 28.06.2017

Appellate AAR

- In case of United Breweries Ltd vs AAR [2018 (11) TMI 283 - APPELLATE AUTHORITY FOR ADVANCE RULING, KARNATAKA]- CBUs (Contract Bottling Units)making and supply alcoholic liquor (beer) for human consumption and excluded from purview of GST. Brand owners (Applicant) give CBUs right to use their process for manufacture of their branded beer under their supervision and control by deputing process executives and commercial executives to brewer at their cost. "Surplus Profit" over and above brand fee transferred by CBUs to brand owner in lieu of permission granted to

utilize their brand. Activity of brand owner in terms of agreements permitting use of intellectual property right squarely covered under Clause 5(c) of Schedule II of Central Goods and Services Tax Act, 2017.

- Patanjali' sell their Trademark "PATANJALI" to 'Dabur', then such transfer shall attract a GST rate of 12% on the total consideration or transaction value whereas, GST rate applicable on goods bearing the mark "PATANJALI" like herbal toothpaste, soaps, shampoos etc. is different in case of different products as per HSN code.
- In the case of EASY GROUP IP LICENSING LIMITED AND ANOTHER VERSUS EASYJET AVIATION SERVICES PVT. LTD. AND ANOTHER [2013

(9) TMI 349 - DELHI HIGH COURT], the supreme court cited that, It is also pertinent to note that the suit trademark is a coined word. No explanation has been offered by the defendants as to why they chose the suit trademark. The defendants have chosen not to contest the present proceedings and, therefore, the only valid inference that can be drawn is that the defendants adopted the impugned trademark to ride on the plaintiffs' goodwill and popularity.

Place of Supply

- Place of Supply of Service of development of software and services on software is the location of recipient.
- Software is intangible. It does not have a unique existence and can exist on different servers at any point in time. Hence, in case of service of development of software (development, design, and programming of information technology software) and services on software (testing, debugging, modification, etc. i.e. customization, adaptation, up-gradation, enhancement, implementation of information technology software), the place of supply is the location of recipient of service

**ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES**

1. Transfer:-

(a) any transfer of the title in goods is a supply of goods;

(b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;

(c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.

2. Land and Building:-

(a) any lease, tenancy, easement, licence to occupy land is a supply of services;

(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process:- Any treatment or process which is applied to another person's goods is a supply of services.

4. Transfer of business assets :-

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;

(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;

(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless,-

(i) the business is transferred as a going concern to another person; or

(ii) the business is carried on by a personal representative who is deemed to be a taxable person.

5. Supply of services:-

The following shall be treated as supply of service, namely:-

(a) renting of immovable property;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation:- For the purposes of this clause,-

(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:–

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (Act No.20 of 1972); or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) A licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) The expression "construction" includes additions, alterations, replacements or remodeling of any existing civil structure;

(a) Temporary transfer or permitting the use or enjoyment of any intellectual property.

(b) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

(c) Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

(d) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

Findings of the study

1. IP includes trademarks, Copyrights, patents and designs as per GST.
2. IP can be registered or unregistered as per GST.
3. "Surplus Profit" over and above brand fee transferred by CBUs to brand owner in lieu of permission granted to utilize their brand.
4. Any lease, tenancy, easement, licence to occupy land is treated as supply of services.
5. Transfer or disposal is a supply of goods by the person.
6. Registered architecture, Chartered engineer and implementation of information technology by licensed person possess competent authority.

**Conclusion**

GST is expected to be a game-changing reform for the Indian economy in the medium to long term since it will flourish a common Indian market and reduce the cascading effect of the tax on the cost of goods and services. If implemented, GST will result in a complete overhaul of the Indian indirect tax system with wide-ranging implications including tax structure, tax incidence, tax computation, tax payment, compliances, and credit utilization and reporting. It is also expected that supply chain and other operational planning opportunities and efficiencies may be available, depending on a company's facts. However, in the short-term/transitional phase, all goods and services sector industries are likely to face a number of challenges, including possibly negative financial impacts, the need to assess existing supply chain structures, the need for reconfiguration of IT systems and more.

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# A RECAPITULATION ON INTELLECTUAL PROPERTY RIGHTS

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**ABSTRACT:**

With the blistering globalization and opening up of the Indian economy, "Intellectual Capital" has acquired one of the key riches drivers in the current worldwide exchange. Intellectual Property rights have exposed obvious on the legitimate panorama of India both regarding new resolutions and legal professions. There are several types of intellectual property protection like patent, copyright, trademark, etc. This article briefs the various intellectual property rights in India, necessity and their importance.

Keywords: Intellectual Property Rights, Indian economy, patent, copyright and trademark

## INTRODUCTION:

The Legal property that is the creative product of mind, which includes the Law of Copyright (Works of Authorship), trademark (ownership of brands and marketing efforts) and patent (inventions of the mind). Intellectual property rights (IPR) are the rights given to persons over the creations of their minds: inventions, literary and artistic works, and symbols, names and images used in commerce [1]. They ordinarily give the maker a select directly over the utilization of his/her creation for a specific timeframe. In India it is referred to as the patents, copyrights and other intangible assets.

India sanctioned the understanding for setting up the World Trade Organization, which contains the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). Indian Statutes, implementation arrangements and techniques for contest goal concerning licensed innovation (IP) insurance are presently completely TRIPS-consistent. In the ongoing occasions, India has been attempting to build up itself as an Intellectual Property Rights (IPR) well disposed country in the world, by characterizing its principles according to the Global Intellectual Property standards. This has been obviously reflected in probably the most recent advancements in the laws identified with Intellectual Property Rights in India. One such exertion can be found in the Indian government's vision to set-up completely automated Intellectual Property workplaces dependent on the United States Patent and Trademark Office model. The Government has as of late affirmed the Patent Prosecution Highway Program which will ease and facilitate the procedure of patent assessment in India.

## NECESSITUDE OF IPR:

The progress and well-being of humanity rest on its capacity to create and invent new works in the areas of technology and culture.

- Encourages innovation: The legal protection of new creations encourages the commitment of additional resources for further innovation.

- Economic growth: The promotion and protection of intellectual property spurs economic growth, creates new jobs and industries, and enhances the quality and enjoyment of life.
- Safeguard the rights of creators: IPR is required to safeguard creators and other producers of their intellectual commodity, goods and services by granting them certain time-limited rights to control the use made of the manufactured goods.
- It promotes innovation and creativity and ensures ease of doing business.
- It facilitates the transfer of technology in the form of foreign direct investment, joint ventures and licensing.

**FIRST RECOGNITION:**

The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Both treaties are administered by the World Intellectual Property Organization (WIPO).

**TYPES OF INTELLECTUAL PROPERTY RIGHTS:**

A diversity of areas of intellectual property is archived herein below covering Indian laws:

- ✓ Trade Marks
- ✓ Patents
- ✓ Copyrights and Related Rights
- ✓ Industrial Designs
- ✓ Geographical Indications
- ✓ Layout Designs of Integrated Circuits
- ✓ Plant Varieties
- ✓ Information Technology and Cyber crimes
- ✓ Data Protection

The Intellectual Property Rights are derived in many forms of Acts, in India which are

1. The Designs Act, 1911 which is superseded by the new Designs Act, 2000.
2. The Copyright Act, 1957 which was amended consequently in the year 1983, 1984, 1992, 1994 and 1999 and the Copyright Rules 1958.
3. The Patents Act, 1970, which is amended in the year 1999.
4. The Trade and Merchandise Marks Act, 1958 and the same is superseded by the Trademarks Act, 1999.
5. The Semiconductor Integrated Circuit Layout Design Act, 2000
6. The Geographical Indication of Goods (Registration and Protection) Act, 1999.
7. The Protection of Plant Varieties and Farmers' Rights Act (PPVFRA), 2001. (Pepsi-co Vs Farmers of Gujarat)

**DESIGNS ACT, 2000.**

The registration and protection of industrial designs in India is administered by the Designs Act , 2000 and corresponding Designs Rules , 2001 which came into force on 11th May 2001 repealing the earlier Act of 1911. The Design Rules, 2001 was further amended by Designs (Amendment) Rules 2008 and Designs (Amendment) Rules 2014. The last amendment in Designs Rules came in to force from 30th December, 2014, which incorporates a new category of applicant as small entity in addition to natural person and other than small entity [2].

**COPYRIGHT ACT**

Copyright relates to expression of ideas in material form and includes literary, musical,

dramatic, artistic, cinematography work, audio tapes, and computer software [3]. Infringement of copyright is a tortuous invasion of property in general. The common law has developed several heads of liability constituting the economic torts. 'Their general characteristics are that the defendant must be acting intentionally or recklessly; that the plaintiff must suffer or be about to suffer damage; and that they will not apply if some ground of justification is open to the defendant.

PATENTS Act in India:

**a.** The first legislation in India relating to patents was the Act VI of 1856. The objective of this legislation was to encourage inventions of new and useful manufactures and to induce inventors to disclose secret of their inventions. The Act was subsequently repealed by Act IX of 1857 since it had been enacted without the approval of the British Crown. Fresh legislation for granting 'exclusive privileges' was introduced in 1 859 as Act XV of 1859.

**b.** In 1872, the Act of 1859 was consolidated to provide protection relating to designs. It was renamed as "The Patterns and Designs Protection Act" under Act XIII of 1872. The Act of 1872 was further amended in 1883 (XVI of 1883) to introduce a provision to protect novelty of the invention, which prior to making application for their protection were disclosed in the Exhibition of India.

**c.** This Act remained in force for about 30 years without any change but in the year 1883, certain modifications in the patent law were made in United Kingdom and it was considered that those modifications should also be incorporated in the Indian law. In 1888, an Act was introduced to consolidate and amend the law relating to invention and designs in conformity with the amendments made in the U.K. law.

**d.** The Indian Patents and Designs Act, 1911, (Act II of 1911) replaced all the previous Acts. This Act brought patent administration under the management of Controller of Patents for the first time. The Indian Patents & Designs Act came into force On march 26, 1999 Patents (Amendment) Act, (1999) came into force from 01-01-1995. The Patents (Amendment) Act 2002 came into force from 20th may 2003, The Patents (Amendment) Act 2005 effective from 1st January 2005.

**e.** The Patents Act, 1970 was amended in 1999, 2002 & 2005. The amended Act, in accordance with TRIPS, has provided for product patents in foods, medicines and chemical substances. India became signatory to PCT in 1998. As a consequence, patent filing including PCT National Phase Applications have increased exponentially. Considerable changes have been made in the

patenting procedure through the introduction of Patents Rules, 2003, which were further amended in 2005 and 2006, resulting in new practices and procedure [4, 5].

**THE TRADEMARKS ACT, 1999.**

The Trade & Merchandise Mark Act, 1958 has been revised and replaced by the Trade Mark Act, 1999. The process started, when it was felt that a comprehensive review of the 1958 Act be made in view of new developments in trading and commercial practices, increasing globalization of trade and industry, the need to encourage investment flows and transfer of technology and need for simplification and harmonization of trade mark management system [6]. The Trade Marks Bill, 1993 was introduced in the Lok Sabha on 19.5.1993, which was passed by the Lok Sabha on the lines recommended by the Standing Committee. However, as the Bill failed to get through the Rajya Sabha, it lapsed on the dissolution of the Lok Sabha. A new Bill titled as Trade Marks Bill, 1999 (Bill No.33 of 1999) was introduced in Rajya Sabha and eventually passed by both the Houses of Parliament. The Bill received the assent of the President on 30.12.1999 and became an Act.

The Trade Marks Registry was established in India in the year 1970 and presently it administers the Trade Marks Act, 1999 and the rules there under. It acts as a resource and information centre and is a facilitator in matters relating to trade marks in the country. The Objective of the Trade Marks Act, 1999 is to register trademarks applied for in the country and to provide for better protection of goods and services and also to prevent fraudulent use of the mark. The main function of the Registry is to register trademarks which qualifies for registration under the Act and Rules.

**THE SEMICONDUCTOR INTEGRATED CIRCUIT LAYOUT DESIGN ACT, 2000**

Since the early 1970s, chip pirates have quickly produced copies of semiconductor chips at vastly reduced prices by copying chip designs and avoiding the expensive research and development phase. This problem was particularly prevalent in the US where, until 1984, there was virtually no intellectual property protection for the IC layout, which cost millions of dollars to design and develop. As a result, the manufacturers of ICs sought some sui generis form of intellectual property protection for this backbone of modern technology [5].

Important economic, social, political and technological developments over the past few years have had a fundamental impact on how intellectual property is created, exploited and traded. The same is the case with "Semiconductor Integrated Circuits Layout-Designs".

A layout design expressed in any manner, which is original, which has not been commercially exploited for more than 2 years from the date of application for the registration, which is inherently distinctive and capable of being distinguishable from any other registered layout design, is protected or registered under the Act.

**THE GEOGRAPHICAL INDICATION OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999**:

Geographical Indications of Goods are defined as that aspect of industrial property which refer to the geographical indication referring to a country or to a place situated therein as being the country or place of origin of that product. Typically, such a name conveys an assurance of quality and distinctiveness which is essentially attributable to the fact of its origin in that defined geographical locality, region or country. Under Articles 1 (2) and 10 of the Paris Convention for the Protection of Industrial Property,

geographical indications are covered as an element of IPRs. They are also covered under Articles 22 to 24 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which was part of the Agreements concluding the Uruguay Round of GATT negotiations [7].

India, as a member of the World Trade Organization (WTO), enacted the Geographical Indications of Goods (Registration & Protection) Act, 1999 has come into force with effect from 15th September 2003.

A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place. The Kondapalli Toys originated from the Krishna District are provided with Geographical Indication, these toys are made from the "Tella Poniki" wood which gives the toys a unique character.

**THE PROTECTION OF PLANT VARIETIES AND FARMERS' RIGHTS ACT (PPVFRA), 2001**

The Protection of Plant Varieties and Farmers' Rights Act (PPVFRA), which introduced intellectual property protection in Indian agriculture, faced its biggest test in its implementation phase of nearly a decade and a half, when PepsiCo India initiated legal proceedings against four farmers in Gujarat for "illegally" growing its potato variety registered under the PPVFRA [5].

The company applied for the registration of two hybrid potato varieties FL 1867 and FL 2027 in February 2011. These varieties were registered under the PPVFRA in February 2016 for a period of 15 years. PepsiCo marketed the latter variety under the trademark FC-5, and now is claiming that the Gujarat farmers are illegally using this variety.

After the bases of the cases were questioned, especially by farmers' organizations, the company withdrew its cases, not before trying to bind the farmers it had framed, into its contractual arrangements.

The PPVFRA was enacted in 2001 after engaging debates were held in the country for more than a decade as to how intellectual property rights should be introduced in Indian agriculture after the country joined the World Trade Organisation in 1995 and agreed to implement the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

**NATIONAL IPR POLICY:**

On the 12th May, 2016, the Indian Cabinet has approved the National Intellectual Property Rights Policy ensuring the Doha Development Round and TRIPS Agreement which aims at creating a "Creative India, Innovative India". It includes and brings to a solitary area all IPRs, considering all inter-linkages and expects to make and endeavour collaborations between all types of protected innovation (IP), concerned rules and organizations. It sets set up an institutional method for usage, checking and audit. It means to consolidate and adjust worldwide accepted procedures to the Indian scenario. These rights are plot in Article 27 of the Universal Declaration of Human Rights, which accommodates the option to profit by the assurance of good and material interests coming about because of creation of logical, abstract or masterful creations [8].

**ACHIEVEMENTS ON IPR:**

India's rank in the Global Innovation Index issued by WIPO has improved from 81st in 2015 to 52nd place in 2019. Strengthening of institutional mechanism regarding IP protection and promotion.

Augmentation of technical manpower by the government, has resulted in drastic reduction in pendency in IP applications.

Automatic issuance of electronically generated patent and trademark certificates has also been introduced. Patent filings have increased by nearly 7% in the first 8 months of 2018-19 vis-à-vis the corresponding period of 2017-18. Trademark filings have increased by nearly 28% in this duration. IP Process Re-engineering Patent Rules, 2003 have been amended to streamline processes and make them more user friendly. Revamped Trade Marks Rules have been notified in 2017.

**CONCLUSION:**

Government's effort to strengthen National IPR policy, IP appellate tribunal, e-governance and commitment to abide by the TRIPS agreement of WTO in letter and spirit will help in improving perception of India globally. An efficient and equitable intellectual property system can help all countries to realize intellectual property's potential as a catalyst for economic development and social & cultural well-being.

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# A REVIEW: PRACTICES BEING DEVELOPED IN ORGANIC START UPS AS A SEEDING OF MONEY

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**Abstract**

Intellectual property plays an important role in providing a competitive edge to any Institution in various means. The tangible skill assets like inventions, designs, software, brand name and other creative & innovative ideas composting are more valuable than physical assets. To encourage, protect, manage and to commercialize the Intellectual Property such as Patenting in one of the sources generated through the campus solid biomass. In this connection, training will be given to students as skill based techniques Vermi-Technology, Ornamental fish culture and Aqua culture and the development of knowledge in Intellectual Property patent rights towards employability.

Vermicomposting is a sustainable and economical process that involves the use of Earth worms or wrigglers to convert organic waste materials into a nutrient rich and well stabilized material. Vermicompost is likened to peat and has excellent structure, aeration, porosity, and enhanced moisture holding capacity for promoting plant root growth. Unlike typical composting, which requires the compost to be turned each week for aeration, here worms will tunnel through the soil, creating air pathways to allow oxygen flow. VermIcomposting needs to be used in low temperature(25+C) and relative humidity must be 50-60% ranges to prevent the worms from dying. The nurturing of earthworms in organic waste has the potential to transform waste water sludge, food waste, cow dung, domestic municipal waste into a valuable nutrient rich (13 nutrients) fertilizer. Besides that, the use of these organic fertilizers will maintain and improve the condition of the soil structure for the luxuriant growth of plants.

This work will provide a comprehensive insight into the current progress in organic fertilizer production from biomass waste, also aims to provide insights on the development and transformation of waste into organic fertilizer which helps to reduce the impact on environmental pollution and how to generate income.

**Key words: Vermicompost, Red wrigglers, NPK Nutrients,Biomass garbage.**

## INTRODUCTION

Transformation of biomass waste into sustainable organic income source creates a challenge for the generation of waste into fertilizer in a rapid and alarming rate. Much awareness towards the sustainability and technological advances for solid waste management has been implemented to reduce the generation of unnecessary waste. To create a pollution free environment**, recycling, reduce, reuse** technologies being applied to produce valuable organic matter which can be used as fertilizers or

amendments to improve the soil structure. This review studies helps the sustainable transformation of various types of biomass waste such as campus garbage, cow dung, sewage sludge, municipal solid waste, and food waste into an organic fertilizers and their impact on waste minimization, agricultural enhancement and seeding of money. The side effects of these organic fertilizers towards the soil are evaluated as the characteristics of these fertilizers will differ from chemical fertilizers used. This work will provide an insight to the potential management of biomass waste to be produced into organic fertilizer and the advantages of substituting chemical fertilizer with organic fertilizer derived from the biomass waste.

The biomass waste contain valuable nutrients, which can be put to good use if managed properly. They contain high organic matter and can be treated to remove pathogens and then used to fertilize soils. Unlike chemical fertilizers, organic matter requires a period of time lag to mineralize. This mineralization time will depend on the composition of the organic matter, characteristics of soil, moisture and temperature conditions.

Soil remediation by using vermicomposting from municipal solid wastes showed that vermicompost was proficient in mitigating the heavy metals-contaminated soils, in addition to enhancing plant growth .The use of cow manure vermicompost on peppermint growth reported that plants treated with vermicompost were the tallest and had the highest level of chlorophyll, carotenoids, and essential oil content. The study by Wang et al. (2019) reported that animal manure application gave a high stimulation effect on abiotic and biotic N immobilization, attributed to the increase in carbon availability and soil microbial activity at higher soil pH

The vermicompost derived from the mixture of cow manure, wastewater sludge, and municipal solid waste was also found to greatly reduce the number of microbial in the waste. Vermicompost is able to eliminate significant amounts of pathogens through factors such as worm gut enzymes, coelomic fluid secretion and competition between microorganisms . Different treatments on the earthworm ***Eisenia fetida ,Eudrilus eugiene*** gut will also affect the microbial population differently. The earthworms consume the pathogens as food and their proteolytic enzymes activity will help to eliminate the pathogens, thereby promoting the use of earthworms to significantly reduce the pathogens to an acceptable microbiological quantity without the need for increased temperature .

