

## Vocal for Local: IPR protection will boost Indian Economy

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### Abstract

Today, the World is growing at the cost of knowledge. Knowledge is acquired at the expense of time, energy, money, and other resources. The ultimate goal of knowledge is to coin a new idea or implement it to invent something unique. When intellectuals achieve something unique, there is a lifetime of effort, perseverance, dedication, academics, and economic factors behind their success. Few intellectuals intend to share their inventions to World for the well-being of the community. Yet, in certain circumstances, such altruistic sharing is not desirable without denying that they deserve to bear the fruit of their endeavors. They have the legitimate right to decide how and when their creation should be used. Here comes the need for the protection and safeguard of their production from piracy and plagiarism. Intellectual Property Rights (IPRs) acts as a protective shield. In a country like India where the aim is to enhance empowerment for localities via agendas like Vocal for Local, Stringent implementation of IPR Act can effectively boost the motives.

**Keywords:** Today, Vocal, Local, Economy

### 1. Introduction: What are intellectual property rights?

Intellectual Property Rights (IPRs) are exclusive rights provided to the creators for their creations for a certain period of time. They provide a secure environment and protect the socio-economic interests of the creators, inventors, scientists, artists, designers, traders, etc. In other words, IPRs are provided through patents, copyrights, and trademarks. IPR holders have a monopoly over the use of their creation and inventions <sup>[1]</sup>.

### Intellectual property rights in India can be broadly covered in five categories

1. Copyrights
2. Patents
3. Industrial Designs
4. Trademarks
5. Geographical indication

Let's have a thorough understanding of the subcategories of the IPs below

### 2. Copyrights

The creators of literary, dramatic, musical and artistic works and the producers of cinematograph films and sound recordings are provided with a bundle of rights given by the law.

Under copyrights, the creator gets the following rights:

- communication of the work to the public,
- the rights of reproduction of the work,
- Adaptation of the work and translation of the work.

Copyright comes into existence as soon as a work is created, and no formality is required to be completed for acquiring copyright. However, certificate of registration of copyright and the entries made therein serve as prima facie evidence in a court of law with reference to dispute relating to ownership of copyright. Copyright application can be filed in the Copyright office.

Computer Software or program can also be registered as a 'literary work.' As per Copyright Act, 1957 "literary work" includes computer programs, tables, and compilations, including computer databases. 'Source Code' has also to be supplied along with the application for copyright registration for software products.

The 2012 amendments make Indian Copyright Law compliant with the Internet Treaties – the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) <sup>[1]</sup>.

### 3. Patents

Patents are intellectual property rights to protect an invention from others who may use it without the inventor's permission. Once the invention is patented, it belongs to the inventor. It becomes his choice to license it to others, sell it, or use it for himself.

In the 2006 amendment, the only process of production was allowed to be patented, which means if production is achieved through a different method, then there will be no infringement.

For the first time in March 2012, the first compulsory license was granted. The permit was issued to Indian generic drug manufacturer Natco Pharma Ltd for Sorafenib tosylate, a cancer drug patented by Bayer. Many Non-Governmental groups welcomed this decision.

### The following criteria must be fulfilled to acquire patents

- The creation should be uniquely new
- Should not be published by anyone previously
- If an inventor wants to register a patent, he must not publicize his invention beforehand.

Patents can be broadly divided into two categories as design patents, and utility and plant patents:

Design patents are valid for 15 years, starting from the application of issuance.

Utility and plant patents are valid for 20 years, starting from the filing of the patent application <sup>[2]</sup>.

#### 4. Industrial Designs

According to IPR, design refers to the features of a 2-D, 3-D article. These features include the color, composition, material, ornamentation, shape, or combinations of such things applied to any object.

According to WIPO's definition, an industrial design includes the aesthetic or ornamental aspects of any object.

The designs Act, 2000, protects certain designs. It protects the copyright of the design for a period of 10 years from the date of registration.

A total of 8174 designs were registered between January 1, 2018, and December 31, 2018, as opposed to 9694 registrations in 2017, indicating a decrease of about 15.68%. Nearly 8000 applications are filed annually in India. However, this seems to be a fair number but is far below the potential applications that can be submitted. Overall, there is a very high scope for improvement in the current scenario. This is possible only if concerted steps are taken to improve the enforcement of this law, especially in the informal sector and the budding MSMEs <sup>[3]</sup>.

#### 5. Trade Marks

Trademark refers to name, phrase, design, logo, image, or any combination of these elements. Apart from this particular non-conventional trademarks like the smell, color, or sounds are trademarks that do not belong to the standard category. However, the only limitation is that trademarks cannot be offensive <sup>[4]</sup>.

