

# Intellectual Property Rights in India: Issues and Prospect

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**ABSTRACT:** Intellectual property (IP) is a legal concept which refers to creations of the mind for which exclusive rights are recognized. Intellectual Property Rights (IPR) are legal aimed at protecting the creations of the intellect, such as inventions, the appearance of products, literary, artists and scientific works and signs, among others. Under intellectual property law owners are granted certain exclusive rights to a variety of intangible assets. These laws protect the legal rights of creators and owners, in relation to intellectual creativity. Promotion and protection of IP spur economic growth. It creates a conducive atmosphere for growth of industries and employment. Patents can generate revenue through technology transfer, licensing and assignment, trademark links the products to its producer and helps to build customer loyalty in trade and business, a registered industrial design provides protection as well as attract customers to the product. Similar is the case with other IPRs. GI can bring about economics upliftment of an entire community. It is the only IPR that provides rights to a community, instead of an individual or group of individuals. Therefore, the dissemination of IPR information and its suitable implementation is the highest requirement for any country. The present paper discusses various IPR concepts, such as patents, trademarks, product designs, geographical indications, copyright, etc, with their corresponding laws, legislation, needs and roles directly related to the situation in India. Most of the patents filed in India are by reputed technological firms from foreign countries. Government of India has realized the urgency of bringing a revolution in the field of IPR and is taking initiatives in this direction. However, the status of India involvement in IPR related activities has been briefly discussed. Therefore, the present paper tries to examine the issues and prospects of IPR in India with the help of secondary sources collected from books, articles and journals etc.

**Keywords:** - Intellectual Property Rights, India, Emerging, Issue.

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## 1. INTRODUCTION

Intellectual Property (IP) refers to any basic human cognitive structure, such as technical, literary, artistic or scientific constructs. The legal rights granted to the creator or manufacturer to protect their innovation or manufactured product are known as Intellectual Property Rights (IPR). These legal rights give the creator or the owner an exclusive authority to control or make full use of his / her product or invention. Some major IP rights include utility models, trade secrets, trademarks, patents, geographical indications, integrated circuit layout design, Industrial designs, new species of plants and animals, and copy right and related rights, and new plant varieties. It is widely acknowledged that intellectual property plays a significant role in today's economy. IPR is a powerful weapon for protecting the inventor / creator of IP's money, investment of time and effort, as it grants the creator / inventor and exclusive right to use their creation / product for a certain amount of time. India is well known for its intellectual skills in software engineering, missile technology and other technological

fields. In terms of registered patents, industrial design, trademarks etc. India lags in the generation of IPR properties. India ranked 29<sup>th</sup> among 30 countries in the IP index around the in a recent report by the US chamber of Commerce. Any society's growth depends directly on IPR and its policy frame work. Lack of awareness of IPR resulted in the death of innovations, a high risk of piracy, economic loss and the deterioration of the country's intellectual age. Thus, there is an urgent need for the dissemination of IPR knowledge to improve indigenous research and technology innovations and developments. As per Article 2 of the World Intellectual Property Organization (WIPO), the intellectual property shall include "rights relating to literary, artistic and scientific works, inventions in all fields of human endeavour, scientific discoveries, industrial designs, trademarks, service marks and commercial names and designations, protection against unfair competition, and all other rights resulting from intellectual activity in the industrial, scientific, literary or scientific fields". In this research paper an effort is made to highlight various situational intellectual property rights to India with their corresponding laws, regulations, needs and role in society.

## 2. Literature Review

Intellectual Property Rights (IPRs) have become important in the face of changing trade environment which is characterized by global competition due to: high innovation risks, short product cycle, investments in R&D, production and marketing and need for highly skilled human resources.

### **Barbiroli, Giancarlo 2001: -**

The author in this article explains the aspects of global performance: "internal" and "external", impacts, the indicators can measure the materials, energy, environmental, operational, volume, inputs effectiveness/efficiency of a process, the quality and environmental performance of a product, both at the technical and economic level. The socio-economic sphere, they can measure the effects produced by a partially or radically new technology on total and intellectual employment, and on the environment. Within the strategic sphere, they can measure domestic and international importance, the degree of indispensability, and the knowledge advancement. Moreover, at the company sphere, data can be drawn 6 to 12 months after the innovation has been implemented, while at the macro-sphere It is advisable to wait for 1 to 2 y.