**EARTHWORMS-Red worms (Annelids).**


**Eisenia**

Raw material Cow dung was composted thermophilically and the resulting compost was added with earthworms and left to vermicompost for three months. The improvements in physico-chemical properties make vermicompost an ideal amendment for field applications to improve soil health and the economic potential of biowaste conversion into biofertilizer is the need of hour.

**METHODOLOGY:**

Dried Phosphorus is crucial for energy metabolism, storage, and expression of genetic information hidden in biomass. Potassium is an essential for stimulating photosynthetic systems in dried biomass and can improve plant growth,yield, and resistance to drought, thereby helping plants to maintain growth under stressed conditions . However, the rigorous use of chemical fertilizers has led to the deterioration of the dynamic equilibrium of soil, flora and fauna ecosystems as well as water streams contamination. The need for sustainable fertilization with minimal environmental impact has given rise to the search for alternative fertilizer sources for use in agriculture.This has generated increasing interest in renewable feedstock from biomass waste since the past decade valuable nutrients, contain high organic matter also.

Unlike chemical fertilizers, organic matter requires a period of time lag to mineralize. This mineralization time will depend on the type of red wrigglers, composition of cow dung , moisture, and temperature conditions. Besides that, the feasibility of these organic fertilizers is largely dependent on the conversion processing costs, production costs, quality of the organic fertilizers, environmental assessments, and safety to human and animal health.

**Small scale enterprise:**

| | | |
|---|---|---|
| **Name of the Project** | **-** | **Campus Manure Plant** |
| **Place** | **-** | **Maris Stella College, Vijayawada** |
| **Annual capacity** | | **8 tonnes per annum** |
| **Name of the Product** | **-** | **Vermicompost** |
| **No.of working days** | **-** | **300 days** |
| **No.of persons employed** | **-** | **1** |
| **No.of cycles** | **-** | **3 cycles per annum [July to February]** |

**Means of finance:**

- Own Land
- Shed and Office
- Siever, Shovel for mixing, Cutter, Plastic Bags etc.,
- Capital Expenditure

Working capital for one cycle

Raw material, Cow dung 1 lorry load means 3 tonnes

costs Rs.2500/-

Agricultural/Municipal waste

**EXPENDITURE:**

Cost of earthworms - 1kg Rs. 300/-

Waste material 2 tonnes dried solid waste

Cowdung - 1 truck load

Thatching material - Pucca shed

**COST OF VERMICOMPOST:** 1 kg of compost Rs 20/-

- Coconut Scrub/Gunny Bags to Cover
- Cow dung/Cow Urine/Saw dust – 8cm
- Water – Humidity 60%
- partial compost - 30cm
- Earthworms – 10 – 15 kgs/bed. with pillar material
- Parameter - cow dung waste%

COMPOSITION OF COW DUNG:

- Crude Fat - 2.85
- Crude Protein - 4.38
- Carbohydrate - 2.94
- Ash - 4.50
- Moisture Content - 6.60
- Crude fibre - 78.73

**PARAMETER** - cow dung extract

1.pH - 6.26 (slightly acidic)

2.Temperature - $29.6^0$ C

3.$NO_3$ ppm - 4.6

4.$NH_4$ ppm - 29.7

5.$SO_4$ ppm - 4.3

6.Calcium hardness - 0.38

7.BOD - 2.7

8.COD - 3.9

9.10.Total Hardness - 40.0

Conductivity µg/cm

Phosphorus is a key nutrient for all living beings, whereby its deficiency in agriculture would compromise on crop productivity. Phosphorus fertilizer can be recovered from sewage sludge through various methods, for example, hydrothermal carbonization, pyrolysis, combustion, and composting.

The acid acts as a catalyst to enhance the degree of carbonization as well as to increase the amount of ammonium to elevate phosphate recovery .On the other hand, the pyrolysis of sewage sludge can

reduce the polycyclic aromatic hydrocarbons (PAHs) and toxic elements bio-accumulation in the sewage sludge. The resulting matter from pyrolysis will have a lowered sludge toxicity suitable for agricultural usage .Besides that, composting is an effective and cost-efficient process to manage sewage sludge.Composting can biodegrade organic matter and produce substances that affect the mobility of heavy metals. The addition of phosphate amendments during sewage sludge composting also contributes to better fertilizer efficiency and heavy metals, creating compost that are safe for agricultural applications.

The combustion of sewage sludge will produce ashes, which contain rich phosphorus content that are valuable as plant nutrients. Many treatment methods have been used to recover phosphorus from the sludge or increase the phosphate fraction in order to further utilize the sewage sludge ashes (SSA) as fertilizers.The recovery of phosphorus from SSA through leaching can be further purified by the removal of heavy metals in SSA using ion exchange or sulphide precipitation.

This paper explores the relationship between intellectual property rights (IPRs) and small-scale farmer innovation. It focuses on the type of on-farm innovation that relates to the use, conservation and further enhancement of organic manures and associated knowledge. A range of IPR tools – patents, trade secrets, plant variety protection (PVP), variety registries, trademarks and geographical indications – are assessed in sequence in terms of how each may support or impede innovation in this area. Small-scale farming systems are characterized by their relative size, reliance on family labour, low use of external inputs, and the sheer diversity of farm management practices and livelihood strategies employed to suit local environmental and socioeconomic conditions.

Small-scale farmer innovation systems are informal networks of social and economic actors where individuals and communities share and adapt local knowledge and material, selectively integrate 'scientific' knowledge and 'modern' tools and technologies with that which exists, and develop new and better ways of managing resources and overcoming local challenges. IPRs and their relationship with small-scale farmer innovation a) Patents i) Overview of patents Patents grant exclusive rights to holders to exclude others from using, replicating or commercializing their invention for a given period of time. Trade secrets and small-scale farmer innovation, Small-scale farmers do not use trade secrets, thus trade secrets do not directly drive on-farm innovation.

**Constrains for the introduction of organic farming** :

1 Mindset.

2. Follow-up for farm operation.

3. Adaptive research and demonstration efforts.

4. Advisory services.

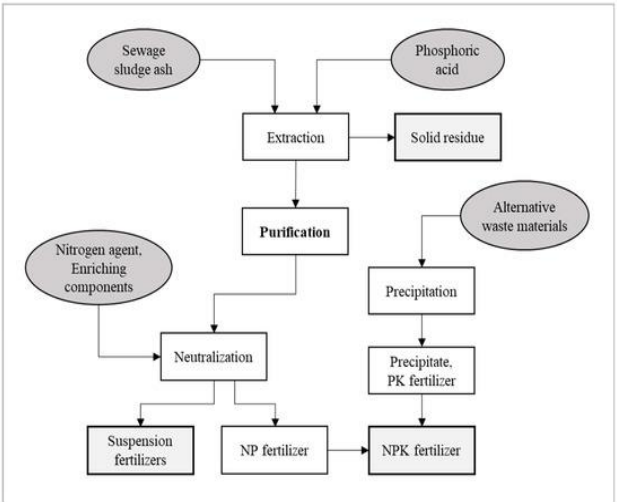
5. Infrastructure for market access.

6. Organic product prices.

7.Continues support of Organic Farming.

8. Coexistence with GM crop production

**Flow chart:Process of Sewage sludge ash-NPK (N: Nitrogen, P: Phosphorus, K: Potassium)**




A case study was conducted to discover the effect of training on income and employment generation as a result of adopting vermicomposting production technology by the students. vermicompost of size 10 X 4 x 2 feet dimensions.Gradually expanded numbers of production units to four numbers with a production of 1.5-2 t/unit in farm and producing over 20 tons of quality vermicompost per annum. After getting expected momentum, started to supply surplus quantity vermicompost to the nearby colleges directly. Observations on income and employment creation by the adoption of vermicompost production were recorded as per the standard procedure.

**Bed method**: Vermicompost production unit (size 10x4x1 feet) was established in a cool, moist and shady place provided under the pucca shed in our campus since Nov 2007 till today . The number of units increased, according to the availability of raw materials and requirements. The campus solid waste and cow dung ,coconut waste and other organic waste like cow dung and chopped dried leafy materials such as sugarcane trash, coconut fronds were mixed in the proportion of 1:3:1 and Effective Microorganism (EM) @2 lit/ton was mixed and kept for 40-50 days for partial decomposition. During this period, the heap was kept moist by a sprinkling of water so that temperature can be favorable to worms. Each bed contained 1.5-2 tonnes of raw material. After the preparation of vermicomposting beds, 10 kg of Eudrilus eugeniae (nightcrawler) was released on the upper layer of the pit/bed and covered with gunny bags so that worms can be saved from predators. Water sprinkled immediately after releasing worms and kept it moist by frequent sprinkling as per need. First harvesting of vermicompost was done at 90 days after the worms release, then subsequently every 30 days harvest was done according to the number of castings appeared on the surface of the bed. A reddish colour liquid, with an alkaline reaction having dissolved nutrients, called vermiwash also collected in the small chamber connected through drainage pipes fitted at the bottom of the bed. By this way, vermicompost was collected and amounting by weight 55-60 percent of the raw materials used. The harvested vermicompost was analysed and their nutrient status was known.

**Nutrient content of vermicompost**

Parameters Nutrient content

1. Organic carbon (%) 12.6

2. Total nitrogen (%) 1.35

3. Total phosphorus (%) 0.48

4. Total potassium (%) 0.85

5. Total calcium (%) 1.65

6. Total magnesium (%) 0.52

7. Total iron (ppm) 0.8496

8. Total manganese (ppm) 100.62

9. Total zinc (ppm) 42.39

10. Total Copper (ppm) 12.05

**Preventive Measures Adopted during Production:**

- To prevent downward migration of worms, a cement floor was laid-out at the bottom of each vermicompost bed or unit
- To provide the cool, moist and shady environment, coconut fronds thatched sheds was established
- To protect earthworms worms from heat generation during degradation, use of fresh dung and fresh leaves was avoided
- The harmful materials like plastics, glass, stones, chemicals, pesticides and metals etc., were removed from the base material before laying-out vermicompost bed or unit To promote the ideal growth ,multiplication of earthworms, proper aeration was ascertained. Preventive measures were taken to protect earthworms from ant, rat and birds.

**RESULTS AND DISCUSSION** :

The success of any production system basically depends on need, availability of inputs and marketing channels .Income and employment creation through vermicompost production

1.Products Quantity produced (kg/yr)

2.Production cost (Rs./yr)

3.Gross income (Rs./yr)

4. Net income (Rs./yr)

The key to the success of the organic farming system is the production of all inputs like manures, plant protection, etc., and on-farm utilizing the local resources wherein animal husbandry plays a catalytic role . The study on the economics of vermicompost production indicated that direct marketing of vermicompost from producer to consumer was found to be the strongest marketing channel, however, marketing through cooperatives and trader was also found in a few instances . Economics of vermicompost production was arrived to compare benefit-cost ratio and it was observed that the BC ratio was around 2.19 from vermicompost production alone and it was 2.40 while including the sale of an earthworm. The results also indicated that the production of vermicompost provided about 365 days throughout the year, which helped in reducing migration of rural youth to urban areas.

This might be due to the need based skill oriented training programme and technical backstopping extended by certificate courses enhanced the knowledge level of the student and resulted in adoption level.

The raw materials for biofertilizers are derived from biomass waste, and can be obtained for no cost with a reliable supply as these wastes are constantly being generated. With a higher demand of biofertilizers, the cost for biofertilizer will eventually reduce as the higher production rate will ease the production cost. The management and transformation of biomass waste into fertilizers has shown great advantages to soil and plant growth, besides contributing tremendously to the reduction of carbon footprint.

**CONCLUSION:**

The results of the current study revealed that benefit cost ratio (2.19:1 to 2.40:1) of vermicompost production was significantly higher and can boost-up Indian economy which is today's essential need besides serving as an eco-friendly venture for rural populace.

From the results, it is evident that, the earning an annual income is good with an average, but after undergoing vocational training and with technical backstopping established vermicomposting units resulting in change of annual income.

From the study, it can be concluded that an organized and systematic training cum learning of technology with necessary technical guidance from knowledge centers can uplift students to great height and attain desirable changes. Some of the teething issues like marketing and linkages must be formulated by the policy makers to promote marketing of such farm products to sustain the farmer's income and soil health in future so as to maintain nature ecology intact.

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# AN OVERVIEW OF INTELLECTUAL PROPERTY RIGHTS AND LAWS

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**Abstract**

Intellectual property is a product of human intellect and the rights granted on it allow its owner to benefit from the fruits of this intellectual endeavour by creating a monopoly over it. Such benefit is not always a natural right but requires recognition by a statute. IPR provide certain exclusive rights to the inventors or creators of that property, in order to enable them to reap commercial benefits from their creative efforts or reputation. The intellectual property protection includes patents, copyrights, trademarks, geographical indications, trade secret, industrial design, semiconductor integrated circuits & layout design, tradition knowledge and plant breeders' right. IPR is prerequisite for better identification, planning, commercialization, rendering, and thereby protection of invention or creativity. Patent is recognition for an invention, which satisfies the criteria of global novelty, non-obviousness, and industrial application. The Non-Conventional or Non-Traditional trademarks are relatively new in the era of Intellectual Property. The Non-Conventional trademark is a new type of trademark that forms such as scent, sound, taste, touch, color and olfactory marks grew in importance. This paper begins with a brief introduction to the field of Intellectual Property Rights and Laws and Non-Conventional trademarks.

**Introduction:-**

**Patents:-**

A patent is the granting of a property right by a sovereign authority to an inventor. This grant provides the inventor exclusive rights to the patented process, design, or invention for a designated period in exchange for a comprehensive disclosure of the invention. They are a form of incorporeal right.

Government agencies typically handle and approve applications for patents. In the United States, the U.S. Patent and Trademark Office (USPTO), which is part of the Department of Commerce, handles applications and grants approvals.

A patent is territorial in nature and inventors or their assignees will have to file separate patent applications in countries of their interest, along with necessary fees, for obtaining patents in those countries. The term of a patent is at least 20 years in most of the countries of TRIPS*. The term of the patent is counted from the date of filing application. Hence, date of filing is an important date and, therefore, the application should be filed without any loss in time.

Law Governing Patents in India is The Patent Act, 1970 and The Patent Rules, 2003. For USA, its Patent Law: 25 United States Code and Patent Rules: 37 Code of Federal Regulations. The European Patent Convention (EPC 1973) is for Europe.

* Trade-Related Aspects of Intellectual Property Rights.

**Trademarks:-**

A trademark is a unique symbol or word(s) used to represent a business or its products. Once registered, that same symbol or series of words cannot be used by any other organization, forever, as long as it remains in use and proper paperwork and fees are paid.

Unlike patents, which are granted for a period of 20 years, trademarks never end. Companies do need to apply for them and receive ownership confirmation with the U.S. Patent and Trademark Office in order to claim protection from copycats, however.

It provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or to authorize another to use it in return for payment. It helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs.

Registration of trademark is prima facie proof of its ownership giving statutory right to the proprietor. Trademark rights may be held in perpetuity. The initial term of registration is for 10 years; thereafter it may be renewed from time to time.

Law Governing Trademark in India is The Trademarks Act, 1999 and The Trademarks Rule, 2002. For USA, its Lanham Act (15 U.S.C. §§ 1051-1127) and 37CFR Part 2: Rule of Practice in Trademark Cases.

**Copyright:-**

Copyright is a legal means of protecting an author's work. It is a type of intellectual property. that provides exclusive publication, distribution, and usage rights for the author. This means whatever content the author created cannot be used or published by anyone else without the consent of the author. The length of copyright protection may vary from country to country, but it usually lasts for the life of the author plus 50 to 100 years.

Many different types of content can be protected by copyright. Examples include books, poems, plays, songs, films, and artwork. In modern times, copyright protection has been extended to websites and other online content. Therefore, any original content published on the Web is protected by copyright law. This is important in the digital age we live in, since large amounts of content can be easily copied and pasted.

Creators often sell the rights to their works to individuals or companies best able to market the works in return for payment. These payments are often made dependent on the actual use of the work, and are then referred to as royalties. The total term of protection for literary work is the author's life plus 60 years. For cinematographic films, photographs, records, posthumous publications, anonymous publications, pseudonymous publications, works of government and international agencies, the term is 60 years from the beginning of the calendar year following the year in which the work was published. For broadcasting, the term is 25 years from the beginning of the calendar year following the year in which the broadcast was made.

**Geographical Indications:-**

A geographical indication is a sign which is used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. Geographical Indication is primarily granted to agricultural, natural, manufactured, handicraft originating from a definite geographical territory.

Registered Geographical Indications prohibit a third party to use such Geographical indication by any means in the designations or presentations of goods that indicate that such goods originates in a geographical area.

For example, Darjeeling Tea (Word) vide Geographical Indication Registration No. 1 or vide Geographical Indication Registration No. 2 are registered Geographical Indications. Hence, Tea Board, Registered Proprietor of Darjeeling Tea can prohibit any third party from using the term "Darjeeling" for tea that does not grow in their gardens or is not produced according to the standards set out in the code of practice for the registered Geographical Indication.

Under Articles 1 (2) and 10 of the Paris Convention for the Protection of Industrial Property, geographical indications are covered as an element of IPRs. They are also covered under Articles 22 to 24 of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which was part of the Agreements concluding the Uruguay Round of GATT negotiations.

India, as a member of the World Trade Organization (WTO), enacted the Geographical Indications of Goods (Registration & Protection) Act, 1999 and the Geographical Indications of Goods (Registration and Protection) Rules, 2002.

**Trade Secret:-**

A trade secret is any practice or process of a company that is generally not known outside of the company. Information considered a trade secret gives the company an economic advantage over its competitors and is often a product of internal research and development.

To be legally considered a trade secret in the United States, a company must make a reasonable effort in concealing the information from the public, the secret must intrinsically have economic value, and the trade secret must contain information. Trade secrets are a part of a company's intellectual property. Unlike a patent, a trade secret is not publicly known.

A trade secret can be protected for an unlimited period of time but a substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficultyin acquiring the information. There is no term of protection. In fact, the term can be as long as you can keep it secret.

**Industrial Design:-**

Industrial designs refer to creative activity, which result in the ornamental or formal appearance of a product, and design right refers to a novel or original design that is accorded to the proprietor of a validly registered design. Industrial designs are an element of intellectual property. Under the TRIPS Agreement, minimum standards of protection of industrial designs have been provided for. As a developing country, India has already amended its national legislation to provide for these minimal standards.

The essential purpose of design law it to promote and protect the design element of industrial production. It is also intended to promote innovative activity in the field of industries. The existing legislation on industrial designs in India is contained in the New Designs Act, 2000 and this Act will serve its purpose well in the rapid changes in technology and international developments. India has also achieved a mature status in the field of industrial designs and in view of globalization of the economy, the present legislation is aligned with the changed technical and commercial scenario and made to conform to international trends in design administration.

This replacement Act is also aimed to enact a more detailed classification of design to conform to the international system and to take care of the proliferation of design related activities in various fields.

An industrial design right protects the visual design of objects that are not purely utilitarian. An industrial design consists of the creation of a shape, configuration or composition of pattern or color, or combination of pattern and color in three-dimensional form containing aesthetic value. An industrial design can be a two- or three-dimensional pattern used to produce a product, industrial commodity or handicraft.

The term of protection for industrial design is 15 years. US design patents last 14 years from the date of grant and cover the ornamental aspects of utilitarian objects.

Law Governing Industrial Design in India is The Design Act, 2000 and The Design Rules, 2001. For USA, its Patent Law: 35 U.S.C. and Patent Rules: 37 Code of Federal Regulations.

**Semiconductor Integrated Circuits & Layout Design:-**

The semiconductor Integrated Circuits Layout Design Act, 2000, provides protection for semiconductor IC layout designs. SICLD Act is a sui-generis (one of its kind) specifically meant for protecting IPR relating to Layout-Design (Topographies) of Semiconductor Integrated Circuit.

The subject of Semiconductor Integrated Circuits Layout Design has two parts, namely:

**Semiconductor Integrated Circuit:-**

Semiconductor Integrated Circuit means a product having transistors and other circuitry elements, which are inseparably formed on a semiconductor material or an insulating material or inside the semiconductor material and designed to perform an electronic circuitry function.

**Layout-design:-**

The layout-design of a semiconductor integrated circuit means a layout of transistors and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in semiconductor integrated circuits.