##### The concept of Trade dress

Trade dress refers to resemblance of a product in terms of packaging, appearance, colour, shape or a combination of these, to a registered product which is restricted to be used by the competitors for their business or services. The trade dress protection is implemented to protect the customers from purchasing the wrong product having similar appearance under false belief of buying their desired brand product. For ex: Apple Inc has registered the design of their Apple stores under trade dress.

The concept of trade dress originated from the US legislation of "The Lanham Act." While in India there is no separate law for trade dress but the Trademark Act 1999, which came into force in the year 2003 recognises the concept of trade dress <sup>[5]</sup>.

#### 6. Geographical Indications

A geographical indication (GI) is a sign or symbol used to represent a particular product belonging to any given geography. This is done for the products that possess some symbolic or specific qualities to the climate or other native factors of the place. Mainly GI represents the link of the product to a particular geography.

The geographical indication right offers protection to the proprietors having the right to use the indication from third party use by the sellers who do not have similar quality standards. For example, "Darjeeling" is the geographical indication for the tea. Producers who are producing Darjeeling tea hold exclusive rights of using the label. However, the prefix cannot be used by others producing tea outside the Darjeeling gardens or who are not producing tea according to the code of practice for the geographical

indication.

Geographical indications are generally used for agricultural products, foodstuffs, wine and spirit drinks, handicrafts, and industrial products <sup>[6]</sup>.

#### Legal and Legislative Frameworks for IPR Laws

A continuous flow of innovation is among the bare necessities to fuel a vibrant knowledge economy. This is possible only if a balanced and stringently enforced legal system encourages the innovators.

##### Patents Act, 1970

The patent act has been amended from time to time in the years 1995, 1999, 2002, and 2005 to keep up with the TRIPS agreement signed by Nation previously. The primary aims behind the formulation and further amendments to the Patent act were to fuel the country's technological capabilities and the need to introduce a robust framework for IPRs that can keep up with the international practices.

The amendments were also aimed at making the Act a modern, systematic, and public-friendly legislation that can fruitfully protect the interests of the Nation and the public without defying the obligations of internationally signed TRIPS agreement.

Later amendments were also introduced in the Patent Act's rules and were put into effect from May 2003. Few modifications were added later in 2005 as well, set to effect from January 1, 2005. Since then, the Patent act 2005 is operative in the country with full effect <sup>[7]</sup>.

##### Trade Mark Act, 1999

A bill was proposed to introduce changes which were contemplated and were put into a discussion by the Government of India. However, the bill lapsed in 1994. Laws related to development in trading and commercial practices were deeply reviewed and accessed in view of the changing trade scenario owing to increasing Globalisation. The bill was then passed by the Parliament in the year 1999 and was signed by the Indian President on December 30, 1999, marking the inaugural big Trademark Act, 1999. The Act was an enhanced replacement of the former Trade and Merchandise Act, 1958 <sup>[8]</sup>.

##### The Designs Act, 2000

Designs Act 2000 came as an improvised version of the Designs Act 1911. Considering the rapid progression in science and technology, it became imperative to offer better protection to the registered industrial designs for promoting the design element in the production activities. The new Act was designed to coordinate with the TRIPS agreement and, hence, holds relevance according to the international trade standards.

The characteristic features of the new Designs Act launched in the year 2000, are as follows:

1. The scope of definitions for "article" and "designs" was elaborated, and a new definition was added for the term "original."
2. The scope of the term "prior publication" was elaborated.
3. Provisions were introduced for certainly better delegation of powers from the Controller to the officers and for enhancing the roles and duties for the examiners.
4. Provision was introduced for identifying the designs

- that could not be registered.
5. Provision for substituting any candidate before registration of their designs
  6. The international system of classification for designs was adopted by discarding the previously followed Indian classification system.
  7. Provision to include a register for designs on the computer
  8. Provision for the process to be followed for restoring a lapsed design
  9. Arrangements for a claim against the Controller's requests under the watchful eye of the High Court rather than the Central Government.
  10. The secrecy period of two years for a registered design was revoked.
  11. Registration of documents for the transfer of rights for design made mandatory.
  12. Presentation of extra grounds in dropping procedures and arrangement for starting the wiping out procedures before the Controller instead of High Court
  13. Appreciation in the amount of fine levied for infringement of registered design.
  14. Improving the introductory time of enrollment from 5 to 10 years, to be trailed by a further expansion of five years.
  15. Arrangements to avoid some restrictive policies in order to restrict the anticompetitive practices in case of contractual licenses <sup>[9]</sup>.