### **Lall, Amar Raj; Khurana, Vinod; 2002:**

The author in this article evaluates and discusses about the outline of some of the issues arising in connection with brand valuation in the changing economic scenario their Types of brands, their valuation, intangible and tangible benefits of brand valuation.

### **Robert F. Reilly; Robert P. Schweih 2004:**

The author in this chapter explains Intellectual Property Income Projections: Approaches and Methods. According to the current observations of the author the Valuation of Intellectual Property and Intangible Assets, the total value of an intellectual property is based on three components: 1. The current and/or anticipated applications of the intellectual property 2. Logical extensions of the intellectual property 3. Speculative extensions of the intellectual property. emphasis on reliability and alternative scenarios OF income projections are referred which will allow the analyst to estimate (1) the maximum potential upside income projection (i.e., best case) as well as (2) the maximum potential downside income projection (i.e., worst case). Also different methods of valuations along with respective case studies are suitably provided.

### **Bernard Marr & Jay Chatzkel 2004: -**

The author in this paper explains the importance visual representation of the strategic content of an organization utilized for creation of intangible assets and capital. The paper further explains that understanding the interrelationships and interdependencies of intangible assets improvises the efficiency of the management of the organization.

### **Ravindran, Sudhir Raja 2004:**

The author in this article. discusses the innovation strategy and capacity building provisions adapted due to IP structure/infrastructure. Commercialization of innovations and invention into advanced processes. The further emphasis for the improvement of IP laws and infrastructure in developing countries.

**Richard A. Spinello: Herman T. Tavani, 2005:**

The author in this chapter explains the confusions relating to exporting trademarks. The determination relating to 'likelihood of confusions' of trademarks arises when the infringement and passing-off of the brands in the domestic and international markets across the globe. Counterfeiting through infringements and lookalikes results into dilution of the brand depending on different features of the trademark. The authorities i.e. judicial decision makers evaluates both allegedly conflicting trademarks in the contexts in which they are used and make a determination about whether the dual usages create a "likelihood of confusion".

**Larysa Antoniuk 2005:**

"The author in this article explains the principles of international competitiveness of nations. through intra-national activities. On the basis of quantitative and qualitative indicators the author analyzes the innovation competitiveness of Ukraine's regions and suggests what principles can be applied to enhance the competitiveness of Ukraine's economy. Principle: a state strategy of enhancing international competitiveness should be designed on the basis of the National Innovation System and operate at the regional and sectorial levels. "

**Derek Bosworth, Elizabeth Webster 2006:**

The author in this book suggests different methods of measuring the private value of intangible capital. Three Methods of Estimating the Private Rate of Return of Intellectual assets are explained- i) Rate of return approach, ii) Production function approach and iii) Market valuation approach. Further the concept is explained through various Example Empirical Results: R&D and IP Proxies for IAs; Other Investments in IAs and Computers and IT systems. These specific approaches are intended to measure the private returns to the investment through intellectual assets.

**Claas Junghans, Adam Levy, Rolf Sander, Tobias Boeckh, Jan Dirk Heerma, and Christoph Regierer 2006 :**

The author in this chapter explains the economic objectives of protecting intellectual property of a company. The technical and legal elements of patenting and the filing process of patent enables the reader to clearly position patents within the context of business strategy. Further to it how strategically patent filing can be beneficial to company. The author has also explained in detail about the factors influencing filing strategy and claim and their implications on the market economics and commercialization of the products of the company.