Criteria for Registration of a Chip Layout Design are, if it is Original, Distinctive and capable of distinguishing from any other lay-out design.

Note: " Only the Layout-Design " - which essentially is the mask layout- floor planning of the integrated circuits can be registered under the SICLD Act 2000 and not the other information like any idea, procedure, process, system, programme stored in the integrated circuit, method of operation etc.

The term of protection is last for 10 years from the date of filing an application for registration or from the date of first commercial exploitation anywhere in the world, whichever is earlier.

The protection of IC Layout Designs is governed by the Semiconductor Integrated Circuit Layout Design Act, 2000 and the Semiconductor Integrated Circuits Layout Design Rules, 2001 in India. Law Governing Layout Design of Integrated Circuits is 17 U.S.C. § 904 in USA.

**Traditional Knowledge:-**

Traditional knowledge refers to the knowledge and practices of indigenous and local communities that have developed over centuries and are traditionally transferred from elders to young people in concrete working and life situations. Traditional knowledge is dynamic and it can be transferred and expressed orally, through stories, legends, rituals, songs and laws. It can also be preserved in artefacts handed from father to son or mother to daughter. The indigenous people have knowledge and understanding of their environment and ecosystems and ways how to use and manage them. Often this knowledge is very particular and detailed. In recent years traditional knowledge has been increasingly considered alongside scientific knowledge within the context of research and conservation efforts related to Arctic peoples and nature.

The Turmeric in India is used for healing wounds and infections from ancient times. Use of Aloe Vera in the healing of burns, abrasions and other skin injuries. Use of Neem extracts against pests and fungal diseases attack food crops and skin diseases, malaria and meningitis. Use of Hoodia cactus to prevent off hunger and thrist on long hunting trips. Kava, an important cash crop is a source of ceremonial beverage and grown in Pacific, are some examples of traditional knowledge.

**Plant Breeders' Right:-**

Plant breeders' rights are a form of intellectual property rights that allow plant breeders to protect new varieties of plants. Other forms of intellectual property protection include patents, trademarks and copyrights.

When plant breeders' rights are granted, the breeder gets exclusive rights in relation to propagating material of their new plant variety.

Protection is available to a new variety of plants to safeguard the interest of plant breeders as an incentive to the development of improved plant varieties for agriculture, horticulture and forestry. Improved varieties are a necessary and very cost-effective element in the improvement of the performance and quality of plants of all types.

The plant varieties can be registered in India under the Protection of Plant Varieties and Farmers' Right Act, 2001. The Indian Act provides for farmers' right meaning thereby that farmers' varieties can be registered even after the variety has been in use for a period specified in the Act.

Registration of a new plant variety is valid for 18 years from the date registration in case of trees and vines, and for 15 years in other cases. Registration of an extant variety is valid for 15 years only.

**Non-conventional Trademarks:-**

The Non-traditional or non-conventional trademarks are new in the era of Intellectual Property. Any mark that does not come under the traditional categories of trademarks such as letters, words, logos, numerals, pictures and symbols may termed as non-conventional trademark. Therefore, Non-conventional trademarks consist of a mark that originates the forms shape, smells, sounds, tastes and textures.

Traditionally, the subject matter of trademarks includes words, logos, symbols or a combination thereof. The Indian Trademarks Act, 1999 (the 'Act') defines trademarks as "*a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours*."

In the day and age of aggressive marketing, numerous techniques are adopted to capture the attention of the consumers. This is where the non-conventional trademarks come into play. Non-conventional or non-traditional trademarks are those marks which are beyond the purview of traditional trademarks and therefore consist of marks originating from shapes, sounds, smells, tastes and textures. Although not specifically mentioned in the Act, the definition of a 'trademark' incorporates the non-conventional marks as well.

**Graphical representation of the marks :-**

Graphic representation of a mark is the *sine qua non* for a trademark registration in India. A trademark application essentially requires the mark to be represented graphically, that is, the mark should be capable of being put on register in a physical form and also being published in the journal. The Trademarks Rules[1], requires the trademark to be represented in a 'paper form'.

**Pantone/color :-**

A unique and distinctive trademark with catchy colours is likely to stay on the mind of the consumers. However, whether a specific color exclusively is eligible has been a contentious area of dispute. The Act does not specifically provide for the registration of a single color, although it does not expressly exclude the notion. In order to secure a single color trademark registration, one must furnish to the Registrar the evidence of acquired distinctiveness in India, prior to the date of filing of the single color trademark. In practice, a combination of colors stands a better chance of registration, provided that it is capable of distinguishing the goods of one trader from those of another.

The Indian Registry and Courts follow the color depletion theory, which is based on two arguments- First, there is a concern that with the limited number of colors, to grant exclusive rights to colors would sooner or later deplete the available stock and, thus, be anticompetitive. Second, if a color alone was protectable, trademark infringement suits would lead to lengthy litigations over 'shades' of color which would slow down the trademark registration process. However, the theory only bars the registration of the seven basic colours but not any shade thereof.

**Sound :-**

The function of a sound trademark is to uniquely identify the commercial origin of products/ services by means of an audio clip. In general, applications in the form of musical notations describing the sound meet these requirements, whereas onomatopoeic descriptions do not. This means that musical notes that can be represented in the form of musical notations are acceptable whereas noises like a dog barking which cannot be represented by a musical notation but has to be described onomatopoeically or through a sonogram cannot be eligible for a trademark.

The Trademark Registry in India has granted registration to ICICI Bank Ltd for its sound mark by registering the very notes that form the jingle. ICICI Bank is the first Indian entity to obtain sound mark registration. The first sound mark to be granted registration by the Trademark Registry was the Yahoo! Yodel[2]. In a milestone trade mark registration for India as well as Yahoo, the country's trade marks

registry in 2008, granted registration to India's first "sound mark" to Sunnyvale, California-based internet firm Yahoo Inc.'s three-note Yahoo yodel. Subsequently, Allianz is reported to have successfully registered its sound mark in India and the Trademarks Registry has also recently accepted Intel's application for registration of its sound mark.

Internationally, the most celebrated case in this regard is that of Metro Goldwyn Mayer (MGM) Corporation had applied for the registration of a sound, that of a Lion roaring, by submitting a sonogram for the "Lion's roar". The application has been refused in the EU. Interestingly, the same trademark has been granted in the US. In the United States, whether a sound can serve as a trade mark "depends on the aural perception of the listener which may be as fleeting as the sound itself unless, of course, the sound is so inherently different or distinctive that it attaches to the subliminal mind of the listener to be awakened when heard and to be associated with the source or event with which it struck." Quite simply this means that if a sound lingers in the mind of the listener and the listener subsequently associates the source or event with that sound then the sound may be eligible for trademark registration.

**Smell :-**

In comparison to sound trademarks and color trademarks, the numbers of smell or scent or olfactory trademarks registered are significantly less. One of the reasons could be due its inability of graphic representation.

The "graphical representation" of scents thus far has solely been verbal. A verbal description of smell can be subjective and cannot really provide a full-proof method of identifying and distinguishing one smell or scent from another. Another commonly used form of graphical representation of a scent is describing the smell as a chemical formula. However the European Court of Justice has been of the view that a chemical formula does not represent the smell of the chemical itself and that few people would be able to get a sense of the smell based on its chemical formula. Further, a sample of the scent provided as evidence of the scent in question may degenerate over a period of time as the chemical composition may deteriorate.

There have been very few smell trademarks registered till date. The smell of-freshly cut grass for tennis balls was registered as a European Trademark. An example of a registered smell trademark in the US is of a "vanilla" scent or fragrance when applied to office supplies.

The registration of non-traditional trademarks is still at its infancy stage in India. Since the need of trademarks is at its zenith in today's times, the scope of non-conventional trademarks is yet to be tapped. Various aspects such as holograms, motion/gesture trademarks etc. need to be streamlined in order to cope up with the current realities.

**Hologram Trademark:-**

Holograms have for long been used for security purposes on credit cards, concert tickets, certain currencies etc. The purpose of use is to prevent counterfeiting and fraudulent replication, as replication of a hologram is considered more difficult. Holographic trademarks have been registered by a few European countries and also in the US. The basic requirements for a trademark registration apply to a hologram too, i.e., the mark should be distinctive enough to be used by a business to uniquely identify itself and its products and services to consumers.

**Conclusion:-**

IP is an important tool for trade and commerce in enhancing business potential, market size, return on investment, enhancing profits and so on. It plays a key role in all technology transactions, including licensing and assignments. IPR can be used for raising funds from banks and venture capitalist by using them as collaterals. For start-up companies, this may become as effective tool for generating funds. If you have a good IPR portfolio and your resultant product is marketable, you can become a market leader. The protection of non-conventional trademarks is still an under-developed part of intellectual property law. However these trademarks are registerable and enforceable, if they are capable of identifying the manufacturer as a source of the product and also if they distinguish products sold or manufactured by the applicant from similar products of other manufacturers.

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# REVIEW PAPER ON IPR – IT & COMMUNICATION AND SERVICE SECTOR

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Innovation in service sector plays vital role in the world. through IPR. The larger enterprises in service sector fails to recognize, IPR as an effective part of strategic management that can be globalized. Where also service sector must compete on innovation and new ideas. The service sector are to use formal protection. Mechanism like, the use of patent, copy right, trade mark and design. The service sector formulate the IPR in Judicious use with best concept of IP protection, Innovation and mechanism with the assist of research methodology. The effect of IPR in quantitative and qualitative method, but it is more effective than any other method. Intangible assets, innovation is to be mechanized in service sectors. The effect of IPR shows in startups, in recent emerging companies.

**Intellectual Property Rights**

Intellectual property rights (IPR) are the rights given to persons over the creations of their minds: inventions, literary and artistic works, and symbols, names and images used in commerce. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.

These rights are outlined in Article 27 of the Universal Declaration of Human Rights, which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions.

The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Both treaties are administered by the World Intellectual Property Organization (WIPO).

**Intellectual property rights are customarily divided into two main areas:**

**(i) Copyright and rights related to copyright:**

The rights of authors of literary and artistic works (such as books and other writings, musical compositions, paintings, sculpture, computer programs and films) are protected by copyright, for a minimum period of 50 years after the death of the author.

**(ii) Industrial property: Industrial property can be divided into two main areas:**

Protection of distinctive signs, in particular trademarks and geographical indications. Trademarks distinguish the goods or services of one undertaking from those of other undertakings.

Geographical Indications (GIs) identify a good as originating in a place where a given characteristic of the good is essentially attributable to its geographical origin.

The protection of such distinctive signs aims to stimulate and ensure fair competition and to protect consumers, by enabling them to make informed choices between various goods and services.

The protection may last indefinitely, provided the sign in question continues to be distinctive.

**Industrial designs and trade secrets:** Other types of industrial property are protected primarily to stimulate innovation, design and the creation of technology. In this category fall inventions (protected by patents), industrial designs and trade secrets.

**Need of IPR**

The progress and well-being of humanity rest on its capacity to create and invent new works in the areas of technology and culture.

**Encourages innovation:** The legal protection of new creations encourages the commitment of additional resources for further innovation**.**

**Economic growth:** The promotion and protection of intellectual property spurs economic growth, creates new jobs and industries, and enhances the quality and enjoyment of life.

**Safeguard the rights of creators:** IPR is required to safeguard creators and other producers of their intellectual commodity, goods and services by granting them certain time-limited rights to control the use made of the manufactured goods.

It promotes innovation and creativity and ensures ease of doing business.

It facilitates the transfer of technology in the form of foreign direct investment, joint ventures and licensing.

**India and IPR**

India is a member of the World Trade Organisation and committed to the Agreement on Trade Related Aspects of Intellectual Property (TRIPS Agreement).

India is also a member of World Intellectual Property Organization, a body responsible for the promotion of the protection of intellectual property rights throughout the world.

India is also a member of the following important WIPO-administered International Treaties and Conventions relating to IPRs.

Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure

Paris Convention for the Protection of Industrial Property

Convention Establishing the World Intellectual Property Organization

Berne Convention for the Protection of Literary and Artistic Works

Patent Cooperation Treaty

Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks-Madrid Protocol

Washington Treaty on Intellectual Property in respect of Integrated Circuits

Nairobi Treaty on the Protection of the Olympic Symbol

Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms

Marrakesh Treaty to facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities.

**National IPR Policy**

The National Intellectual Property Rights (IPR) Policy 2016 was adopted in May 2016 as a vision document to guide future development of IPRs in the country.

It's clarion call is "Creative India; Innovative India".

It encompasses and brings to a single platform all IPRs, taking into account all inter-linkages and thus aims to create and exploit synergies between all forms of intellectual property (IP), concerned statutes and agencies.

It sets in place an institutional mechanism for implementation, monitoring and review. It aims to incorporate and adapt global best practices to the Indian scenario.

Department of Industrial Policy & Promotion (DIPP), Ministry of Commerce, Government of India, has been appointed as the nodal department to coordinate, guide and oversee the implementation and future development of IPRs in India.

The 'Cell for IPR Promotion & Management (CIPAM)', setup under the aegis of DIPP, is to be the single point of reference for implementation of the objectives of the National IPR Policy.

India's IPR regime is in compliance with the WTO's agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

**Objectives**

**IPR Awareness: Outreach and Promotion -** To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society**.**

**Generation of IPRs -** To stimulate the generation of IPRs**.**

**Legal and Legislative Framework -** To have strong and effective IPR laws, which balance the interests of rights owners with larger public interest**.**

**Administration and Management -** To modernize and strengthen service-oriented IPR administration.

**Commercialization of IPRs -** Get value for IPRs through commercialization.

**Enforcement and Adjudication -** To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements**.**

**Human Capital Development -** To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs.

**Achievements under new IPR policy**

Improvement in GII Ranking: India's rank in the Global Innovation Index (GII) issued by WIPO has improved from 81st in 2015 to 52nd place in 2019.

Strengthening of institutional mechanism regarding IP protection and promotion.

Clearing Backlog/ Reducing Pendency in IP applications: Augmentation of technical manpower by the government, has resulted in drastic reduction in pendency in IP applications.

Automatic issuance of electronically generated patent and trademark certificates has also been introduced.

Increase in Patent and trademark Filings: Patent filings have increased by nearly 7% in the first 8 months of 2018-19 vis-à-vis the corresponding period of 2017-18. Trademark filings have increased by nearly 28% in this duration.

IP Process Re-engineering Patent Rules, 2003 have been amended to streamline processes and make them more user friendly. Revamped Trade Marks Rules have been notified in 2017.

**Creating IPR Awareness:** IPR Awareness programs have been conducted in academic institutions, including rural schools through satellite communication, and for industry, police, customs and judiciary.

**Technology and Innovation Support Centres (TISCs):** In conjunction with WIPO, TISCs have been established in various institutions across different states**.**

**Issues in India's IPR regime**

Section 3(d) of the Indian Patent Act 1970 (as amended in 2005) does not allow patent to be granted to inventions involving new forms of a known substance unless it differs significantly in properties with regard to efficacy.

This means that the Indian Patent Act does not allow evergreening of patents.

This has been a cause of concern to the pharma companies. Section 3(d) was instrumental in the Indian Patent Office (IPO) rejecting the patent for Novartis' drug Glivec (imatinib mesylate).

**Issue of Compulsory licencing (CL):** CL is problematic for foreign investors who bring technology as they are concerned about the misuse of CL to replicate their products. It has been impacting India-EU FTA negotiations.

CL is the grant of permission by the government to entities to use, manufacture, import or sell a patented invention without the patent-owner's consent. Patents Act in India deals with CL.

CL is permitted under the WTO's TRIPS (IPR) Agreement provided conditions such as 'national emergencies, other circumstances of extreme urgency and anti-competitive practices' are fulfilled.

India continues to remain on the United States Trade Representative's (USTR's) 'Priority Watch List' for alleged violations of intellectual property rights (IPR).

In its latest Special 301 report released by the United States Trade Representative (USTR), the US termed India as "one of the world's most challenging major economies" with respect to protection and enforcement of IP.

**Data Exclusivity:** Foreign investors and MNCs allege that Indian law does not protect against unfair commercial use of test data or other data submitted to the government during the application for market approval of pharmaceutical or agro-chemical products. For this they demand a Data Exclusivity law.

Enforcement of the Copyright act is weak, and piracy of copyrighted materials is widespread.

Way Forward

Promoting an environment of innovations in schools. The academic curricula need to be rebooted.

A proper resolution mechanism for resolving IPR related issues is needed.

India will be unable to take full advantage of the transformative benefits of a strong IP system unless and until it addresses gaps in its IP laws and regulations.

Success of India's flagship programmes - Make in India and Start up India - depends on the boost of innovation ecosystem with better IPR safeguardings.

More awareness is needed about the creation, protection and enforcement of IPRs to encourage the Indian industry not only to innovate but also to protect and enforce their innovations.

**Conclusion**

India has made a number of changes in its IPR regime to increase efficiency and has cut down the time required to issue patents.The culture of innovation is taking centre stage in the country. India is well poised to focus on R&D. This has been reflected in its improved ranking in Global Innovation Index over the years.

Government's effort to strengthen National IPR policy, IP appellate tribunal, e-governance and commitment to abide by the TRIPS agreement of WTO in letter and spirit will help in improving perception of India globally.

An efficient and equitable intellectual property system can help all countries to realize intellectual property's potential as a catalyst for economic development and social & cultural well-being.

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# IPR IN INDIAN SCENARIO : ROLE AND IMPLICATIONS IN BANKING SECTOR

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**Abstract**

Conventional Banking services are out of reach for a large proportion of the masses. The recent two decades of virtual world has brought out, amongst other things, the inadequacy and vulnerability of the laws governing use of internet banking. In ln this situation, strengthening the grievance redressal mechanism available to bank customers was made available for the institutionalisation of the Internal Ombudsman (**"IO"**) mechanism in 2015 in all public sector banks, selected private sector and foreign banks. In this article, authors discussed about different types of IPR's in banking sector. In addition, they elaborated different issues challenges faced in banking sector. To sum up The industry seems to be recovering from the overnight de-monetisation of the Rs500 and Rs1,000 notes in circulation on 8 November 2016 and the implementation of the Goods and Services Tax. High-profile controversies have affected both public and private sector banks, which have raised eyebrows in regard to the overall conviction of the industry.

**Introduction**

Traditional Banking services are out of reach for a large proportion of the masses. But to make it a success it requires more than just an adequate internet enabling infrastructure. There is a dire need for an adequate legal and regulatory framework to be put into place. One of the crucial elements of such a legal and regulatory framework will be Data Protection provisions. The emphasis of this article is on the this aspect of data protection in the electronic banking sector. The article is an attempt to highlight the importance of data protection in internet banking and dwell upon possible legal recourses which may adopted keeping in mind the current legal framework in India with regards regulation of Information Technology.

Law cannot possibly be expected to update with changes in technology. The recent two decades of virtual world has brought out, amongst other things, the inadequacy and vulnerability of the laws governing use of internet banking. . Fixing liability, recording and reproducing evidence, ascertaining jurisdiction are problems which show little sign of easing. Concerns over security and misuse pertaining to e-banking activity have been mounting as more banks in India foray into electronic banking.

The right of a person or company to exclusively use its own ideas, plans, and other intangible assets without competition, at least for a certain period of time. Examples of **intellectual property** include copyrights, trademarks, patents, and trade secrets.

**Review of Literature**

1.Wu and Mi, 2011, Chen and Hu, 2011 emphasised lack of independent innovation and has limited the intensive and efficient use of resources and sustainable economic growth

2.Liu et al., 2013, Cull et al., 2015 explained how low efficiency of both the market also encourages enterprises to invest in social capital, such as building political connections, hiring executives with financial backgrounds and so on, to obtain resource allocation advantages.

**Objectives of the study**

- To examine the role of RBI in Indian Banking Sector
- To identify the role of IPR's in banking sector.
- To analyse the challenges faced in e banking in real market scenario

**Role of RBI in Indian Banking Sector**

From past few decades, the RBI has involved itself in strengthening the fiduciary relationship between the banks and the customers as it holds the responsibility of maintaining the financial health in the Indian banking sector. At the same time RBI has a major duty in building up a strong consumer confidence amongst general public by ensuring the stability and the safety in the Indian Banking System.