### **The Geographical Indications of Goods (Registration and Protection) Act, 1999**

Initially, there was no provision for protecting the geographical indications in India. As a result, many parties from abroad misused the titles of geographical indications in India for indicating their own goods, which had no linkage to the particular Indian geography. To protect people's rights from such geographic locations, it became necessary to introduce the legislation for adequate protection of the geographical indications. Understanding the concerns, the Parliament passed a law under the name of Geographical Indication of Goods (Registration and Protection) Act, 1999. Highlighting features of this legislation are:

1. Introduction of several definitions including, "goods", "producers", "authorised user", "packages" etc.
2. Provision to maintain a register of all geographical indications in required format with parts A and B. Part A would contain registered geographical indications, and Part B shall provide information about authorized users for the indications.
3. Provision of classes for registration of different geographical indications
4. Restrictions and limitations for the registration of specific geographical indications
5. Arrangements for confining of rules by Central Government for documenting utilization, substance, and matters identify with a considerable assessment of geological sign applications.
6. Advertisement of all accepted geographical indications made mandatory, and objections also welcomed
7. Registration is made mandatory for authorized users for specific geographical indications and provisions introduced for infringement actions in case of unauthorized usage.
8. Provision for offering higher protection for notified

- products
9. Restriction for assignments etc. for a geographical indication as they belong to the public property
10. Prohibition on registration of geographical indication as a trademark
11. Appeals against the decision made by the registrar to be held in front of the Intellectual Property Board which was established under the trademark legislation
12. Introduction to offenses and penalties for defaulters
13. Detailing of the provisions for registration and the rights to be conferred by registering <sup>[10]</sup>

### **Copyright Act, 1957**

Copyright Act, 1957 governs the copyrights in India. The Act has been revised from time to time in order to keep up with the changing time and scenarios. This Act grants lifetime coverage with 60 years of additional coverage after death to the proprietor.

This Act also grants novel rights to the proprietor. Also, it offers the right to oppose any modifications to the original work in order to protect the originality of the creator's reputation.

"Computer industry" is one of the vital fields that enjoys protection under this Act. The Copyright Act was amended in 1984 to include computer programming as an addit to the former definition of "literary work".

Piracy is one of the major threats associated with the copyright industry. Piracy of books, media, television films, musical works is all widespread. However, for protecting the computer programs, special provisions were included in the Copyright amendment made in 1994 with inclusion of section 63B.

The new provision has stringent punishments extending to the imprisonment of 7 days to 3 years and a fine of Rs. 50,000 to Rs.2, 00,000. However, in the case of non-commercial infringement of computer programming, the court may impose only a fine of up to Rs. 50,000/- without any imprisonment <sup>[11]</sup>.

### **The Protection of Plant Varieties and Farmers' Rights Act, 2001**

The Act was introduced to protect innovators' rights, bringing newer technologies and ideas to breed plants in a manner that can generate a great return on investments and to promote such researchers to share their innovative ideas with others in the society.

This issue of protecting the Farmers' rights gained an escalated importance after India signed the TRIPS agreement under the World Trade Organization, which promotes the protection of rights in all fields related to technology. Article 27 under the TRIPS agreement requires the partner countries to protect the plant breeds via patents or by Sui Generis System or via any suitable combination of these techniques <sup>[12]</sup>.

### **The Semi-Conductor Integrated Circuits Layout Design Act, 2000**

Electronics and Information technology is one of the fastest-growing sectors that has played a significant role in the world economy. This is mainly linked to advancements in the field of electronics, computers, and telecommunication. Microelectronics, which primarily refers to Integrated Circuits (ICs) ranging from Small Scale Integration (SSI) to Very Large Scale Integration (VLSI) on a semiconductor

chip - has rightly been recognized as a core, strategic technology world-over, especially for Information Technology (IT) based society.

The government enacted the Semiconductor Integrated Circuit Layout Designs Act, 2000 providing for the protection of Semiconductor Integrated Circuits Layout-Designs by process of registration, the mechanism for distinguishing Layout-Designs which can be protected, rules to prohibit registration of Layout-Designs which are not original and/or which have been commercially exploited, the period for protection, provisions with regard to infringement, payment of royalty for registered Layout-Design, provisions for dealing with willful infringement by way of punishment, appointing a Registrar for registering the Layout Designs and mechanism of Appellate Board<sup>[13]</sup>.