**Moerman, Lee 2006:**

The author in this article explains economic frameworks, such as accounting, which recognize and value intellectual property for providing information for decision making & discourse of accounting in recognition of intellectual property as an asset according to the new International Accounting Standards. The legal and accounting discourses in which intellectual property rights are acknowledged are compared & these discourses are not necessarily aligned. The effects and implications of the development of a global regime for accounting for intangibles may eventually harmonize the accounting treatment for intellectual property

**Larissa Rudenko 2007:**

The author explains importance of studying transnational corporations with global markets in new competitions and regulation. Effective business model of development: transnational corporations that optimize the constantly growing cash flows in their dynamic structures. Hypothesis of the twenty-first century changes in reasons of transnational accumulation of capital with the consequences to modern priorities of development (economic democratization, socialization, and economization). The traditional approach (marketing-based), the financial approach: which takes into account the process of capital turnover, the architecture of the business models: a system of resources provision, efficient capital management, while allowance for the changes in the external environment requires constant upgrading of the business model with modifications.

**Tetyana Veremienko 2008:**

The author in this article discusses the cross-cultural aspect of globalization and its effect on the business scenario. The peculiarities relating to focusing on the future positive alternative to the civilization development led to because of the cross-cultural peculiarities dealt with the influence on the worldwide dynamics within modern global paradigm.

**Raju, K D 2008:**

The author in this article examines various provisions of intellectual property taxation under different legislations in India. It argues that the lack of a comprehensive policy on intellectual property taxation acts as a disincentive to technology transfer and IP creation in India. Different categories are taxed with different objectives and purpose, Sometimes economies may want to discourage use of foreign goods within their countries and consequently therefore the tax on imported goods will be high. However, interestingly, taxing of intellectual property is a recent phenomenon across the globe.

**Richard Razgaitis 2009:**

The author in this chapter evaluates the risk and rewards structure surrounding the process of creation of intellectual assets. The author explains further that this technology opportunity realization process has to occur within an environment of both high risk and high uncertainty. Along with this the aspects related to adjoining uncertainty, prognosis, unexpected risk factors, valuation process, pricing techniques and customer development structure relating to buying & selling of the final product are explained in details along with suitable examples/case studies.

**Tim Heberden 2011:**

The author in this book has describe the factors that guide the determination of royalty rates for licensed intellectual property rights (IP). According to the author the Key principles of IP valuation are also discussed as royalty rates and value are flip sides of the same coin; both are driven by the earnings capability of the asset. It further includes different facets of the licensing Include royalty rate negotiation techniques such as Transfer pricing, litigation, Strategic planning and valuation. The aspect of valuation of IP reflecting for financial reporting, tax compliance, pre-acquisition due diligence, and strategic asset management.

**Denys Kiriakov 2011:**

The author in this article states the contemporary strategy and tactical decision making pattern utilized during international merger and acquisitions transactions. These aspects have been explained further through researched on exemplary buyer (a corporation) having strategies completely adhered to transfer of assets and information in the process of M&A transactions.

**Ravi Kiran and Vijay Jain 2012:**

The author in this paper explains the challenges faced by small and medium enterprises (SMEs) when dealing with the technological innovations and its implementations in the state of Punjab in India, The author highlight the low level of awareness and mediums to reach out in matters of IPR in India. The author further suggests the policy initiatives and organizational factors for improvement of the IPR sector in the SME sector.

**Kankanala, Kalyan C 2012:**

The author in this conveys the business worthiness by value of asset by use of IP. Advantages: IP exclusivity helps business to form its competitive value, asset value of IP is much higher than the tangible ones, amalgamation, merger & alignment of various activities ranging from every aspect from building Culture to effective portfolio management maximizes benefits from IP.

**Thakur, Aditi Verma 2012:**

The author in this article attempts to generalize the perception of business unit with respect to business units. It states that brand name is a powerful medium for any business. A brand name serves as a strong tool not Just for competitiveness of the firm but also for enhancing the commercial aspect of the products. The author concludes by stating that the business needs to understand the importance of names and identities and their hidden effects on the business.

**Qinghai, Li; Sizong, Wu; Chen, Shouming; Junzhe, Ji 2013:**

The author in this article explains the problem wherein Chinese firms are easily subject to litigation and accusation of IP infringement, and how they can reduce these associated risks. imp reasons of negative reputation of IP abuses, penetration in high value-added area in terms of branding and R&D, entry in developed countries with sophisticated products, and passive response to litigation and allegation, are important reasons. 3 strategies are there to build reputation: getting technology and IP with joint venture and

acquisition, getting technology and IP with R&D and patent application, and toughness against litigation. He further evaluates Chinese way to illustrate these strategies and incorporate reputation into IP defensive strategies, therefore helps emerging economies which attempt to upgrade from labor-intensive to R&D and brand intensive enterprises.