When previous works of RBI are traced, we can note its efforts in introducing **Banking Ombudsman ("BO") Scheme 2006**. BO is an 'Alternative Dispute Resolution Mechanism' for resolving the disputes between a bank and its customers. As of today, there are 20 BO offices in our country. However, the Indian Banking Sector is simultaneously exposed to innumerable known and unknown risks and uncertainties such as cybersecurity breaches, phishing/ vishing frauds, data thefts, misuse of data, data privacy breaches, malware attacks, etc. While it is known that these risks exist, the garb in which they manifest, when and at what severity, is unknown. In this background, the role of the Ombudsman has become challenging as there is an increase in the number of complaints, their complexity, as well as the ability to deal with the dynamic financial environment.The recent initiatives of RBI in consumer education and protection, we find the formulation of the '**Charter of Customer Rights**' which includes 5 basic rights of bank customers. They are:

- Right to Fair Treatment
- Right to Transparency, Fair and Honest Dealing
- Right to Suitability
- Right to Privacy
- Right to Grievance Redress and Compensation

Also, RBI has done a prominent job by setting up the **Customer Service Department** in 2006 to act as the nodal department in the RBI for grievance redressal of complaints received from the public. The department is renamed as **Consumer Education and Protection Department (CEPD)** and continues to focus on providing a level playing field between suppliers and consumers of financial services, by easing the imbalances arising from information irregularities, inadequate disclosures, and unfair treatment.

An important milestone in strengthening the grievance redressal mechanism available to bank customers was the institutionalisation of the Internal Ombudsman (**"IO"**) mechanism in 2015 in all public sector banks, selected private sector and foreign banks. Now, the coverage of the "IO" Scheme is extended to all scheduled commercial banks (other than Regional Rural Banks) having 10 or more banking outlets in India. The objective of setting up the "IO" is to ensure that an undivided attention is given to the resolution of customer complaints in banks and the customers of banks get an independent and auto-review of their grievances which are partially or wholly unaddressed before they approach the BO.

On the other hand, recently on 24 June, 2019 RBI launched a software application called Complaint Management System (**"CMS"**)[1] in order to effectively support the Ombudsman framework 2006. Now, the citizens can access the CMS portal at RBI's website to lodge their complaints against any of the entities regulated by RBI. With the launch of CMS, the processing of complaints received in the offices of Banking Ombudsman (**"BO"**) and Consumer Education and Protection Cells (**"CEPCs"**) of RBI has been digitalized.

**Role of IPR in Banking sector**

Intellectual property in India mostly includes patents, copyright, trademark and designs. Security interests over IP rights can be created by way of hypothecation, assignment or mortgage.

***Procedures***

*Patents* : Patents are governed by the Patents Act 1970. The following procedures must be complied with:

- The instrument must be in writing.
- The document creating the assignment, mortgage, licence or creation of any other interest needs to be registered with the relevant authority along with necessary prescribed forms.

*Copyrights* : Copyrights are governed by the Copyright Act 1957. The following procedures must be complied with:

- An instrument in writing should record the assignment of copyright.
- Registration of the assignment instrument is not mandatory, but advisable. The assignment of copyright needs to be recorded with the relevant authority on enforcement.

*Trademarks* : Trademarks are governed by the Trademark Act 1999. The following procedures must be complied with

- The instrument must be in writing.
- The document creating assignment must be registered with the relevant authority.

*Designs* : Designs are governed by the Designs Act 2000. The following procedures must be complied with:

- The instrument must be in writing.
- The document creating the assignment, mortgage, licence or any other interest needs to be registered with the relevant authority along with necessary prescribed forms.

Other procedures include the registration of the charge with the company registry. Certain lenders are required to register their charge with the CERSAI and corporate authorisations should be in place. The following are different mechanism listed in IPR policy:

- IPR policy has recommended securtisation of innovative rights allowing banks to use them as collateral for raising funds for their commercia development.
- Venture capital, Angel funding and crowd funding are funded by banking sector to develop IPR in the country
- National IPR Policy suggested securtisation of assets can be issued to investors to raise funds is also considered as IPR policy.
- Valuation of IPR is an important issue.It can be done by analyzing the cost incurred and costs incurred in acquiring the assets which generates returns over the next five years.
- At root level, DIPP will assist IPR owners to come under one ecommerce platform and facilitate brand equity of their products.

Challenges in E -Banking

E-banking activities involve not just banks and their customer, but numerous third parties too. Information held by banks about their customers', their transactions etc changes hands several times. It is impossible for banks to retaining information solely within their own computer networks, let alone a single jurisdiction is impossible. Risks pertaining leakage, tampering or blocking of data are sufficiently high to warrant adequate legal and technical protection. India has no law on data protection leave alone a law governing an area as specific as protection of data in electronic banking. Information security in e-banking presents two main areas of risk: preventing unauthorized transactions and maintaining integrity of customers transactions. Data protection falls in the latter category.

Data protection laws primarily aim to safeguard the interest of the individual whose data is handled and processed by others. 'Interests' are usually expressed in terms of privacy, autonomy and/or integrity. Data protection laws are 'framework laws' providing rather diffused general rules for such processing and making allowances for developing detailed norms as and when the need arises. Such legislation typically regulates all or most stages of the data protection cycle including registration, storage, retrieval, and dissemination of personal data.

The Indian Information Technology Act, 2000, basically a framework law, makes hacking a punishable offence under Section 66. Breach of information security is implicitly recognized as a penal offence in the form hacking. The 'appropriate government' (central/state) is empowered to declare any 'computer', 'computer system' or 'computer network' as a protected system. A ten year prison term and a hefty fine await any person who secures access to the 'secured computer system' in contravention of the provisions of the law.

Despite the deterrence characterized by the penal provisions of the IT Act, 2000, a lacuna in the law is that organizations and entities can take action against those who breach data security procedure, but they are not obliged to implement data security measures to protect consumers and clients. The IT Act does not lay down any such duty upon banks. Contrastingly, in UK, failure to undertake identification of new customers properly can create an array of risks for the bank. Under the Data Protection Act, 1998 an erring bank may face an action for damages if it fails to "maintain adequate security precautions

in respect of the data". Essentially, a legal duty is thrust upon the banks, to use reasonable care and skill in disseminating information to persons who access the bank's networks either on the internet or though an ATM card.

In India, a Bank's liability would arise out of contract as there is no statute to the point. When liability is contractual it means that the bank is, by virtue of the contract, under an obligation to keep customers' data secret. If transactions are being done on an open network such as the internet then in case of a security breach, an internet service provider (ISP) may be liable, in addition to the bank. Though ambiguity persists as regards liability of an internet service provider due to dearth of decided case law on the point.

**Conclusion**

India is the fastest growing large economy in the world. Although the lending market has waivered in this regard over the past several years, there seems to have been some hope over the past year for the lending market to do justice to this label. Banks have seen an overall reduction in provisioning against deteriorating assets and an increase in credit growth. The industry seems to be recovering from the overnight de-monetisation of the Rs500 and Rs1,000 notes in circulation on 8 November 2016 and the implementation of the Goods and Services Tax. High-profile controversies have affected both public and private sector banks, which have raised eyebrows in regard to the overall conviction of the industry. However, stern measures from regulators and enforcement agencies should help to clear these blemishes on the industry.

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# IP PROTECTION IN MSME SECTOR

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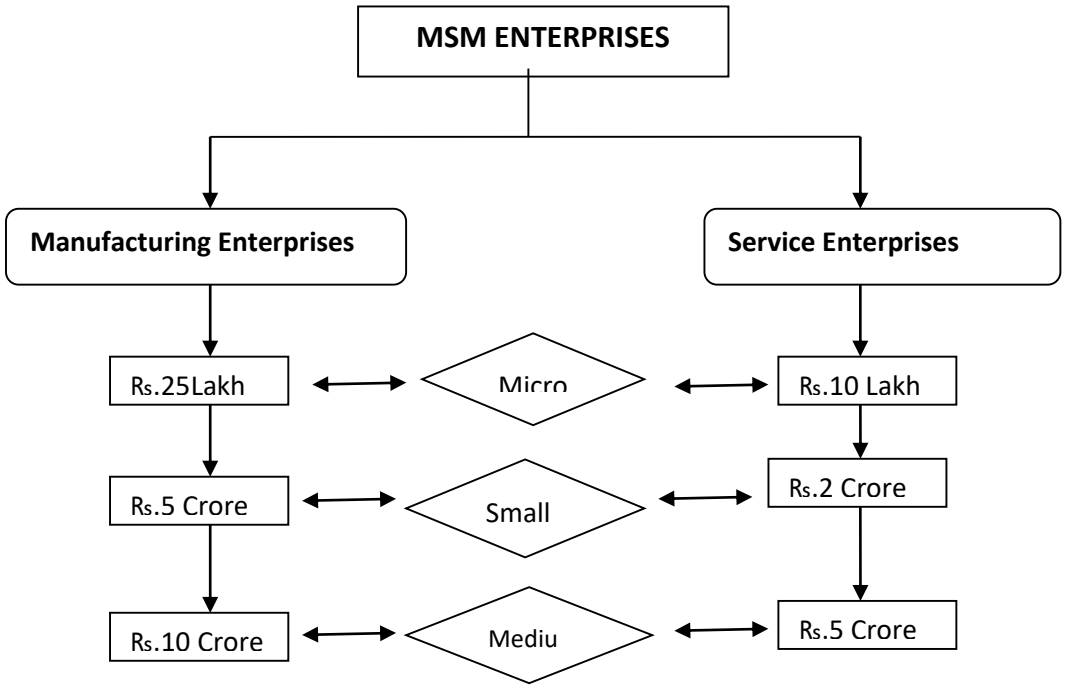
## I. Introduction

Micro, Small & Medium Enterprises (MSMEs) are the pillars of the Indian manufacturing sector and have become significant in the stable monetary growth of India. There are more than lakh of MSME units in India with investment of above Rs. 1 lakh crore. The sector has recorded strong growth during the past fiscal years and contributes approx. 40 percent to industrial production and 6 percent to country's GDP. As the name suggest these businesses are varied from small organization and trading concerns to large retail chains. According to the estimate, there are over 13 million SMEs in India providing employment to 42 million peoples. Due to these reasons it is vital for these companies to invest in their own IP, by adopting unique trademarks and brand names, every trader can create a strong recall value and a position for its product and/or service in the market. Today customers want more and more for less and less. This will further lead to Intense Competition: More the players in the market, the fierce will be the competition, which means only the "fittest will survive".

## II. Micro , small & medium Enterprises (MSMEs):

The Micro, Small & Medium Enterprises sector continuous to be a vibrant sector of the Indian economy. Approximately there are about 12.8 million units (over 90 per cent of total industrial units) in the given sector employing nearly 31 million people. This sector contributes about 39 per cent of the total industrial production which accounts for approximately 33 per cent of the total exports. This sector has registered a higher growth rate than the rest of the industrial sector. There are more than 6500 products ranging from traditional to high-tech items, which are being manufactured by the small enterprises in India. After agriculture, MSMEs sector provides maximum opportunities for self-employment and jobs in the country.

- The government of India has enacted the Micro, Small & Medium Enterprise Development Act 2006 on June 16th, 2006 and came into force on October 2nd 2006, defines the MSMEs as those that are engaged in manufacturing or production and providing or rendering services. As for this act the MSMEs are classified on the basis of the investment limits as shown below;




These enterprises constitute the overall industrial sector of the country.

### III. Intellectual property

Intellectual property (IP) is a category of property that includes intangible creations of the human intellect. The most well-known types are copy rights, patent, trademarks and trade secrets. The modern concept of intellectual property developed in England in the 17th and 18th centuries. The term "intellectual property" began to be used in the 19th century, though it was not until the late 20th century that intellectual property became commonplace in the majority of the world's legal systems. The intangible nature of intellectual property presents difficulties when compared with traditional property like land or goods. Unlike traditional property, intellectual property is "indivisible", since an unlimited number of people can "consume" an intellectual good without it being depleted. Intellectual property covers any original ideas, designs, discoveries, inventions and creative work produced by an individual or group.

Almost all businesses own some form of IP, which could be a business asset. Common types of IP include:

Copyright: this protects written or published works such as books, songs, and films, web content and artistic works;

Patents – this protects commercial inventions, for example, a new business product or process;

Designs – this protects designs, such as drawings or computer models;

Trademarks – this protects signs, symbols, logos, words or sounds that distinguish your products and services from those of your competitors.

IP can be either registered or unregistered. With unregistered IP, you automatically have legal rights over your creation. Unregistered forms of IP include copyright, unregistered design rights, common

law trademarks and database rights, confidential information and trade secrets. Registered forms of IP include patents, registered trademarks and registered design rights. Copyright also can get registered if necessary.

## IV. Significance of IPR in MSMEs

The MSMEs play a vital role in the growth of the country as they contribute in terms of output, export, employment, competitiveness innovation etc. MSMEs which use the IP have become a precious commodity in today's world. IP enhances the competitiveness of MSMEs to be a boom in the marketing. MSMEs make the efforts to benefit from IPR system. IP aids the MSMEs to bring out the creativeness in the business matters. IPR is proposed for the substantial growth of MSME sector in India. Every product we use is born out of the human innovation which is needed to be protected. IP enables the MSME to safeguard its identity and to face the competition. One view is that IPR enables MSMEs to become more competitive through technological gains. But it seems that this argument glosses over the problems, complexities, and uncertainties inherent in innovations and also ignores the fact that most innovations either not exploited or more often than not fail. If innovation is to play a part in enhancing the competitiveness of MSMEs, it seems to follow that IPR must also have a role to facilitate innovations. MSMEs in India also make efforts to glean the benefits from IPR system. However, most of the Indian MSMEs have not yet been able to effectively use IPR as a business tool to increase their competitiveness in the national and global markets.

## V. IP protection in MSMEs

Intellectual property is a business asset. It helps set apart your business versus your competitors. It also provides a stream of revenue, which you deserve to be compensated for since these are your creations. It makes good business sense, therefore, to protect your IP and restrict others from copying, using, selling or distributing, and profiting from it without your consent. Intellectual property (IP) covers any original ideas, designs, discoveries, inventions and creative work produced by an individual or group. It wasn't a big deal to protect IP in the past. However, with information more accessible and easier to distribute today due to technology, safeguarding your creations and works from infringers, copycats, and thieves has become vital to any business.

The main purpose of intellectual property law is to encourage the creation of a wide variety of intellectual goods. To achieve this, the law gives people and businesses property rights to the information and intellectual goods they create, usually for a limited period of time. This gives economic incentive for their creation, because it allows people to profit from the information and intellectual goods they create. These economic incentives are expected to stimulate innovation and contribute to the technological progress of countries, which depends on the extent of protection granted to innovators. IP protection is not just necessary to ensure that your innovations won't be copied or stolen. It establishes an incentive so whatever you create can proliferate and benefit more people without violating your rights. The protection of IPR helps increase the competitiveness of MSMEs in a variety of ways.

It helps in:

- Preventing competitors from copying or closely imitating a company's products or services; Avoiding wasteful investment in research and
- development (R&D) and marketing;

- Creating a corporate identity through a trademark and branding strategy;
- Negotiating licensing, franchising or other IP-based contractual agreements;
- Increasing the marketing value of the company; Acquiring venture capital and enhancing access to finance;
- Obtaining access to new markets.

How to protect IP

The following ways can be used for the protection of IP in MSMEs;

1. Register copyrights, trademarks, and patents

Copyright, trademark, and patent are three of the most common types of IP protection. These grant you the exclusive rights to your creations, especially when it comes to the commercial gains of its use.

❖ Copyright ©

Copyright is a right given by the law to the creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including rights of reproduction, communication to the public, adaptation and translation of the work. Copyright is provided automatically to the author of any original work covered by the law as soon as the work is created. Registration is not mandatory, but provides for protection of ownership in case of dispute. Copyright registration is invaluable to a copyright holder who wishes to take a civil or criminal action against infringement.

The creator of a copyrighted work has right to control/ prevent unauthorized copying or reproduction of their work by others for a certain time period, after the said work will enter in the public domain. The protection of copyright varies according to national legislations and the type of work. The Indian law extends copyright protection for the work made by an individual for life time of the author plus sixty (60) years. The Copyright Act, 1957 and the Copyright Rules, 1958 provide for protection of copyrights in India.

❖ Trademark ™

A trademark is the most valuable asset owned by a business. When a business is successful, others will imitate not only the ideas and market strategy, but very often they will also imitate the trademarks, product packaging, distinctive markings, etc. used by a successful company. Businesses with particularly successful products or services spend considerable amounts of time, effort and money creating, establishing and promoting their unique identities. The legislations which deal with the protection and registration of trademarks in India are The Trademark Act, 1999 and The Trademark Rules 2002. In India, trademark registration is valid for a period of ten years. The same may be renewed from time to time for additional periods of ten years each. For registration of a mark as a trademark in India, the mark has to fulfill certain criteria. These include the following requirements:

- The mark should be non- generic
- The mark should be non- descriptive
- The mark is not identical or similar to existing marks

- The mark should be non- deceptive

❖ **PATENT**

Patent is a form of protection that provides a person or legal entity with exclusive rights for making, using or selling a concept or invention and excludes others from doing the same, also for claiming damages from those who infringe the invention. Patents generally cover innovations, products or processes that include new functional or technical aspects. It is granted by the Indian Patent Office and has a term of 20 years. After expiration of this 20 year monopoly the product/ invention will fall in the public domain for any third party to use it. The legislations which deal with the protection and registration of patents in India are The Patent Act, 1970 and The Patent Rules 2003.

In India an invention/product has to satisfy various criteria to qualify for a patent are:

- New/ Novel- The invention has a feature that sets it apart from previous inventions and is unknown to the public.
- Non-obviousness- The invention's novelty must not be obvious to someone who has ordinary skill in the area of invention.
- Utility- The invention is considered useful.

Like other IP laws patent protection is territorial in nature. Registration of a patent ensures protection in all over India.

**2. Create confidentiality, non-disclosure or licensing contracts for employees and partners**

Sometimes, there is crucial information about your business that you should protect from leaking in public. For instance, you are developing a video game, but you don't want the details to come out before it's ready to launch. Thus, it will be prudent to ask the game developers and other people working for you, who have knowledge or access to information or trade secrets, to sign a confidentiality agreement to ensure the IP protection. Confidentiality agreements, which must be prepared by lawyers, bound employees, and workers to comply with your demand to keep what they know private. Otherwise, they will be legally liable for any leaks.

Confidentiality agreements are also known by other names including:

- A non-disclosure agreement (NDA)
- Confidential disclosure agreement (CDA)
- Proprietary Information Agreement (PIA)
- Secrecy Agreement (SA)

3. Implement security measures

Nearly all businesses are conducted today using technology or the Internet. There is an upside to this because technology may fuel the growth, dynamics, and success of an operation. However, there are also downsides to using technology to conduct the business, especially when your company's IP is integrally connected online or stored in a system that may be vulnerable to hacking or file corruption.

Thus, there is a need to implement robust security measures within the IT framework of your company.

These may include:

I. setting up password protection for all computer networks

II. encrypting data, especially since files are shared within the company's IT system

III. using virtual private network access (VPN)

IV. establishing Wi-Fi Protected Access 2 (WPA2)

However, the licensor (Disney, in this case) defines the parameters of the use of its IP, which may include the quality of the products or toys, as well as the distribution process. Since there are plenty of grounds to cover with licensing, it's important to consult with lawyers to ensure that all aspects of protecting the IP are established in the licensing agreement.

4. Avoid joint ownership

Intellectual property may be developed and created by more than one person, as in the case of a company that has its research and development team. Joint IP ownership, on the other hand, grants the control of the copyright, trademark or patent to more than one party.

With that said, every owning party may copy, recreate, distribute, or wield whatever they want to do with the IP without consulting the other owners. Thus, businesses run the risk of exploiting their IP rights in joint ownership. The enforcement of a jointly owned IP, however, may require all of the owner's participation at all times. Profits and benefits also have to be shared in joint IP ownership, which may create complications for the business. While many of these issues could be mitigated by defining specific conditions in a contract, the bottom line is that joint ownership of intellectual property can be complicated and create more problems than protecting the IP in the first place.

**The other tools of IP are;**

- Geographical Indications

Geographical Indications of Goods Act, 1999 came into effect in September 2003. Geographical Indications (GI) are the names associated with goods that identify such goods as agricultural goods or manufacturing goods as originating, or manufactured in the territory of a region or locality in that territory where a given quality, reputation or other characteristic of such goods are essentially attributable to its geographical origin. It is worth mentioning that a GI cannot be created, it can only be recognized. The product derives its qualities and reputation from that place. It confirms the value of products which already exist. The place of origin may be a village or town or region or country. GI is an exclusive right given to a particular community. Hence, the benefits of its registration are shared by all members of the community.