### International cooperation

Being a member of the World Trade Organization, India has to abide by the terms of the agreement on trade-related aspects of the IPRs. India has signed and is a member of the following international treaties related to IPRs:

- Budapest Treaty 1980, which deals with the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure
- Paris Convention 1883(the Protection of Industrial Property)
- Berne Convention 1886, working in the field of the Protection of Literary and Artistic Works
- Patent Cooperation Treaty, 1970
- Protocol Relating to the Madrid Agreement, 1881 (the International Registration of Marks- Madrid Protocol)
- Washington Treaty (for IPRs linked to integrated circuits)
- Nairobi Treaty (for protecting the Olympic Symbol)
- Marrakesh Treaty which promotes the access of published works to the visually impaired people

2019 marked another landmark when the Union Cabinet approved the proposal elevating India the Nice, Vienna and Locarno Agreements, related to the World Intellectual Property Organization's (WIPO) international classification<sup>[14]</sup>

### Have a look at some of the famous Patent wars

1. **Apple vs. Samsung:** Apple and Samsung had been engaged in a 7 year-long patent fight. Apple had accused Samsung of copying its idea of smartphones. This had been the most prominent case for the past decade linked to patent infringement of smartphones. Finally, the jury ordered Samsung to pay Apple \$539 million for infringing on its patents<sup>[15]</sup>.
2. **India counteracts the Patent for Nutmeg Mouthwash by Colgate:** A Colgate subsidiary company filed a patent application in 2010 titled, "oral compositions containing extracts of myristica fragrans and related methods." With this patent application, the Colgate Palmolive Company aimed at oral compositions containing Myristica Fragrans and other extracts from another natural product. However, in India, almost every household, mainly in the villages, uses Myristica fragrans daily. Myristica Fragrans, popularly known as Nutmeg, is a common kitchen spice in the country and has been used in the traditional medicine system for ages.

To counter the patent application filed by Colgate, India submitted proofs in the form of references to show that Myristica Fragrans has been in use to treat oral diseases in Indian systems of medicine. As a result, the application was shot down, and the patent application EP2689806 stands canceled<sup>[15]</sup>.

### Where we stand in IPRs in the World

In today's Competitive World, Intellectual Property Rights is one of the essential factors that partner countries consider in trade and technology advancement. India is underperforming when we compare it to global standards.

According to the International Intellectual Property Index, 2020 released by the US Chamber of Commerce, India slipped to 40th position from the 36th position in 2019.

US, UK, France, Germany, and Sweden are the top five economies on the IP Index in 2020.

India's rank has slipped despite the government's focused effort to support investments in innovation and creativity through increasingly robust IP protection and enforcement, since the release of the National Intellectual Property Rights (IPR) Policy, 2016. In 2016, India was in the 37th position out of 38 countries<sup>[16]</sup>.

This index gives us a reminder that we need to improve our laws and securities for the creators and inventors as the future of trade and commerce lies in the hands of creators of different domains.

India will have to deal with the following issues seriously to get out of this bottleneck situation. Currently, Indian laws do not provide adequate enforcement mechanisms to deal with online piracy-related problems. The patent protection regulations are far below international standards.

Among India's critical areas of weakness is the enforcement of strict policies like compulsory licensing for commercial and non-emergencies. The Indian government plans to expand such systems, making it more robust for innovative startups to boom.

Another area of weakness is the reduced application and enforcement of civil remedies and criminal penalties.

The fact that India is not a part of major international treaties, like the Trans-Pacific Partnership agreement, is also a consideration.

### Conclusion

India recognizes that adequate protection of IP rights is essential for making optimal use of its people's innovative and creative capabilities. India's IPR regime is fully compliant with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). However, the poor implementation of laws has been an issue. India has witnessed a lot of Patent or copyright infringement and piracy issues. India is presently ranked 76th among 143 economies, as per the Global Innovation Index (GII). The research and development expenditure accounts for as little as 2.7% of global spending, hugely affecting the overall performance.

An inadequate IPR protection regime is a significant cause of this.

The Union Cabinet approved the National Intellectual Property Rights (IPR) Policy on May 12, 2016. This policy shall lay the future roadmap for dealing with situations related to IPRs in India. The policy is based on the belief that there are abundant creative talents and innovative



energies in the country that need to be protected to build a better and brighter future.

The National IPR Policy is a detailed document that aims to encompass and bring to a single platform all the required details of IPRs. The policy views IPRs holistically, keeping in mind all linkages, institutional mechanisms, thereby trying to exploit synergies between all forms. The ultimate goal is to incorporate and adopt a system in the country, which is at par with the global standards.

The implementation of the IPR policy will lead to expansion and setting up copyright and patent offices, even in the farthest corners of the country. Measures like compulsory licenses in all cases would only be possible to achieve when we can invest sufficiently in infrastructural and human resource capabilities.

In the current scenario, different matters related to IPR are dealt with by various departments and ministries. The IPR policy aims to eliminate this red-tapism and bureaucracy, helping build an integrated system to balance Public rights with private rights. It is also believed that, if implemented strictly, this policy regime would be a big boost to entrepreneurship in the country. This would help in the real success of the Prime Minister's visions like Vocal for local, Make in India and Atma Nirbhar Bharat.

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