**Gerald Groshek 2014:**

The author in this article explains different aspects of economic measures adapted and integrated since independence in Ukraine. Further the cross- border and intra-industry trade implication of Ukraine links with EU Partners and Russia. He explains how the intra-industry across nations affects the business at domestic and internal level, not just for the nations dealing with these aspects but also the allied resources. The key elements for economic consideration into enhanced integration with the EU partners as well as protection of its own interest and links with traditional trading partners. The progress of business in Ukraine is resultant factor of adaptation of intra-industry trade facilitation & trade flows by the business entities.

**Svitlana Sidenko 2015:**

The author in this article evaluates the driving forces for economic globalization and characteristics of Its process, the growth of world trade, the rise mobility of financial capital, the growing role of transnational corporations. the development of network technologies and internet. Problems arising from the growing interdependence of a globalized world: environmental issues, security, worldwide disparity of socio-economic development of countries and regions. In conclusion attest he is trying to say the urge of global management.

**Ravi Kiran 2016:**

The author in this article explains the cultural adaptation of IPR tactics into the pharmaceutical industry and the effect of the same on the growth of the industry not just in the domestic market but also in the global market. The search conducted in this paper determines status of IPR in individual firms and the results indicate noticeable growth but states need for improvement in awareness and implementations of IPRs across the industry.

**Intellectual Property Rights and their Classification:**

The term Intellectual Property is linked to the imagination and ingenuity attributed to the human brain. Numerous efforts are needed to develop or create something new in terms of manpower inputs, time, resources, ability, money etc. The ultimate concept by which an innovation or development happened is an intangible property of the person who has taken pains for the invention or creation. Consequently, according to the statute, the inventor or innovator is granted legal or exclusive rights to reap the economic benefits of their invention or production. Intellectual Property Rights (IPR) are proprietary rights through which proprietors may sell, lease or license their Intellectual Property (IP) similar to physical property. But one has to sign IPR in some presentable or measurable form at the legal authority to assert their benefits. Growing from of IPR gives the author and / or developer special rights to maintain and reap economic benefits that further encourage skills and societal innovations.

Based on the type of invention and development of the human mind and its uses, the intellectual property rights are defined as follows: (i) patents, (ii) trademarks, (iii) industrial designs, (iv) layout design of an integrated semiconductor circuit, (v) geographical source indications, (vi) copy right and related rights (literary and creative works, musical works, artistic works, photographic works).

**WIPO:** The world Intellectual Property Organization (WIPO) was founded at Stockholm in 1867 to protect the IPR worldwide. It later became one of United Nations agencies in 1974. The WIPO system functions as well as governing various IPR related policies internationally. WIPO's main objective is economic, social and sustainable cultural development with bio-diversity protection, traditional information through a balanced and efficient international IP framework. In addition, it is responsible for harmonizing differences between different countries, especially between developed and developing nations, by amending international regulations to ensure that each of them has equal opportunities in the emerging world.

**Intellectual Property Systems in India:**

Most European countries created patent laws between 1880 and 1889. In 1856, the Indian Patent Act was enacted, which stayed in effect for more than 50 years before being updated and renamed as "The Indian

Patents and Designs Act, 1911." Some years after the country's independence in 1970, the "Patents Act, 1970" was enacted as a comprehensive bill on patent rights. Specific statutes protected just certain types of intellectual work; until recently, only four types of intellectual properties were protected. Copy rights, trademarks, patents, and designs were all used to provide protection. Designs were governed by the Designs Act of 1911, trademarks by the Trade and Merchandise Marks Act of 1958, copyrights by the Copyrights Act of 1957, and patents by the Patents Act of 1970 in India.