- Trade secrets

Trade secrets are confidential business information that provides an enterprise a competitive edge over its competitors. Trade secrets are manufacturing / industrial or commercial secrets that include sales methods, distribution methods, consumer profiles, and advertising strategies, lists of suppliers and clients, and manufacturing processes. Trade secrets are protected without registration. Though a trade secret can be protected for an unlimited period of time, it is necessary that a substantial element of secrecy must exist. Keeping in view the vast availability of traditional knowledge in the country, protection of trade secrets will be very crucial in reaping the benefits from such type of knowledge. In

a way, trade secret or traditional knowledge are also interlinked / associated with the geographical indications.

A trade secret can be protected for an unlimited period of time but a substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring the information. Considering the vast availability of traditional knowledge in the country the protection under this will be very crucial in reaping benefits from such type of knowledge. The Trades secret, traditional knowledge are also interlinked / associated with the geographical indications

- Industrial Designs

Industrial designs refer to creative activity, which result in the ornamental or formal appearance of a product, and design right refers to a novel or original design that is accorded to the proprietor of a validly registered design. Industrial designs are an element of intellectual property. Under the TRIPS Agreement, minimum standards of protection of industrial designs have been provided for. As a developing country, India has already amended its national legislation to provide for these minimal standards. The essential purpose of design law is to promote and protect the design element of industrial production. It is also intended to promote innovative activity in the field of industries. The existing legislation on industrial designs in India is contained in the New Designs Act, 2000 and this Act serves its purpose well in the rapid changes in technology and international development.

The IP protection helps the MSME's to establish enterprise/business identity through branding strategy. It helps protect innovation through patents, utility models and trade secrets of the MSME's. It protects creativity by designs and authors rights. IP protection prevents competitors from imitating products or services.

## VI. Conclusion

Micro, Small and Medium Enterprises form the bedrock of economies of all major nations. The significance of IPR for MSMEs lies in the fact that IPR provides competitive advantage of MSMEs through technological gain.

IPRs essentially protect brands, inventions, designs, creative, and literary works from being copied and commercially exploited by third parties. They grant exclusivity to the creators or owners of IPRs to commercially exploit their works. The exclusivity and potential gains by commercial exploitation of the IPRs act as an incentive to promote innovation in various fields. IPR protection grants legal rights in favor of the rights owner who may restrain third parties for using his IPRs and also claim damages. In India, Intellectual property plays an important role in MSMEs development and protection.

Those MSMEs which make use of IPRs should be recognized and rewarded to further disseminate the relevance of IPR for MSMEs. IPR are considered to achieve economic, social and technological advancement that protects the idea and stimulates innovation, design and helps create of technology.

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# EVOLUTION OF PATENTS- PROCEDURE, PRACTICE AND PROTECTION

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**ABSTRACT**

Intellectual property is the product of human intellect that includes creativity models, industrial inventions, trademarks, patents etc. Inventions are intellectual property and can be protected by patents provided the invention is novel, non-obvious, useful and enabled. To have fare trade among member countries, World Trade Organisation proposed TRIPS agreement. India had taken necessary initiation by signing the World Trade Organisation agreement and transformed to global needs. The aim of this article is to provide a thorough understanding of the origin, present governing bodies, their role along with the Act that is safeguarding the Patent system.

**KEY WORDS**: Intellectual property, patents, TRIPs, world trade organization

## INTRODUCTION

### WHAT IS INTELLECTUAL PROPERTY RIGHTS

Intellectual property rights (IPR) are legal rights aimed at protecting the creations of the intellect, such as inventions, the appearance of products, literary, artistic and scientific works and signs, among others. Generally speaking, intellectual property law aims at safeguarding creators and other producers of intellectual goods and services by granting them certain time-limited rights to control the use made of those productions. Those rights do not apply to the physical object in which the creation may be embodied but instead to the intellectual creation as such.

### HISTORY

The World Intellectual Property Organization (WIPO) is one of the specialized agencies of the United Nations (UN) system of organizations. The "Convention Establishing the World Intellectual Property Organization" was signed at Stockholm in 1967 and entered into force in 1970. However, the origins of WIPO go back to 1883 and 1886, with the adoption of the Paris Convention and the Berne Convention respectively. Both of these conventions provided for the establishment of international secretariats, and both were placed under the supervision of the Swiss Federal Government. The few officials who were needed to carry out the administration of the two conventions were located in Berne, Switzerland.

At the 1967 diplomatic conference in Stockholm, when WIPO was established, the administrative and final clauses of all the then existing multilateral treaties administered by BIRPI were revised. They had to be revised because member States wished to assume the position of full governing body of the Organization (WIPO), thus removing the supervisory authority of the Swiss Government, to give WIPO the same status as all the other comparable intergovernmental organizations and to pave the way for it to become a specialized agency of the United Nations system of organizations.

**MISSION AND ACTIVITIES OF WIPO**

The mission of WIPO is to promote through international cooperation the creation, dissemination, use and protection of works of the human mind for the economic, cultural and social progress of all mankind. Its effect is to contribute to a balance between the stimulation of creativity worldwide, by sufficiently protecting the moral and material interests of creators on the one hand, and providing access to the socio-economic and cultural benefits of such creativity worldwide on the other.

WIPO's place on the international scene has greatly changed since its beginnings, when it was created to serve as the secretariat of treaties concluded between States. Although WIPO has maintained this function (it currently administers 23 such treaties), together with the consequential one of promoting intergovernmental cooperation in the administration of intellectual property, its activities have not only expanded, but also greatly diversified.

WIPO's cooperation for development program is closely interwoven with governmental and intergovernmental cooperation, including WIPO's agreement with the World Trade Organization (WTO), whereby WIPO assists developing countries in the implementation of WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

**HISTORY OF PATENTS**

A patent is a form of intellectual property that gives its owner the legal right to exclude others from making, using, selling and importing an invention for a limited period of years, in exchange for publishing an enabling public disclosure of the invention. In most countries patent rights fall under civil law and the patent holder needs to sue someone infringing the patent in order to enforce his or her rights. In some industries patents are an essential form of competitive advantage; in others they are irrelevant.

The procedure for granting patents, requirements placed on the patentee, and the extent of the exclusive rights vary widely between countries according to national laws and international agreements. Typically, however, a patent application must include one or more claims that define the invention. A patent may include many claims, each of which defines a specific property right. These claims must meet relevant patentability requirements, such as novelty, usefulness, and non-obviousness.

Under the World Trade Organization's (WTO) TRIPS Agreement patents should be available in WTO member states for any invention, in all fields of technology, provided they are new, involve an inventive step, and are capable of industrial application. Nevertheless, there are variations on what is patentable subject matter from country to country, also among WTO member states. TRIPS also provides that the term of protection available should be a minimum of twenty years.

**DEFINITION**

The word *patent* originates from the Latin *patere*, which means "to lay open" (i.e., to make available for public inspection). It is a shortened version of the term *letters patent,* which was an open document or instrument issued by a monarch or government granting exclusive rights to a person, predating the modern patent system. Similar grants included land patents, which were land grants by early state governments in the USA, and printing patents, a precursor of modern copyright.

In modern usage, the term *patent* usually refers to the right granted to anyone who invents something new, useful and non-obvious. Some other types of intellectual property rights are also called *patents* in

some jurisdictions: industrial design rights are called *design patents* in the US, plant breeders rights are sometimes called *plant patents*, and utility models and Gebrauchsmuster are sometimes called *petty patents* or *innovation patents*.

Patent law has a rich and extensive history that began as early as 500 BCE, where chefs in Sybaris had the opportunity to enjoy a year of monopolized profit for a unique dish that they had created. This is possibly the first intellectual property protection reference, although the Sybaritic law was "well-known—but apocryphal" notes Bruce Bugbee in his *Genesis of American Patent and Copyright Law*.

Several hundreds of years afterwards, Vitruvius, who served as a judge in Alexandria, tried and exposed several poets who were guilty of stealing the material of others in their field. From then on, Roman jurists discussed different types of ownership for intellectual works, although they still did not have any intellectual property laws.

In 1416, the Great Council of Venice awarded the first patent for a technological invention to Ser Franciscus Petri of Rhodes. Later, in 1421, architect Filippo Brunelleschi was granted an individual act to in protection of his intellectual property rights. A 1474 statute then provided a statutory alternative to the existing ad hoc system that was already in place to provide intellectual property protection.

The Statute of Monopolies was passed by the English Parliament in 1623. Luigi Palombi refers to it as "the mother of modern patent law in all common law countries". England also had monopolies before 1623. For example, in 1449, Henry VI granted letters patent to a Flemish man for the manufacture of stained glass in England. Sir Edward Coke principally drafted the 1623 statute to outlaw abusive monopolies, particularly those granted under the King's letters patent. 1710 marked the passage of the Statute of Anne, a copyright law.

The first Patent Act of the U.S. Congress was passed on April 10, 1790, titled "An Act to promote the progress of useful Arts". The first patent under the Act was granted on July 31, 1790 to Samuel Hopkins for a method of producing potash (potassium carbonate). A revised patent law was passed in 1793, and in 1836 a major revision to the patent law was passed. The 1836 law instituted a significantly more rigorous application process, including the establishment of an examination system. Between 1790 and 1836 about ten thousand patents were granted. By the American Civil War about 80,000 patents had been granted.

**PROCEDURE TO FILE A PATENT**

**FILING A PATENT IN INDIA**

Intellectual property is an intangible asset- one that can bestow the world with an invention that can make life simple and also contribute to the inventor or his company's fiscal growth. An intellectual property brings with it a whole lot of benefits. It can turn an idea into a profit making asset, enhance the market value of a business and even help raise finances. Various inventions such as solar power trees, solar water purifiers, cane-based prosthetic limbs and self-repairing roads have all been credited to Indian Investors. These inventions have truly changed the world.

If you have created or invented a process, product or service that can be defined as an original invention, it is in your best interest get it patented. Patenting your invention prevents your competitors from profiting from something created by you. If you need to file a patent, you can refer to this step-by-step guide covering the entire patent process in India.

**Step 1- Check if your invention is Patentable**

Before you begin the patent registration process, you need to check if your invention is patentable. This means that you need to check if another individual has filed a patent for a similar technology for which you are filing. Performing an in-depth patentability search helps you understand whether or not you have a chance of getting a patent. While this step is optional, it can save time and help you understand whether or not you should file for a patent in the first place.

**Step 2- Draft the Patent Application**

You can now begin the patent application process. Indian applicants need to fill Indian Patent Application Form 1. For every patent you file, you need to mandatorily provide a Form 2 patent specification. You can choose between a provisional and complete Patent Application, based on the stage of invention. This means that if you are still testing your invention, you need to apply for a provisional Patent Application. You get a period of 12 months to complete the invention and file for a complete Patent.

You need to pay special attention when you are drafting your patent application. Your patent application should include clauses such as usability and outcome of the invention in detail. You should also include the necessary clauses including your attention to license your invention and preventing competition from using and thereby, profiting from your invention. Ensure caution while drafting your patent application, be meticulous and include clauses that prevent the competition from using your technology.

**Step 3 – Filing the Patent Application**

Your patent application needs to be submitted with several application forms. As per the patent filing procedure in India, you need to submit all of the below mentioned forms.

- Form 1- Application for patent grant.
- Form 2- Patent Specification Form (Provisional or complete)
- Form 3- Undertaking and statement with regards to foreign applications under section 8 (Mandatory only in case a corresponding application for patent is filed in a Foreign country)
- Form 5- Declaration of Invention to be filed with complete application
- Form 26- Form Authorizing Patent agent (applicable only if you opt for an agent to help file your patent)
- Form 28- Mandatory only if applicant is claiming small entity or start up status.
- Priority Documents- you need to provide priority documents only if priority is being claimed from a foreign patent claim or application.

**Step 4- Publishing the Patent Application**

After you submit all the documents, the patent application is safely secured by the Indian Patent Office. The patent is then published in an official Patent Journal after a period of 18 months approx. However, inventors who wish to have their patent application published before this 18month period can submit

Form 9. This is an automatic process but if an investor wishes to have his application published earlier, he needs to submit Form 9 (Early Publication Request), in which case, the application will be published in the Official Patent Journal within 1 month of making the request. However, there are certain scenarios in which your Patent Application may not be published. These include incomplete applications, withdrawal requests made by the individual filing the patent and secrecy direction imposed under Patent Act wherein the invention is against the nation's interests.

**Step 5- Examining the Patent Application**

Before your patent is granted, it needs to be examined substantively. As per rules of the Patent Application process in India, your patent is thoroughly examined based on the merits of your invention as claimed and described in the patent specification form. Unlike the publication process, this is not an automatic process and the applicant needs to make a request to examine their Patent Application by submitting Form 18. The Patent Office queues the application for examination only after a formal request for examination is made. You can also expedite this process by filing and submitting form 18 (A).

The patent examiner is obligated to follow the few steps of his/her own while examining your application. They are as under:

- When the application lands on the examiner's desk, it is scrutinised according to the patent act and underlying rules.
- The Patent examiner searches for similar technologies to ensure the invention satisfies the patentability criteria.
- After reviewing the application, a first examination report (FER) is submitted in which, grounds for objections, if any, are also stated.
- The examiner lists his objections in detail. This can further extend the application process by another 6-9 months. Note that examiner objections are quite common in case of patents.
- If the inventor needs to make changes to his/her objection, he/she can file a request for time extension by submitting Form 4.

**Step 6- Decision to grant Patent**

Once the examiner finds no objections in the patent application, he grants the patent. The patent is then published in the Official Patent Gazette.

**Step 7- Renewing the Patent**

The patent holder also needs to renew his patent by paying an annual renewal fee. In India, it is possible to renew your patent for a period of 20 years at maximum, from the date the patent was first filed.

Although the patent filing process is long and complex, one must remember its importance in the long run. The entire process can take anywhere between 3-5 years. However, Indian Patent Office is hiring new examiners and also upgrading its offices to be able to dispose of patent applications in timely fashions. The process is created with the intention of ensuring that the inventor gets credit for his invention. The legal rights you earn with your patent can prevent competitors from using your

invention for financial benefits. You can also sue such individuals and claim compensation for using your invention without approval.

**PROTECTION OF PATENTS**

If the grant of the patent is for a product, then the patentee has a right to prevent others from making, using, offering for sale, selling or importing the patented product in India. If the patent is for a process, then the patentee has the right to prevent others from using the process, using the product directly obtained by the process, offering for sale, selling or importing the product in India directly obtained by the process.

Before filing an application for grant of patent in India, it is important to note **"What is not Patentable in India?"** Following i.e. an invention which is (a) frivolous, (b) obvious, (c) contrary to well established natural laws, (d) contrary to law, (e) morality, (f) injurious to public health, (g) a mere discovery of a scientific principle, (h) the formulation of an abstract theory, (i) a mere discovery of any new property or new use for a known substance or process, machine or apparatus, (j) a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance, (k) a mere arrangement or rearrangement or duplication of known devices, (l) a method of agriculture or horticulture and (m) inventions relating to atomic energy, are not patentable in India.

**CONCLUSION**

This study aims at the details of Patent Invention, Procedure, Practice and their Protection. It is not until recently every common man is aware of intellectual property rights. A thorough clear understanding of intellectual property rights is necessary where industrial property and copyright is well protected that in turn raise the economy of the country. The Government of India provided the entire infrastructure. Special provisions were made in protecting software, traditional knowledge, plant varieties, and geographical indications. A thorough understanding regarding the intellectual property rights helps in quick and easier identification, planning, execution and protection of creativity.

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# DO INTELLECTUAL PROPERTY RIGHTS REALLY PROMOTE INNOVATION

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**ABSTRACT**

Actually, IPR was introduced in order to protect the inventions and creative works of individuals. In addition to it also helps to promote the rate of innovators and creators. The role of patents in helping startup businesses grow the economy into most powerful industrial economy on the face of the earth. in a world where property rights in invention were protected, the situation would be very different. Inventors would now feel free to promote their discoveries as widely as possible so as to maximize returns either from commercializing their ideas themselves or from [licensing] rights to the idea to others. The protections offered by the patent system would thus be an important stimulus to the exchange of technological information in and of themselves. Moreover, Sufficient intellectual property protection is key to promoting innovation. However, tweaks to intellectual property rights can shift incentives in ways that either encourage more or less innovation, depending on how strong or weak the existing intellectual property rights are. patents are strongly correlated with increased innovation, knowledge sharing, and economic growth.

## INTRODUCTION

Innovation is developing a new idea and putting it into practice and introducing it into the market. The Michelson 20MM Foundation & Intellectual Property Owners Education Foundation, David Kline states that-The U.S patents show much impact to be more inventive. Provision of broad access to property rights on new inventions was extremely effective at stimulating the growth of a market for technology and promoting technological change**.** As per the study, most of fosters were being done approximately rather than actual results. They induce people to invent because of the prospect of profiting from those inventions. Ambiguous or broad patents are hindrances to growth, especially for software patents. Consider, for example, that the biggest job-creating new industries of the last 60 years - semiconductors (consumer electronics), PCs, software, biotech, mobile telephony, and Internet e-commerce- were all launched on the basis of patented inventions created by startup businesses.

### How do intellectual property rights promote Innovation?

Patents not only promote innovation and economic growth, they are also one of the most effective tools for knowledge-sharing and technology transfer ever devised. A 2006 study by French economists

Francois Leveque and Yann Meniere found that 88 percent of U.S. European and Japanese businesses rely upon the information disclosed in patents to keep up with technology advances and direct their own R&D efforts. "Imagine a world in which there was no patent system to guarantee inventors property rights to their discoveries. In such a world, inventors would have every incentive to be secretive and guard jealously of their discoveries from competitors could, ofcourse, be copied with impunity. Intellectual property serves as the foundation of innovation in our economy. Government granted rights incentivize discovery and creativity by providing creators with an opportunity to profit from the value of their innovative work. In exchange, the creative work is made public so that others may build on and benefit from the work of the original creator. Laws protecting intellectual property also reduce the transaction costs between inventors and industry by providing information about the quality of the invention without jeopardizing the ownership of the idea. One cannot prove theoretically that the patent system by itself causes higher rates of innovation and economic growth. That's because the exogenous factors - the dynamism of markets, theefficacy of legal and governmental institutions, the availability of capital, and the role of countless other factors - are far too complex and interdependent to isolate causation to patents alone.

The formula for American economic success is simple:

**Startups + patents = jobs and economic growth!**

When IPR rules are too strong or weak may result in reduction of encouragement of innovation by the individuals. When patent rights are stronger, firms with intellectual assets are emboldened to threaten other inventors with litigation.In 2011, Apple sued Samsung for among other things, infringement of three U.S. patents – two claiming designs for parts of a smartphone, and one for a graphical user interface of a smartphone display screen. A jury found that certain Samsung smartphones infringed these patents and awarded apple dollar 399 million in damages.

As there are many players involved in facilitating the market success of an innovation, the effective use of the tools of IP will play an important role in reducing risk for the players involved, who may then be able to reap acceptable returns for their participation in the process. IP plays an important role in facilitating the process of taking innovative technology to the market place. And it also enhances the competitiveness which results in improvement of product or services on the basis of improved technology.

For most technology based enterprises, a successful invention results in a more efficient way of doing things or in a new commercially viable product. The improved profitability of the enterprise is the outcome of added value that underpins a bigger stream of revenue or higher productivity

Today, amore inventions are being developed than ever before, thanks to adoption of stranger IP regimes that allow innovators to pursue solutions to global challenges. In 2015, record 2.9 million patents applications were filed, a third from China alone. More than just a product, every new invention provides positive follow on effects including creating jobs, extending life, saving time and increasing well being. Even failed inventions yield useful lessons.

**Effective IP protection increases research and developments and innovation:**

Allen N. Dixon, IIPTC – International Intellectual Property and Technology Consulting, London stated in Intellectual Property: Powerhouse for Innovation and Economic Growth-Competition is often seen

as a negative role in innovation. Well, good news, it doesn't have to be if you learn how to properly use it as a key point in your strategy.

The **IP system has a significant role for a business to gain and retain its innovation-based advantage.** Through several economic surveys we see that the number of patents owned by an enterprise is a good reflection of innovation intensity of that enterprise and a good measure of output of innovation in industries. It helps highlight the importance of the link between IP and the success of innovation in the marketplace.

Effective IP protection increases research and development and innovation. One of the most fundamental reasons for making sure that innovations get legal protection in the form of IPR is the negative effect that free-riding otherwise has on innovation. Economists have understood since the 1960s that there is a build-in tendency for industry to under-invest in R&D from the standpoint of society's needs, due to the problem that firms have in appropriating the economic benefits of their innovations. Inventions, creative works, brands and other such valuable intangibles are what economists call 'non-rival' and 'non-excludable'—that is, if these are not protected by legal rights, they could and would be used fairly easily by market competitors (or anyone else for that matter) and could not be easily defended against imitators.

Without IPR, for example, a small technology developer in India could not prevent its multinational competitors from simply expropriating and free-riding on its innovations. In simplest terms, firms that are not sufficiently rewarded as a result of such free-riding do not have much incentive to engage in R&D and other innovative and creative activity. Depending on how little income and profit a firm is able to derive from its innovative activity, it may not only be unable to fund R&D, it may not be able to stay in business at all. IPR gives innovative firms and individuals needed economic incentives to produce socially desirable new innovations. It does this through the mechanism of a set of legal rights given to authors, inventors, brand owners and others to determine whether and how their innovative works, inventions, brands and other intangible innovations are used. Empirical studies, both 'micro' surveys of firm behavior and 'macro' studies of the behavior of markets following the strengthening of IP rights, demonstrate that IPR is positively linked with increased R&D and innovation substantially more so in some industries.

In 2003, found that patents had a positive. Intellectual Property Promotes Innovation Intellectual Property: Powerhouse for Innovation and Economic Growth, impacts on R&D spend in most industries, especially pharmaceutical products. Without patents, they found, firm R&D would decrease by 25-35% in the US.Duguet and Lelarge (2005) found similar linkages between product patents and R&D in France. Numerous other studies have shown the correlation between patent strength and technological performance, GDP growth and the stimulation of innovation. At a more intuitive level, trademark protection for brands also tends to support investment in innovation. As a recent UK report explained, "Brands encourage innovation in part because consumers expect them to continue to deliver their promise in a world where technology and competitive responses continually change." The brand helps to align a firm's internal investments, "notably in research and development, innovation, process engineering, product quality, and consumer understanding."

**Governments themselves increasingly look to IPR to help fund and disseminate innovative R&D:**

Incentives for firms or research organizations to innovate in various fields are sometimes provided in ways other than through the private sector via the IPR system. Direct government research funding

and subsidies do promote R&D in some fields, particularly for basic research, and such funding can be made subject to a range of different terms and conditions as to the subsequent use of the technologies developed. This is not mutually exclusive with private-sector IPR incentives, of course, and particularly in the current economic climate it is improbable that government funding ever could support the scale and breadth of innovation that is needed and otherwise funded in the market through the mechanisms of the IPR system. In fact, governments in both developed and developing countries are increasingly looking to the IPR system itself to help to pay for and disseminate new innovation and products which follow on from basic research that was initially publicly funded.

The US Bayh-Dole Act of 1980 permits academic institutions and business contractors to retain the intellectual property in inventions they develop under government-funded research programmes, whilst defining the government's own rights of use and implementing a uniform IP management policy for government departments. The benefit of such an IPR-based system for innovation is that it provides incentives to develop and commercialize further the basic research that has been publicly funded, such that new products, firms and even industries based on these technologies can emerge. Statistics bear out that this is precisely what is happening: The US Association of University Licensing Managers reports that in 2008 alone the Bayh-Dole system led to the grant of 3,280 new patents, 5,039 new licenses and options, the creation of 595 new companies (with a total of 3,381 start-up companies still in operation), and the release of 648 new products based on technologies originally developed in academia with public funding Similar laws and programmes have been adopted more than 13 other developed countries. More recently, developing countries increasingly have adopted (e.g. South Africa, China, Brazil, and the Philippines or begun to consider (India) Bayh-Dole type systems to promote innovation in this way.

**CONCLUSION**

Intellectual property rights can shift incentives in ways that either encourages more or less innovation, depending on how strong or weak the existing intellectual property rights are. Patents are strongly correlated with increased innovation, knowledge sharing, and economic growth.

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# INTELLECTUAL PROPERTY RIGHTS: INDIAN SCENARIO

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**ABSTRACT**

Intellectual property rights (IPR) have been defined as ideas, inventions, and creative expressions based on which there is a public willingness to bestow the status of property. IPR provide certain exclusive rights to the inventors or creators of that property, in order to enable them to reap commercial benefits from their creative efforts or reputation. There are several types of intellectual property protection like patent, copyright, trademark, etc. Patent is recognition for an invention, which satisfies the criteria of global novelty, non-obviousness, and industrial application. IPR is prerequisite for better identification, planning, commercialization, rendering, and thereby protection of invention or creativity. Each industry should evolve its own IPR policies, management style, strategies, and so on depending on its area of specialty.

In this article, we briefly describe the IPR roles, significance in Indian scenario and the proposed changes to strengthen IPR.

**Keywords:** Drug, intellectual property, license, patent.

## INTRODUCTION

Intellectual property (IP) pertains to any original creation of the human intellect such as artistic, literary, technical, or scientific creation. Intellectual property rights (IPR) refers to the legal rights given to the inventor or creator to protect his invention or creation for a certain period of time. These legal rights confer an exclusive right to the inventor/creator or his assignee to fully utilize his invention/creation for a given period of time. It is very well settled that IP play a vital role in the modern economy. It has also been conclusively established that the intellectual labor associated with the innovation should be given due importance so that public good emanates from it. There has been a quantum jump in research and development (R&D) costs with an associated jump in investments required for putting a new technology in the market place. The stakes of the developers of technology have become very high, and hence, the need to protect the knowledge from unlawful use has become expedient, at least for a period, that would ensure recovery of the R&D and other associated costs and adequate profits for continuous investments in R&D. IPR is a strong tool, to protect investments, time, money, effort invested by the inventor/creator of an IP, since it grants the inventor/creator an exclusive right for a certain period of time for use of his invention/creation. Thus IPR, in this way aids the economic development of a

country by promoting healthy competition and encouraging industrial development and economic growth.

**Intellectual Property Rights – Looking Back**

Prior to General Agreement on Tariffs and Trade (GATT), intellectual property rights were not subject to formal international trade negotiations. Rather, intellectual properties were subject only to international conventions like Berne and Rome conventions concerning Copyrights. These conventions required 'national treatment', i.e. treat foreigners the same as nationals. As a result if the member nation opted to provide limited protection to the creators, then no greater protection was available to foreigners.

**Intellectual Property Rights – The Days Ahead**

Following the emergence of strong global and national intellectual property regimes the subject of intellectual property rights and their protection has become a central issue in economic development, scientific and technological development, protection of traditional knowledge and scientific and economic co – operation between industrialized and developing countries. IPR as an issue has become important because of the emergence of corporates' as dominant institutions. Today's world is a 'World of Opportunities and Threats' (WTO); wherein the knowledge dimension has acquired a new role in wealth creation. In this era of contemporary knowledge, the corporates wish to establish their rights on this resource to ensure a proper 'Return on Investments / Invention / Innovation'. Where on one side these corporates' play a dominant role in discovering new knowledge, on the other side, these corporates try to appropriate the knowledge of nations and communities. With the advent of globalization and a borderless world, nations have been weakened and corporates' have emerged as states in themselves. This has made attempts of piracy of people's knowledge easier. "How are we going to ensure that our Intellectual property is protected at an offshore location?" is a question often asked in board meetings of companies that are planning their offshore initiatives in India. The importance of IP exponentially increases in companies that are planning to execute some of their core projects offshore and in companies that need to provide access to classified company data to the offshore location for BPO/Call center initiatives. It is important for companies to understand IP rights in India and the best practices that can be followed to protect the IP. Intellectual Property will no longer be seen as distinct or self-contained domain, but rather as an important and effective policy instrument that would be relevant to a wider range of socio – economic, technological and political concerns. Moreover, as technological advancements have become a requirement for sustained growth in the future, a new emphasis is emerging on research and development. It is for this reason that intellectual property and its protection have gained greater importance. Intellectual Property has now been recognized as an important tool for technical, industrial and economic development.

**Intellectual Property – Components**

Intellectual Property essentially includes the products or creations of mind. Traditionally intellectual property was divided under as follows:

Originally, only patent, trademarks, and industrial designs were protected as 'Industrial Property', but now the term 'Intellectual Property' has a much wider meaning. IPR enhances technology advancement in the following ways:

(a) It provides a mechanism of handling infringement, piracy, and unauthorized use

(b) It provides a pool of information to the general public since all forms of IP are published except in case of trade secrets.

IP protection can be sought for a variety of intellectual efforts including

- (i) Patents
- (ii) Industrial designs relates to features of any shape, configuration, surface pattern, composition of lines and colors applied to an article whether 2-D, e.g., textile, or 3-D, e.g., toothbrush
- (iii) Trademarks relate to any mark, name or logo under which trade is conducted for any product or service and by which the manufacturer or the service provider is identified. Trademarks can be bought, sold, and licensed. Trademark has no existence apart from the goodwill of the product or service it symbolizes
- (iv) Copyright relates to expression of ideas in material form and includes literary, musical, dramatic, artistic, cinematography work, audio tapes, and computer software.
- (v) Geographical indications are indications, which identify as good as originating in the territory of a country or a region or locality in that territory where a given quality, reputation, or other characteristic of the goods is essentially attributable to its geographical origin

**PATENTS**

Patent is recognition to the form of IP manifested in invention. Patents are granted for patentable inventions, which satisfy the requirements of *novelty* and *utility* under the stringent examination and opposition procedures prescribed in the Indian Patents Act, 1970, but there is not even a prima-facie presumption as to the validity of the patent granted.

Most countries have established national regimes to provide protection to the IPR within its jurisdiction. Except in the case of copyrights, the protection granted to the inventor/creator in a country (such as India) or a region (such as European Union) is restricted to that territory where protection is sought and is not valid in other countries or regions. For example, a patent granted in India is valid only for India and not in the USA. The basic reason for patenting an invention is to make money through exclusivity, i.e., the inventor or his assignee would have a monopoly if,

(a) The inventor has made an important invention after taking into account the modifications that the customer, and

(b) If the patent agent has described and claimed the invention correctly in the patent specification drafted, then the resultant patent would give the patent owner an exclusive market.

The patentee can exercise his exclusivity either by marketing the patented invention himself or by licensing it to a third party.

The following would not qualify as patents:

(i) An invention, which is frivolous or which claims anything obvious or contrary to the well-established natural law. An invention, the primary or intended use of which would be contrary to law or morality or injurious to public health

(ii) A discovery, scientific theory, or mathematical method

(iii) A mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine, or apparatus unless such known process results in a new product or employs at least one new reactant

(iv) A substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance

(v) A mere arrangement or re-arrangement or duplication of a known device each functioning independently of one another in its own way

(vi) A method of agriculture or horticulture

(vii) Any process for the medicinal, surgical, curative, prophylactic diagnostic, therapeutic or other treatment of human beings or any process for a similar treatment of animals to render them free of disease or to increase their economic value or that of their products

(viii) An invention relating to atomic energy

(ix) An invention, which is in effect, is traditional knowledge

**COPYRIGHT**

Copyright is a form of **intellectual property.**

The U.S. Copyright Office defines copyright as

- A set of exclusive rights awarded to a copyright holder or owner for an original and creative work of authorship fixed in a tangible medium of expression.
- A limited statutory monopoly that gives a copyright holder the sole right to market a work for a limited period of time.
- Copyright also includes exemptions that permit a user of the copyright-protected work the right to exercise an exclusive right without authorization or royalty payment under certain conditions.

Copyright includes literary and artistic works, such as

- Novels, poems, plays, and films
- Musical works
- Artistic works, such as drawings, paintings, photographs, and sculptures
- Architectural designs

Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.

**TRADEMARK**

A **trademark** is a type of intellectual property consisting of a recognizable sign, design, or expression which identifies products or services of a particular source from those of others, although trademarks used to identify services are usually called service marks The trademark owner can be an

individual, business organization, or any legal entity. A trademark may be located on a package, a label, a voucher, or on the product itself. For the sake of corporate identity, trademarks are often displayed on company buildings. It is legally recognized as a type of intellectual property.

Registered trademark symbol

Trademark symbol

The first legislative act concerning trademarks was passed in 1266 under the reign of Henry III, requiring all bakers to use a distinctive mark for the bread they sold. The first modern trademark laws emerged in the late 19th century. In France the first comprehensive trademark system in the world was passed into law in 1857. The Trade Marks Act 1938 of the United Kingdom changed the system, permitting registration based on "intent-to-use", creating an examination based process, and creating an application publication system. The 1938 Act, which served as a model for similar legislation elsewhere, contained other novel concepts such as "associated trademarks", a consent to use system, a defensive mark system, and non-claiming right system.

The symbols ™ (the trademark symbol) and ® (the registered trademark symbol) can be used to indicate trademarks; the latter is only for use by the owner of a trademark that has been registered.

**TRADE SECRETS**

Trade secrets are a type of intellectual property that comprise formulas, practices, processes, designs, instruments, patterns, or compilations of information that have inherent economic value because they are not generally known or readily ascertainable by others, and which the owner takes reasonable measures to keep secret.[1] In some jurisdictions, such secrets are referred to as confidential information. The precise language by which a trade secret is defined varies by jurisdiction, as do the particular types of information that are subject to trade secret protection. Three factors are common to all such definitions:

A trade secret is information that

- is not generally known to the public;

- confers economic benefit on its holder *because* the information is not publicly known; and
- Where the holder makes reasonable efforts to maintain its secrecy.

In international law, these three factors define a trade secret under article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, commonly referred to as the TRIPS Agreement.

**Role of Undisclosed Information in Intellectual Property**

Protection of undisclosed information is least known to players of IPR and also least talked about, although it is perhaps the most important form of protection for industries, R&D institutions and other agencies dealing with IPR. Undisclosed information, generally known as trade secret or confidential information includes formula, pattern, compilation, programme, device, method, technique, or process. Protection of undisclosed information or trade secret is not really new to humanity; at every stage of development people have evolved methods to keep important information secret, commonly by restricting the knowledge to their family members. Laws relating to all forms of IPR are at different stages of implementation in India, but there is no separate and exclusive law for protecting undisclosed information/trade secret or confidential information.

Pressures of globalization or internationalization were not intense during 1950s to 1980s, and many countries, including India, were able to manage without practicing a strong system of IPR. Globalization driven by chemical, pharmaceutical, electronic, and IT industries has resulted into large investment in R&D. This process is characterized by shortening of product cycle, time and high risk of reverse engineering by competitors. Industries came to realize that trade secrets were not adequate to guard a technology. It was difficult to reap the benefits of innovations unless uniform laws and rules of patents, trademarks, copyright, etc. existed. That is how IPR became an important constituent of the World Trade Organization (WTO).

**Significance of TRIPS Agreement**

The Trade Related Intellectual Property Rights System (TRIPS) agreement is the most important development in international intellectual property law because it was made as an annex to the WTO agreement bringing intellectual property under the rubric of the trade for the first time. TRIPS has subsumed, the International Intellectual Property Regime created in the 1880's based on the judicial enforcement of IPR's and border control of trade infringements. This development was regarded necessary because of the perceived toothlesness of the Paris and Berne conventions and the inability of WIPO to modify the Paris Convention. The preamble to TRIPS heralded the demise of WIPO as the leading intellectual property agency by stating the desire of WTO members "to reduce distortions and impediments to international trade and taking into account the need to promote effective and adequate protection of intellectual property rights and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade."

**Measures to Strengthen the Enforcement of IP Laws**

Number of measures to strengthen the enforcement of copyright law has been taken by the Government of India. The summary of the same is as follows:

1. The Government has brought out A Handbook of Copyright Law to create awareness of copyright laws amongst the stakeholders, enforcement agencies, professional users like the scientific and academic communities and members of the public. Copies of the Handbook have been circulated free-

of-cost to the state and central government officials, police personnel and to participants in various seminars and workshops on IPR.

2. National Police Academy, Hyderabad and National Academy of Customs, Excise and Narcotics conducted several training programs on copyright laws for the police and customs officers. Modules on copyright infringement have been included in their regular training programs.

3. The Department of Education, Ministry of Human Resource Development, Government of India has initiated several measures in the past for strengthening the enforcement of copyrights that include constitution of a Copyright enforcement Advisory Council (CEAC), creation of separate cells in state police headquarters, encouraging setting up of collective administration societies and organization of seminars and workshops to create greater awareness of copyright laws among the enforcement personnel and the general public.

4. Special cells for copyright enforcement have so far been set up in 23 States and Union Territories, i.e. Andhra Pradesh, Assam, Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Meghalaya, Orissa, Pondicherry, Punjab, Sikkim, Tamil Nadu, Tripura and West Bengal.

5. The Government also initiates a number of seminars/workshops on copyright issues. The participants in these seminars include enforcement personnel as well as representatives of industry organizations. As a consequence of the number of measures initiated by the government, there has been more activity in the enforcement of copyright laws in the country. Over the last few years, the number of cases registered has gone up consistently.

**IPR Protection – Some More Issues**

India has enacted fully TRIPS compliant Patents Act, Trademarks Act, Copyright Act, Designs Registration Act and such other acts related to fields of IPR. However, though most acts have been TRIPS compliant, in the Patents Act there are areas where substantive or procedural amendments could be considered for complying with the TRIPS. Business methods/ models or computer programs comprising only mathematical or scientific principles are not patentable under the present act. Thus protection could be provided, under the Patents Act, for business methods qualifying as technology. Another important issue is that computer programs qualify as expression s and can be protected under the Copyrights law. However, in certain sectors the need is being felt for getting a patent protection for certain software in addition to the copyrights. Copyright protects the coded expressions of software, while patent protection can protect the qualifying features of the software, such as its sequence, structure and organization or its functional elements.

**CONCLUSION:**

It is obvious that management of IP and IPR is a multidimensional task and calls for many different actions and strategies which need to be aligned with national laws and international treaties and practices. It is no longer driven purely by a national perspective. IP and its associated rights are seriously influenced by the market needs, market response, cost involved in translating IP into commercial venture and so on. In other words, trade and commerce considerations are important in the management of IPR. Different forms of IPR demand different treatment, handling, planning, and strategies and engagement of persons with different domain knowledge such as science, engineering, medicines, law, finance, marketing, and economics. Each industry should evolve its own IP policies,

management style, strategies, etc. depending on its area of specialty. Pharmaceutical industry currently has an evolving IP strategy. Since there exists the increased possibility that some IPR are invalid, antitrust law, therefore, needs to step in to ensure that invalid rights are not being unlawfully asserted to establish and maintain illegitimate, albeit limited, monopolies within the pharmaceutical industry. Still many things remain to be resolved in this context.

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# INTELLECTUAL PROPERTY RIGHTS: PATENTS INVENTION, PROCEDURE AND PROTECTION

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**ABSTRACT**

The study concentrates on the Invention, Procedure and Protection of Patents in India. Patents, one of the Intellectual Property Rights gives its owner the legal right to exclude others from making, using, selling and importing an invention for a limited period of years, in exchange for publishing an enabling public disclosure of the invention. This paper focuses on the procedural aspects of Patents as per Patents Act, 1970 and also discusses on the problems or challenges faced by Patent holders in India.

**KEYWORDS:** Intellectual Property Rights, Patents Act, 1970, WIPO.

## INTRODUCTION

Intellectual Property is a property that arises from the "Human Intellect". It is a product of human creation. Intellectual Property has been defined as ideas, inventions, and creative expressions based on which there is a public willingness to bestow the status of property.

Intellectual property comprises of two distinct forms:

- Literacy and Artistic Works and
- Industrial Property

**Literacy and Artistic Works** are usually books, paintings, musical composition, play movies, radio, television programs, performance and other artistic works.

These are protected by **"COPYRIGHTS"**

**Industrial Property** describes physical matter that is the product of an idea or concept for commercial purpose

These are protected by

- **Patented objects**
- **Trademarks**
- **Lay-out designs**
- **Trade secrets**
- **Industrial designs**

**PATENTS ACT**

The first patenting related act in India was passed in 1911 by the name of "Patents and Designs Act,1911. After Independence, the Patents bill was unsuccessfully introduced before the parliament in 1949 & 1965 and finally the bill was passed in the year 1970. The act came into force on **20th April 1970**

India joined WTO (World Trade Organization) and became a signatory of the TRIPS (Trade-Related Aspects of Intellectual Property Rights) agreements in the year of 1995. With this, all the signatories were supposed to align their IP rules in the confirmation with the TRIPS agreement. However, developing countries like India were granted a window period of 10 years (5 Compulsory+5 Extended) to comply with the rules put forth by the agreement.