With the foundation of the World Trade Organization (WTO) and India's signing of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), various new laws were enacted to protect intellectual property rights and meet international commitments. The following were among them: The Trademarks were replaced by the Trademark Act, 1999, the Designs Act, 1911 was replaced by the Designs Act, 2000; the Copyright Act, 1957 was amended several times, the most recent being the Copyright (Amendment) Act, 2012; and the Patents Act, 1970 was amended' in ,2005. Plant varieties and geographical indicators were also included in the new regulations. The Geographical Indications of Goods (Registration and Protection) Act of 1999 and the Protection of Plant Varieties and Farmers' Rights Act of 2001 are the two laws in question.

#### **IPR Laws in India:**

The TRIPS agreement established basic standards for the protection of IPR rights, as well as a deadline by which countries must amend their laws to meet the requisite level of protection in light of this, India has taken steps in recent years to alter and amend various UP Acts. Various IP laws enacted by the Government of India are listed below.

#### **Main IP Laws: enacted by the Legislature:**

- Patents (Amendment)Act, 1999 (1999)
- Patents (Amendment)Act, 2002 (2002)
- Patents (Amendment)Act, 2005 (2005)
- Protection of Plant Varieties and Farmers' Rights Act, 2001 (2001)
- The Semiconductor integrated Circuits La, out-Design Act, 1000 (2000)
- The Designs Act, 2000 (2000)
- Copyright (Amendment) Act, 1999 (1999)
- The Geographical Indications of Goods (Registration and Protection) Act 1999(1999)
- The Trade Marks Act, 1999 (1999)
- Copyright Act, 1957 (1999)
- Copyright (Amendment)Act, 1994

#### **IP – related Laws: enacted by the Legislature: -**

- The Cable Television Networks (Regulation) Act, 1995 (2002)
- Cable Television Networks (Regulation) Amendment Act, 2000 (2000)
- Cable Television Networks (Regulation) Amendment Act, 2002 (2002)
- The Cable Television Networks(Regulation) Amendment, ct, 2007 (2007)
- The Code of Criminal Procedure, 1973 (2006)
- Biological Diversity Act, 2002 (2002)
- The information Technology Act, 2000 (2000)
- The Telecom Regulatory Authority of India Act, '1997 (1997)
- The Telecom Regulatory Authority of India (Amendment) Ordinance, 2000 (2000)
- The Arbitration and Conciliation Act, 199 I (1996)
- Drugs and Cosmetics Act, 1940 (1995)
- The Cinematograph Act, 1952 (1984)
- The Code of Civil Procedure, 1908 (1980)
- The Seeds Act 1966 (1966)

- The Seeds (Amendment) Act, 1972 (1972)
- The Customs Act, 1962 (1962)
- The Indian Wireless Telegraph Act, 1933 (1933)
- The Indian Penal Code (1860)

**Implementing Rules / Regulations Intellectual Property: -**

- The Protection of Plant Varieties and Farmer's Rights Rules, 2003 (2003)
- Protection of Plant varieties and Farmers' Rights Regulations, 2006 (2006)
- Protection of plant Varieties and Farmers rights (Criteria for DUS for Registration) Regulation 2009 (2009).
- The protection of plant Varieties and Farmers' Rights (Second Amendment) Rules, 2009 (2009)
- Direction of the Telecom Regulatory Authority of India (2008)
- Designs (Amendment) Rules, 2008 (2008)
- Circular on implementing the intellectual Property Rights (imported Goods) Enforcement Rules, 2007 (2007)
- Intellectual Property Rights (imported Goods) Enforcement Rules, 2007 (2007)
- Patents Rules 2003 (2003)
- Patents (Amendment) Rules, 2005 (2004)
- Patent (Amendment) Rules 2006 (2006)
- Biological Diversity Rules, 2004 (2004)
- The Drugs and Cosmetics Rules, 1945 (as corrected upto November30,2004) (2004)
- The Geographical indications of Goods (Registration and Protection) Rules, 2002 (2002)
- Trade Marks Rules 2002 (2002)
- Semiconductor Integrated Circuits Layout-Design Rules, 2001 (2001)
- The Designs Rules, 2001 (2001)
- Information Technology (Certifying Authorities) Rules, 2000 (2000)
- Copyright Rules, 1958 (1958)
- The International Copyright Order, 1999 (1999)

**The Patents Act, 1970.:**

A patent is a form of intellectual property. It consists of a set of exclusive rights granted by a sovereign state to an inventor or their assignee for a limited period of time, in exchange for the public disclosure of the invention. An invention is a solution to a specific technological problem, and may be a product or a process.