**PATENT INVENTION**

A patent is a form of intellectual property that gives its owner the legal right to exclude others from making, using, selling and importing an invention for a limited period of years, in exchange for publishing an enabling public disclosure of the invention.

A patent is an exclusive monopoly grant by the government of an inventor over his invention for a limited period of time. An invention must satisfy the following conditions of:

a. Novelty

b. Inventiveness (non-obviousness)

c. Usefulness

**Examples of Patents Invention**

There are countless examples of exciting inventions- Advanced technical solutions, simple and clever ideas. Some of the examples are as below

- Pen with Scanner
- Rubber shoes for horse's health
- Life-saving invention
- Quadcopter Drone
- 3D Printer

**PATENT PROCEDURE**


- **Filing**: An applicant chooses a filing route, i.e., National, Regional or International and files an application. The initial filing is considered as "priority filing" from which further successive national, regional or international filings can be made within the "priority period" of one year under the Paris Convention for the Protection of Industrial Property.
- **Formal examination**: The patent office ensures that all administrative formalities have been complied with, i.e., all relevant documentation is included in the application, and all filing fees have been paid. Usually the Government fee for filing a patent application in India is Rs.750 for individuals and Rs. 3000 for legal entities.
- **Prior art search**: In many countries, the patent office carries out a search of the prior art i.e., that all the relevant technological information publicly known at the time of filing of the patent application. Using extensive databases and expert examiners in the specific technical field of the application, a"search report" is drafted, which compares the technical merits of the claimed invention with that of the known prior art.
- **Publication:** In most countries, the patent application is published 18 months after the priority date, i.e., after the first filing date.

- **Substantive examination**: If a prior art search report is available, the examiner checks that the application satisfies the requirements of patentability, i.e., **the invention is novel, inventive and industrial application,** compared to the prior art as listed in the search report.
- **Grant/Refusal:** The examiner may either grant the patent application without amendments, by changing the scope of the claims to reflect the known prior art, or may refuse the application.
- **Opposition**: Within a specified period, many patent offices allow third parties to oppose the granted patent on the grounds that it does not satisfy patentability requirements.
- Pre-grant opposition
- Post-grant opposition
- **Appeal:** Many offices provide the possibility of appeal after the substantive examination or after the opposition procedure.

**PROTECTION**

**WIPO** (World Intellectual Property Organization) was established by the WIPO Convention in 1967. The WIPO is a specialized agency of the United Nations. It promotes the Protection of IP throughout the world. WIPO is headquartered in Geneva, Switzerland.

**CHALLENGES IN PROTECTION OF PATENT RIGHTS IN INDIA**

The practical challenges outlined below continue to be faced by patent holders.

- **Computer related inventions:** This implies Section 3(k) bars patentability of computer programs or algorithms. This objection exists as default for all computer-related inventions. The decisions in such cases are not consistent with different controllers forming their own views in terms of requirements of hardware.
- **From the Process Patent to Product Patents:** One of the binding points in TRIPS agreement is that all member countries are required to shift their patent regime from "Process patent regime" to "Product Patent". The fundamental difference between these two, lies in the fact that the former protects for processes only while the latter products.
- **Compulsory licensing:** With the provision of compulsory licensing, the Government of India can compel the owner company or other companies to mass produce some drugs in emergency irrespective of who got the patent.

**CONCLUSION**

Patent is an instrument of economic policy and development. The economic, social and cultural development of nations and societies now depend more on intellectual resources rather than materials or natural resources. It gives recent development and new technology to society.

The patent law recognizes the exclusive **right of patentee** to gain commercial advantage out of his invention.

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# INTELLECTUAL PROPERTY RIGHTS (IPR) : ISSUES AND CHALLENGES IP PROTECTION IN MSME SECTOR

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**Introduction**

Intellectual Prosperity Rights are the rights given to person over the creations of their minds and provide the creator an exclusive right over the use of his/ her creation for a certain period of time. Intellectual Property Rights are legal rights, which result from intellectual activity in industrial, scientific, literacy and artistic fields. Intellectual Property Rights (IPR) in India was imported from the West. The Indian Trade and Merchandise Marks Act 1884, was the first Indian Law regarding IPR. The first Indian patent law was enacted in 1856 followed by a series of Act being passed. They are Indian Patents and Designs Act in 1911 and Indian Copyright Act in 1914.

**Objectives :**

1. To enhance awareness of MSMEs about Intellectual Property Rights (IPRs)
2. To take measure for the protecting their ideas and business strategies.
3. Assists to SMEs in technology up-gradation and enhancing competitiveness and for effective utilization of IPR Tools by MSMEs.

**Description :**

MSMEs which use of IPR have become a precious commodity in today's world. It seems pertinent to briefly reflect on a debate.

Does IPR enhance the competitiveness of MSMEs? One view is that IPR enables MSMEs to become more competitive through technological gains. But it seems that this argument glosses over the problems, complexities, and uncertainties inherent in innovations and also ignores the fact that most innovations either not exploited or more often than not fail. If innovation is to play a part in enhancing the competitiveness of MSMEs, it seems to follow that IPR must also have a role to facilitate innovations. MSMEs in India also make efforts to glean the benefits from IPR system. However, most of the Indian MSMEs have not yet been able to effectively use IPR as a business tool to increase their competitiveness in the national and global markets.

Intellectual property (IP) law aims at safeguarding creators and other producers of intellectual goods and services by granting them certain time-limited rights to control the use made of those productions. Those rights do not apply to the physical object in which the creation may be embodied but instead to the intellectual creation as such. Intellectual property enables MSMEs to have exclusivity over the exploitation of their innovative products, their creative designs and their brands, thus creating an appropriate incentive for investing in improving their international competitiveness.

The protection of IPR helps increase the competitiveness of MSMEs in a variety of ways. It helps in:

1. Preventing competitors from copying or closely imitating a company's products or services.
2. Avoiding wasteful investment in research and development (R&D).
3. Creating a corporate identity through a trademark and branding strategy.
4. Negotiating licensing, franchising and other IP based contractual agreements.
5. Increasing the marketing value of the company.
6. Acquiring venture capital and enhancing access to finance.
7. Obtaining access to new markets.

IP helps in enhancing the value or worth of the company in the eyes of investors and financial institutions. At the time of sale or merger and acquisitions of assets IP play an important role in increasing the MSMEs value to certain level which cannot be achieved without considering IP assets. A successful IP management enables companies to recover their IP system properly and in a profitable way. In a very initial stage acquiring IP may sometimes crucial and costly but if started in a systematic way profits a lot for a company. It involves company's ability to commercialize their inventions, market their brands and license their know how to other companies

**Major activities taken under the scheme :**

1. Setting up a Intellectual Property Facilitation Centre (IPFC) for MSMEs with financial assistance up to Rs.65.00 Lakh per centre. This awareness programme may be organized by eligible implementing agencies like expert agencies and prominent Industries Association etc.
2. Awareness/ Sensitisation Programmes on IPR with financial assistance is upto Rs.1.00 Lakh per programme of one day duration each. This awareness programme may be organized by eligible implementing agencies like Industries Association, Chambers etc.
3. Interactive Seminars / Workshops IPR with financial assistance is upto Rs.2.00 Lakh per programme. This awareness programme may be organized by eligible implementing agencies like industries Association, Chambers etc.
4. Specialized training for Government official and Enterprenuer to trend them on IPR related issues. For short-term training programme financial assistance is upto Rs.6.00 Lakh per programme is being provided and for long-term training programme financial assistance is upto Rs.45.00 Lakh per programme.
5. These initiatives are proposed to be developed through Public-Private Partnership (PPP) mode to encourage economically sustainable models for overall development of MSMEs. Under this programme financial assistance will be provided for taking up the identified initiatives. Eligible applicants/beneficiaries will have to contribute minimum 10% of the GoI financial support for availing assistance under the scheme.

**Conclusion :**

IP adds value at every stage of the value chain from creative/ innovative idea to putting a new, better and cheaper products/ service in the market making IP protection and management an inevitable and crucial key of competitive advantage and essential corporate value for the MSME's in the modern knowledge- based economy.

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# INTELLECTUAL PROPERTY RIGHT ISSUES AND CHALLENGES INTELLECTUAL PROPERTY RIGHT IN SERVICE SECTOR

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## INTRODUCTION

Education is one of the foremost requirements for its development. India's advantage of having a large population of youth presents a huge opportunity to the players in the education sector as well as scope to the government for development of this sector and consequently, the country. Several factors such as growing income levels and favorable foreign policies have attracted many foreign players into the Indian education market. The Government of India has also taken several initiatives to provide quality education to the youth in the country.

**Market Size of Educational Services:**

The education market in India, which is presently worth around Rs 5.9 trillion (US$ 92.98 billion), is poised for some major growth in the years to come, as by 2020, India will have the world's largest tertiary-age population, and second largest graduate talent pipeline globally. Presently, higher education contributes 59.7 per cent of the market size, school education 38.1 per cent, pre-school segment 1.6 per cent, and technology and multi-media the remaining 0.6 per cent. The higher education sector in India is poised for an average growth of 18 per cent per year till 2020. Due to the growth advantages, this sector has also received number of investments from several foreign organizations. In the period from April 2000—September, 2014, the education sector in India has attracted FDI equity to the tune of US$ 964.03 million, according to the Department of Industrial Policies and Promotion (DIPP).

Initiative by Government

1. Sarva Shiksha Abhiyan Mission.
2. Rashtriya Madhyamik Shiksha Abhiyan (RMSA)
3. Rashtriya Uchchattar Shiksha Abhiyan (RUSA)

**Challenges faced by Educational Sector**

1. Since Independence, successive Indian governments have had to address a number of key challenges with regard to education policy, which has always formed a crucial part of its development agenda. The key challenges are: Improving access and quality at all levels of education;

Increasing funding, especially with regard to higher education; Improving literacy rates.

2) Currently, while Indian institutes of management and technology are world-class, primary and secondary schools, particularly in rural areas, face severe challenges.

3) While new governments commonly pledge to increase spending on education and bring in structural reforms, this has rarely been delivered in practice.

4) Improving the standards of education in India will be a critical test for the current Congress-led government. It will need to resolve concerns over the content of the curriculum, as well as tackling the underlying challenges to education.

**Role of IPR in education:**

The potential pool of talent for innovation in economies also emanates largely from educational and research institutions off late the significance of IPR in higher education has been widely recognized. This could be credited to national IPR policy approved by the union cabinet in May 2016 which was first ever IPR policy framed by government of India. The primary focus of this is to promoting innovation and creativity especially among entrepreneurs and in higher educational institutions the policy brief mentions synergizing all forms of IPR concerned statutes and agencies for tapping the creativity and innovative energizes in India with a special emphasis on startups and educational institutions.

In addition, the National Institutional Ranking Framework (NIRF), a ranking system adopted by the Ministry of Human Resource Development (MHRD), ranks institutions of higher education in India. These rankings act as mechanism for the institutions to include promoting innovation, research and development while assessing their performance beyond academics. One of the parameters considered while ranking and which is significant to our discussion is Research and Professional Practice that includes IPR and patents - both published and granted, by students and faculty members which has a weightage of about 15 marks. Publications and patent applications have been found to be highest from engineering and technology institutes. The ranking of top educational institutions was found to be proportional to the number of applications filed for patents. There has been significant increase in the applications filed for patents and also research publications compared to previous two years since the first announcement of this ranking system in 2016.

Though higher education system is being encouraged to invest its time and money on harnessing and spreading awareness of IP, one of the major criticisms of these initiatives is that the increased numbers of patent applications emanating from higher education institutions are an 'eyewash' to increase their UGC ranking and there is a blind rush to obtain higher credit scores by the students. This sometimes leads to filing of patent applications which are frivolous or plagiarised from previous publications or patents from within the country and outside.

Accentuating the problem is that India has inadequate number of qualified patent professionals such as patent examiners and patent agents, thus, compromising on speed and efficacy of the patent prosecution process. In addition, one of the changes introduced in NIRF in 2018 was the discontinuation of data on patents applied for and earnings from patents in determining rankings. This could be reinstated to suitably reflect those patent applications that are approved and have been successfully commercialized, rather than mere number of patent applications filed.

Further, the awareness of Intellectual Property Rights is limited to higher education institutions. IP awareness should be made a part of the curriculum in schooling. This will ensure that an effort at ingraining IP awareness in the education systems begins at an early stage.

Notwithstanding some of the criticism the Framework has received in its promotion of IPR in higher education, there are some significant positives. These approaches have ensured the participation of administrators, professors and students in spreading IP awareness. It has also been encouraging

students to understand the importance of start-ups, thus directing their focus towards entrepreneurship. An active collaboration between the student and the university leads to growth, development and healthy commercialization of the invention conceived in the campus. The problem of frivolous and plagiarised patent applications can be remedied by having a significant verification mechanism that would scrutinize the applications filed for obtaining patents. A separate set of examiners may be assigned by the Patent Office to exclusively deal with examining of applications filed by educational institutions. A regular, efficient recruitment process will increase the availability of skilled human resource required to perform this critical function.

Inclusion of the IPR as a generic elective subject under CBCS by the UGC and the NIRF establish a symbiotic relationship between the higher educational institutions and the students. The initiative to encourage higher educational institutions to champion IP awareness has been a welcome move. The National IPR Policy has been first of its kind since independence. The developed economies have had these initiatives for the past few decades. We can take them as a case study and incorporate the good and avoid the pitfalls. It must be ensured that implementation of these initiative should be closely monitored and should not become a policy dilemma. The onus also lies on the universities to improvise and equip for large but quality research and encourage more and more filing of patent applications and have a clear IP policy in place.

The Study recommends that to fulfil the need of spreading awareness about IPRs, the budding professionals/entrepreneurs and other stakeholders need more information, orientation and facilities for protecting their intellectual powers. Einfolge conducted the survey both online and offline among students and technical staffs to know how knowledgeable they are on Intellectual Property Rights.

From the responses, it's good to know that Intellectual Property Rights has been made as a part of the curriculum. Even though the knowledge on IPRs is spreading through awareness programs and curriculums, we can identify few areas which need attention to spread awareness on key areas such as Design Patents, Geographical Indication and Trade Secrets.

Most of the things they do with the aid of digital technology are linked to their intellectual property (IP) or the IP of others, but their level of knowledge about this is still rather limited. It is therefore of key importance to raise pupils' awareness in schools, showing how they could reap the benefits of IP knowledge in their private and professional lives. Helping teachers and education authorities with provision of objective, reliable and modern resources and IP information is also necessary. These are the main objectives of the IP in Education project which started in 2015 with the publication of the IP in Education study.

**COPYRIGHT:**

Copyright is the intellectual property right that affects most educators and is actually a bundle of rights, which include the right to:

- reproduce the copyrighted work
- prepare derivative works based on the copyrighted works
- distribute copies for sale
- perform the work publicly

- display the work publicly
- perform by means of a digital audio transmission.

Copyright infringement is the use of copyrighted works without permission, which carries with it steep penalties, including high fines and possible jail time.

**TRADEMARK:**

Class 41 includes services for education, tutoring, training, entertainment, and various sporting and cultural activities. Class 41 covers mainly services rendered by persons or institutions to educate persons or train animals, as well as services intended to entertain. This class includes, in particular:

- services consisting of all forms of education of persons or training of animals
- services having the basic aim of the entertainment, amusement, or recreation of people
- presentation of works of visual art or literature to the public for cultural or educational purposes, and
- chemical products used in industry, science, and agriculture, including those that go to the making of products belonging to other classes.

For a complete listing of all goods in Class 41, see below. For more information about trademarks and federal registration, see Nolo's articles on Trademark Law.

**PATENTS**:

- Patents help universities to improve their ranking, establish an innovation ecosystem, incubate knowledge-based start-ups, earn additional revenue and measure research activity.
- The number of patents applied for, granted and commercialised by universities and institutes are factored in the National Institutional Ranking Framework (NIRF) rankings.
- The top ranked engineering institutes in India are also the leading filers of patent.
- The National Assessment and Accreditation Council awards up to 24 points to an institute which sets up an innovation ecosystem and has a facility for identifying and promoting IPRs.

Qualifications for an IP professional: Patent exam

- The Central government conducts the only competitive examination in the country to check a person's proficiency in IP.
- This year, the government conducted the competitive examination to test proficiency in patent law, a type of intellectual property right (IPR), after a gap of two years.
- Any Indian citizen with a bachelor's degree in science or technology can take the examination.
- Upon clearing it the person is entitled to practise before the Patent Office as a registered patent agent.
- Qualifying the exam allows science graduates to draft, file and procure patents from the Patent Office on behalf of inventors.

**INNOVATIONS IN EDUCATION SECTOR:**

Today, technology is a significant driver behind change, and sometimes plays an important role in innovations in educational design and delivery. There are immense possibilities for greater and wider-spread change with the use of present-day technological advancements, as well as with the implementation of innovative educational programs. The challenge is to ensure that innovation plays a constructive role in improving educational opportunities for billions of people who remain under-served in a rapidly developing world.

With the emergence of smart phones, eBook readers, 'Podcasts' and 'Vodcasts', Internet and low-cost computers, as well as solar electricity, cell phone access, and other technologies, comes the opportunity to provide education to assist individuals and communities in places under-served by traditional educational institutes. Technology and other innovations enable educational design and delivery to be adapted to the needs and environment of students enrolled in Open and Distance learning (ODL) and traditional educational programs. Thus, technology can also help programs shift to a 'learner-centered' approach to education.

The challenge of closing the ever-widening gap between the haves and have-nots may rest with the willingness of the education community to view education from a new perspective and to innovate. This may include making use of affordable and accessible technologies to expand access to education. It may also require other innovative process or service strategies that do not rely on technology. It may require a shift in focus, to target educational and training programs to align more closely with what people identify as their most urgent needs.

Providing education in new and unconventional ways is only one of a number of solutions, but it is through innovation that we can meet the challenges of improved efficiencies, lower costs, increasing accessibility, and greater success in achieving development goals through education

**Conclusion:**

Intellectual property created at the university level has resulted in challenges and conflicts. These challenges and conflicts revolve around ownership, disclosure of new knowledge, and relationships with private business entities. Academic administrators, technology transfer departments, faculty, students, private investors, local governments, and attorneys all have become important players in determining how intellectual property can and will be used. Additional challenges and conflicts will arise as more universities expand their interest in intellectual property and as this area of law matures.

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# IPR: PROTECTING EXPRESSION OF IDEAS COPY RIGHTS AND NEIGHBOURING RIGHTS/RELATED RIGHTS

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**INTELLECTUAL PROPERTY:**

Intellectual Property refers to intellectual creativity of a creator. In contrast to physical property, intellectual property is an intangible asset of a person. Intellectual Property Rights (IPR) are exclusive rights given to the creators to their creations. Common types of Intellectual Property Rights are Patents, Copy Rights, Trade Marks, Industrial Designs, Geographical Indications, Trade Secrets, Layout Designs for integrated circuits and even ideas. Intellectual Property Rights provide an incentive to the creator to develop his creation and to share it with other people for the development of the society. The basic aim of the IPRs is to help in meeting the challenges in the development like reducing poverty, stimulating economic growth, improving the health status by providing medicines to the poor, improving access to education and contributing the overall sustainable development. Though IPRs provide incentive to the author or the creator and lead to a competition in the field of invention but it is also an intellectual protectionism or a form of a temporary monopoly enforced by the state.

Intellectual Property Rights refers to the general term for the assignment of property rights through patents, copy rights, trade marks, neighboring rights. These property rights allow the holder to exercise a monopoly on the use of the item for a specified period.

By restricting imitation and duplication, monopoly power is conferred, but the social costs of monopoly power may be offset by the social the benefits of higher levels of creative activity encouraged by the monopoly earnings.

- Intellectual Property is a category of property that includes intangible creations of the human intellect. There are many types of intellectual property, and some countries recognize more than others. The most well-known types are copyrights, patents, trademarks and trade secrets. Early precursors to some types of intellectual property existed in societies, but the modern concept of intellectual property developed in England in 17th and 18th centuries.
- The term "Intellectual Property" began to be used in the 19th century, though it was not until the late 20th century that intellectual property became common place in the majority of world's legal systems. The World Intellectual Property Organization (WIPO) was established in 1967, as an agency of the United Nations. Since then, the term really began to be used in the United States. There is an extensive international system for defining, protecting, and enforcing Intellectual Property Rights, comprising both multilateral treaty schemes and international organizations such as Trade Related Aspects of Intellectual Property Rights (TRIPs), World Intellectual Property Organization (WIPO), World Customs Organization (WCO), United

Nations Commission on International Trade Law (UNCITRAN), World Trade Organization (WTO), and European Union (EU).

**NEED FOR IPR:**

Definition of ownership has changed over the time. It's not limited to tangible property anymore neither people choose to remain their ownership towards traditional goods. With the growing need of claiming rights due to excessive plagiarism taking place on one's ideologies and thoughts, it has become important for every new idea to be protected and secured by reserving rights on them through "INTELLECTUAL PROPERTY RIGHTS", helping one in restoring their ownership on the expression of ideas, innovations, even their goodwill at times, through Copy Rights and Neighboring Rights being claimed.

Every creation requires time, energy and effort. The time involved varies greatly between projects. It may vary from a few minutes to a few years. In addition, any creative work also requires certain amount of real capital and of course the education or knowledge. All these things add up to a huge investment on the part of any creative professional. Thus, it is necessity to recognize and respect the individual creations of a creator.

An efficient and equitable intellectual property system can help all countries to realize intellectual property's potential as a catalyst for economic development and social and cultural well-being. The intellectual property system helps strike a balance between the interests of innovators and the public interest, providing an environment in which creativity and invention can flourish, for the benefit of all.

**COPYRIGHTS:**

**Copyright** covers literary works (such as novels, poems, and plays), films, music, artistic works (e.g., drawings, paintings, photographs, and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their radio and television programs.

- Alternatively, copyright is a monopoly right restraining others from exercising that right which has been conferred on the owner of copyright. Copyright laws grant the authorities for artistic creations.
- It is a negative right meaning thereby that it is prohibitory in nature. It is a right to prevent others from copying or reproducing.
- The objective of copyright is to encourage author, composers and artists to create original works by rewarding them the exclusive right for a specific period to reproduce the work for publishing and selling them to the public. The moral basis of copyright law rests in the eighth commandment "thou shall not steal".
- Copyright is not a single right. It is a bundle of rights in the same work. For example, in the case of a literary work, copyright consists of reproduction in print media, the right of dramatic and cinematographic versions, the right of translations, adaptations, abridgement and the right of public performance.

- Copyright consists not merely of the right of reproduction. It also consists of right to works derived from the original work, rights like the right of public performance, the recording right and the broadcasting right. Such related rights are called "Neighboring Rights".

In other words neighboring rights are also termed as "Related Rights".

**Benefits of protecting copyrights and related rights:**

Copyright and related rights protection is an essential component in fostering human creativity and innovation. Giving author, artists and creators incentives in the form of recognition and fair economic reward increases their activity and output and can also enhance the result. By enduring the existence and enforceability of rights, individuals and companies can more easily invest in the creation, development and global dissemination of their works. This, in turn, helps to increase access to and enhance the enjoyment of culture, knowledge and entertainment the world over and also stimulates economic and social development.

**Copyrights and Related rights with technology advancements:**

The field of copyright and related rights has expanded enormously during the last several decades with the spectacular progress of technological development that has, in turn, yielded new ways of disseminating creations by such forms of communication as satellite broadcasting, compact discs and DVDs. Widespread dissemination of works via the internet raises difficult questions concerning copyright and related rights in this global medium. WIPO is fully involved in the ongoing international debate to shape new standards for copyright protection in cyberspace. In that regard, the organization administers the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), known as the "Internet Treaties". These treaties clarify international norms aimed at preventing unauthorized access to and use of creative works on the internet.

**Regulation of Copyrights and Related rights:**

Copyright and related rights protection is obtained automatically without the need for registration or other formalities. However, many countries provide for a national system of optional registration and deposit of works. These systems facilitate, for example, questions involving disputes over ownership or creation, financial transactions, sales, assignment and transfer of rights.

Many authors and performers do not have the ability or means to pursue the legal and administrative enforcement of their copyright and related rights, especially given the increasingly global use of literary, music and performance rights. As a result, the establishment and enhancement of collective management organizations (CMOs), or "societies", is a growing and necessary trend in many countries. These societies can provide their members with efficient administrative support and legal expertise in, for example, collecting, managing and disbursing royalties gained from the national and international use of a work or performance. Certain rights of producers of sound recordings and broadcasting organizations are sometimes managed collectively as well.

**Other types of Intellectual Property Rights:**

Intellectual property is claimed not only on the basis of copyright or related rights. There are many other kinds of IPR which help the artistic creations and innovations to be secured and help them in their encouragement for further growth. The other forms of IPR can be seen as;

- **Patents:**

A patent is an exclusive right granted for an invention, a product or process that provides a new way of doing something, or that offers a new technical solution to a problem.

A patent provides patent owners with protection for their inventions. Protection is granted for a limited period, generally 20 years.

- **Trademark:**

A trademark is a distinctive sign that identifies certain goods or services produced or provided by an individual or a company. Its origin dates back to ancient times when craftsmen reproduced their signature, or "marks", on their artistic works or products of a functional or practical nature. Over the years, these marks have evolved into today's system of trademark registration and production. The system helps consumers to identify and purchase a product or service based on whether it's specific characteristics and quality as indicated by its unique trademark to meet their needs.

- **Industrial Design:**

An industrial design refers to the ornamental or aesthetic aspects of an article. A design may consist of Three-Dimensional features, such as the shape or surface of an article, or a Two-Dimensional feature, such as patterns, lines or color.

**Conclusion:**

It's not about picking a pocket or holding up a bank. It's robbing people of their ideas, inventions and creative expressions, their intellectual property ranging everything from trade secrets and proprietary products and parts to movies and music and software.

The concept of intellectual property rights emerged as a public policy device relative to social, economic, and political forces and sculpted by a particular technology, the printing press. It has been realized in various international documents. It's a growing threat especially with the raise of digital technologies and internet file sharing networks. And much of the theft takes place overseas, where losses are often lax and enforcement more difficult.

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# INTELLECTUAL PROPERTY RIGHTS - A KEY TO FOSTERING INNOVATION AND THE SUCCESS OF 'MAKE IN INDIA'

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**Abstract**

Make in India, one of the flagship programmes launched by the Government of India is intended to boost domestic manufacturing and encourage companies to make the product in India. It covers 25 sectors of the economy and currently contributes approximately to 16 per cent to the GDP and the target is to take it to 25% by 2022. This emphasis on manufacturing will provide employment to more than 10 million people, will boost foreign direct investment (FDI) thereby bringing development and will minimise the imports of various products. Ultimately it will augment our exports and it will help in bringing the latest technologies into the country**.** The aim of the 'Make in India' campaign is to promote the development of new technologies in India and to promote products made in India. The key to success of Make in India, which makes India a global manufacturing hub with state-of-the-art R&D facilities, is innovation. The government and private sector needs to look at creating a conducive eco-system for innovation to thrive and prosper in India. The only key to foster innovation is the creation of intellectual property rights(IPR) and Indian Government understands that it is one of the main agenda of ' Make in India'. The present paper is intended to show the significance of IPR in Indian context and India 's efforts in accelerating innovations to survive in global market.

Key Words: domestic manufacturing, augment exports, sustainable technologies, grass root innovators, knowledge power, flagship programme

Today India is classified as an Emerging and Developing Country (EDC) t experiencing rapid economic development. It is currently one of the world's fastest growing economies and the seventh richest country in the world. It is expected to become by 2025 the third largest economy in the world after China and the USA. Still poverty is prevalent in India. The Human Development Index (HDI) places India at 136th out of 187 countries, with 25% of the nation's population still living on less than $1.25 (US dollar) a day. In 2016, India held one sixth of the world's population but had one of the youngest population in the world. Most of the population almost 65% was below the age of 35, and it is estimated that it will become 29 by 2022 as against 35 in China and 48 in Japan. At the same time, it is also anticipated that the key factor in India's future economic development would be the huge youthful workforce, while the discouraging numbers and workforce of even major countries in different corners of the world will make India's position better. Addressing at the 2nd National Award Function of the National Innovation Foundation, India's great former President, Dr. APJ Abdul Kalam emphasized the great need to tap this huge human resource of India and the role of innovations to help India become a creative society and a global leader in sustainable technologies by focusing on and promoting grassroots innovations. He also ensured the need for the evolution and diffusion of grassroots innovations in a selection time bound and mission oriented basis. Kalam further said …since India's

population is of a billion people, the society in its own way has to make innovations continuously, not only in urban areas but also in rural areas. Creativity comes from beautiful minds. It can be anywhere and in any part of the country. It may start from a fisherman's hamlet or a farmer's household or a dairy farm or cattle breeding centre or it emanates from class rooms or labs or industries or R&D centres. Inventions, discoveries and innovations are different dimensions of creativity. It has got an ability to imagine or invent something new by combining, changing or reapplying existing ideas. One can welcome change, newness and creativity with a willingness and flexible outlook to conceive new ideas and possibilities and can have the habit of enjoying the good, while looking for ways to improve it. It is a continuous process to work hard and continually to improve ideas and solutions by making gradual alterations and refinements to their works. The important aspect of creativity is: seeing the same thing as everybody else, but thinking of something different which leads to innovations.

Narayana Murthy, whose very name is now synonymous with entrepreneurship and innovation and who has made India proud with his leadership qualities as the storied founder of 'Infosys Technologies', one of the largest Information Technology (IT) services companies in the world has become an inspiration for the younger generation in India to dream, to have passion for what one believes in and to create something of one's own. 'Finacle', the best banking product is one such innovation and creation from Infosys adopted by many countries. He wanted to be an entrepreneur and believed new ideas and valued discipline, hard work, algorithmic thinking, sacrifice and commitment. He wished that young people should have fundamental values and ethics to make their ideas or dreams come true. As an employer or a business leader he values, "Focus on customer, lead by example, integrity, fairness, transparency and excellence in execution". He believes in simplicity and sharing wealth with the needy. He feels that India must improve its infrastructure, education-both secondary and higher, and create a better environment for growth to attract the migrating professionals back to come out with innovations. After working as the founder CEO of Infosys for 20 years, true to his ethics he retired but continues as a non-executive chairman and mentor of Infosys and is inspiring many.

Addressing the young graduates in the convocation at the National Institute of Designs, Ahmedabad, Narayana Murthy connotes the position of India in the world market through the example of Mahatma Gandhi's speeches. Is there one invention, one technology, one idea since independence produced by Indians that has helped make the society and the world a better place, asks the Chairman Emeritus of Infosys. India has achieved self-sufficiency in every walk of life but still it is listed among developing countries because it has not paid enough attention to excellence. He depicts the reason behind it as the ordinate mind set of Indians for quantity rather than quality. It was only after the introduction of 1990 Economic reforms, software industries gained ground and laid down the foundations for the development of India. While liberalization removes unnecessary restrictions from companies and prompts them to run the enterprise efficiently, globalization integrates the national market with world market and reduces the barriers in international trade. Privatization alerts the companies to work properly and reduces the losers and opens the doors of internal market. In this context, Murthy suggests that the youth should dream to achieve excellence. Only relentless training, frank feedback and self-improvement will help the youth acquire it. In the words of Harold Taylor "the roots of the true achievement lie in the will to become the best that you can become." He emphasizes the strength of youth and makes them realize their obligations towards the nation. At the same time, he makes the youth aware of the positive effects of advanced technology, modernization and the results of

interference of politics in the industrial sector before 1990. He ensures that only with excellence the young graduates can come out with innovative ideas and designs which will produce quality products of international standards. These products based on innovation will overcome the competition in international markets. Hence the youth with innovative ideas and excellence is required for India today.

In today's world, innovation flows around all the time. The creation of the culture of innovation and creativity will only lay a path towards real progress. In this process of encouraging and promoting innovations, creativity and Knowledge should be converted into wealth and social good. It tends to emanate less from R&D centres and more from other sources, including organizational change. Innovation is the major source for competitiveness in service and manufacturing sectors as competitiveness is the potential of a nation's economy to reach the high rates of economic growth. For sustained economic growth, establishing efficient innovation system in the country is necessary. Such a system would be a composition of clusters or networks of inter-dependent firms, knowledge producing institutions (universities, colleges/institutes, research institutes, technology providing firms), bridging institutions and customers linked in a value-addition creating production chain. These clusters beyond the firm network would capture all forms of knowledge sharing and exchange and tap into the growing stock of global knowledge, and assimilate and finally create new knowledge and technology in order adapt it to full the need of people . For the success of such an innovative system, there should be better inter-ministerial coordination to ensure consistency and credibility in policy formulation; and also the introduction of new mechanisms to support innovation and massive spread of technology, including greater use of public/private partnership.

Progressiveness of industry, technology push and status of governmental deregulation all in unison will together decide Competitiveness. When knowledge power is strengthened by technology, competitiveness emerges which in turn is empowered by capital. The ability to recognize and integrate all forms of knowledge that will lead to innovation in every area of human endeavour is acknowledged as competitiveness in the coming years. The mission of building innovation systems is the only strategy for the transformation of India into a knowledge superpower. An innovation system only can sustain technology-led industrial growth and India must evolve such innovative systems to enhance its competitiveness in the global market. The high technology innovation happens through new discoveries mostly in natural sciences such as NMR and Human Genome. No technology innovation happens by finding Gaps created in market as a result of changes in values, perceptions, attitudes and demographics. But adaptation can lead to innovations. For the nation today, what is needed is leadership which bring economic prosperity using technology. 'Developed India', can only be empowered by economic strength. Competitiveness empowered by knowledge power will boost up the economic strength. Similarly innovation and business will empower technology which is in turn empowered by knowledge power. Innovative management will empower business but powerful leadership can only empower management. A leader will neither be a commander nor a super boss, but he or she should be a visionary, facilitator of the team, a thinker and grassroots innovator. Above all, the nobility of the mind is the hallmark of the leader. India has to bring in such grassroots innovators in the mainstream to develop such innovative systems in the country.

Several factories came up and secondary manufacturing jobs increased in late 1980s when the Indian government encouraged foreign transnational corporations (TNCs) to set up within the country. Many transnational Corporations (TNCs) have established their factories and offices in India Factory workers in the tertiary (service) sector earn more money than the workers are paid in primary and secondary,

which means that they can afford to pay people for services, such as entertainment and healthcare. As the population speak good English, and they have strong IT skills and more than that they work for lower wages than people in many other countries, the country becomes an attractive location to TNCs like Toyota, Volvo and Hyundai to manufacture cars in India. Companies like ASDA, BT and Virgin Media have come forward to trade with India and established their call centres in India. India has successfully created relationships with other countries. Due to this, India's exports increased between 2006 and 2012 which ultimately has helped the country to become wealthier.

The challenge before India today is daunting and the task is tough. The huge youthful workforce of India should be trained to come out with innovations of international standards which will lead them and ultimately India towards success. For this, Indian universities have to be designed for world-class excellence, but not just to train students. Education system is to be intended to stimulate all independent thought and world-class ideas in the students as those of Srinivasa Ramanujam, C V Raman and Bose. Universities are not the places of creation of innovations, but places of inventions. It is up to commercial entities to take these inventions (or others) to market and make a success of them. An idea which works successfully in market will be considered an innovation, otherwise it doesn't deserve to be called an innovation: it is only an idea or an invention or a pipe-dream. Such world-class inventions and ideas will be rarely coming out of Indian R&D centers. On the other hand, Indians are indeed innovating, but it's not in product innovation: it's in process innovation, service innovation, and business model innovation. The entire generic pharma industry, Aravind Eye Care and Narayana Hrudayalaya have shown great capability and innovated in process innovation to extract the greatest value out of scarce resources. Aravind has also done by designing and making its own contact lenses and surgical sutures which comes under product innovation, and also are exported to many countries. Their service innovation comes in reaching out to remote villages through tele-medicine and first-level screening before rural patients are brought to the main hospital, where a paramedic 'owns' them, and looks after them. There are small but interesting process innovations galore. The cleaning up after a banana leaf meal in Kerala (the vegetarian treat is a staple at Hindu weddings) used to be a labour-intensive and messy affair and the innovation to avoid this process is a process innovation. The idea of serving the meals on long rolls of newsprint which can be easily recycled would be a brilliant one. The discovery of Kerala fishermen is an example of business model innovations that by using their cell phones out at sea, they could divert to the fishing port where their catch would get the best price, as well as remove intermediaries from the picture, thus improving their profit as well as reducing the price paid by the end customer.

One easy metric for the fundamental discoveries or inventions that have been spilling out of Indian universities such as the IITs and NITs is citations or the other is IPR (including patents, copyrights and other mechanisms). There is only one truly outstanding result so far: a prime-factoring algorithm from IIT, Kanpur which has an impact on public key-private key encryption systems. Universities should have autonomy, and not to be subject to the whims of politicians and bureaucrats. Besides, there should be self-confidence that the professors and graduate students are capable of breakthrough ideas instead of being content to copy, reproduce, and validate discoveries others have made. Industry and academia should work together and the official R&D funds should flow to the universities as they do to the government labs to drive innovation in the academia. There should be a convergence of all three. Any intellectual property produced can be licensed by faculty and students to go off and start companies; successful spin-off companies in turn engage the labs to do more guided research, and may provide

significant funding as well. The main ingredient in this entire process is marketing. The concept of who the customers are, what their pressing needs are, and how to make something of value for them, to mention the means to distribute the product to them should be focused.

A lot of work is to be done in this direction but not intended only for publishing papers. Research done to re-design products from scratch by removing unnecessary functionality making it appropriate to the needs of the customer base will lead to a greater probability of success, and thus to an innovation. One example is the Indian re-design of the ECG machine, in GE's Bangalore labs. This is where the role of incubators and accelerators come into the picture. A fundamental improvement in education is the accelerator model. If an entrepreneur is given with a good idea, and put in a high-pressure environment with a bunch of others in the same situation, they have to quickly produce a product, and while they are doing that, they are taught just enough about business that should enable them to create and execute a business plan. Under the able guidance of mentors including subject matter and domain experts, they will be exposed to angel investors. Ideally, during the brief period that they are in the accelerator for a few months, they get skilled at being an entrepreneur. And at least some of those who go through this experience actually will succeed.

As part of the broad Make In India program, there are new incubators coming up to provide connections. In a way, this can compensate for the skewed education system in which one learns to be an entrepreneur, to take risks, to persist in the face of failure, and then may innovate. Thus a new generation of innovators may arise in India, but that may not be from the universities. There are two advantages of The Make in India campaign - it will help in the production of many commodities in the country, along with the unprecedented potential of employment. Innovations that improve a product, process or service can be protected through intellectual property (IP) rights. Inventions which are the bedrock of innovation offering a new solution to a technical problem can be protected through patents. Patents will provide protection to the invention of inventors and their interests who can control the commercial use of their invention and whose technologies are truly ground breaking and commercially successful. A patent held by an individual or a company has the right to prevent others from making, selling, retailing, or importing that technology. It provides the right and opportunities for inventors to sell, trade or license their patented technologies with others who may want to use them.

Patents state to the world about the inventions of the inventors apart from acknowledging, recognizing and rewarding inventors for their commercially successful technologies. For getting protection for the invention, the inventor must provide a detailed explanation of how it works. World Intellectual Property Organization (WIPO) is making this and other IP-related information freely available to the public through its global databases. The largest of these – it is also one of the largest in the world – is PATENTSCOPE. The purpose of making this information widely available is also meant for sparking new ideas and promoting more innovation, and also to help narrow the knowledge gap which exists in developing and least developed countries. A patent is a private right that is granted by a government authority. It only has a legal effect in the country (or region) in which it is granted. So inventors or companies who want to promote their technologies in foreign markets have to seek patent protection for their new technologies in those countries.

IPR has gained greater significance in India today as India has launched Make In India as a Flagship programmme to promote the best use of own resources and boost domestic manufacturing. It is the main thrust of the nation's developmental policy to minimise the imports and augment exports and

develop country's economy further. At this juncture, IPR will provide protection to domestic manufacturers, entrepreneurs and engineers to contribute to the country's economic growth and become successful in the mission of Make In India programme which will place India at the highest rungs of economic progress.

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