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. These claims must meet relevant patentability requirements, such as novelty and non-obviousness. The exclusive right granted to a patentee in most countries is the right to prevent others from making, using, selling, or distributing the patented invention without permission.

Under the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of intellectual Property Rights, patents should be available in WTO member states for any invention, in all fields of technology, and the term of protection available should be a minimum of twenty years. Nevertheless, there are variations on what is patentable subject matter from country to country.

**The Patents (Amendment Act, 1999): -**

The Patents (Amendment) Act, 1999 is the first of three amendments to the patents Act of 1970 to bring India's patent regime into compliance with the WTO TRIPs Agreement. It provides for the filling of applications (date stamping) for product patents in the areas of drugs, pharmaceuticals, and agrochemicals even though

such patents were not yet allowed at the time this Act was passed. This Act has retrospective effect from January 1, 1995.

**Patents (Amendment) Act, 2002: -**

The Patents (Amendment) Act, 2002 is the second of three amendments to the Patents Act of 1970 to bring India's patent regime into compliance with the WTO TRIPs Agreement. This Act was introduced with the new Patent Rules, 2003, which replaced the earlier Patents Rules, 1972.

**Patents (Amendment) Act, 2005: -**

The Patents (Amendment) Act, 2005 is the third of three amendments to the patents Act of 1970, to bring India's patent regime into compliance with the WTO TRIPs Agreement. It extends the product patent protection to the areas of pharmaceuticals and agricultural chemicals. This Act contains relating to patent and traditional knowledge as per art 23(1) (K) and Article 23 (2) (K) and genetic resources Article 10 and 25. A very important concept in terms of international agriculture is that patents are territorial. A patent in one country generally has no force in other countries. However, products sold in a country, even if they are made outside the patent domin of that country, may infringe a patent if the product is re-imported into the country where protection is effective. Patent terms vary considerably from country to country, although the PCT provides a mechanism for some harmonization.

**As per Section 3 of the Patent Act, 1970 the following are not patentable: -**

- Frivolous invention.
- Invention against the natural laws.
- Invention which are not fair to health of human, animal, plant life, environment as well as country to public order or morality.
- Discovery of any living things; discovery of anyone living substances occurring in nature, formulation of any abstract theory; discovery of any scientific principle.
- Substance or chemical obtained by mere admixture resulting in the aggregation of the properties; mere arrangement or rearrangement of known devices.
- Invention relating to atomic energy and related to security of India.

In the patenting process, on the one hand, inventor is given exclusive rights that offer recognition as well as financial benefits, but on the other hand, at the time of filing the patent application, inventor must reveal all relevant information in a concise manner to the patent office. Anyone can see the information available in the patent document and there is no doubt that it gives other researchers guidance to further innovate in the relevant area. In India the patent registration process is regulated by the office of the Controller General of Patent Designs and trademarks. This office falls under The Ministry of Commerce and Industry, Department of Industrial Policy and Promotion. The steps to patent filling are as follows:

- Step Filing of Patent Application or Priority Application.
- Publication of Application.
- Opposition of Patent.
- Request for Examination.
- Examination and Clarification of raised Objections, if any.
- Grant of Patent.

**Compulsory Licenses:**

The Patent Act gives inventor monopoly on extracting financial gains for invention however, contrary to Section 92 of the Patent Act, 1970 government may grant compulsory licenses to third parties for non-commercial public use in the event of a national emergency. Besides these, if approved patent proprietors do not satisfy society's demand through willingness or unable to produce the patentable product or service such as medicines, food, medical equipment, vaccine, life-saving equipment etc., the government is completely allowed to enable someone else to produce the patentable product by issuing compulsory licenses. In this case the government is liable to pay the patent owner equally justifiable economic benefits.



### **Protection of Plant varieties and Farmers' Rights Act, 2001: -**

The Government of India enacted "The Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act, 2001" adopting *sui genetic system*. Indian legislation is not only in conformity with international Union for the Protection of New Varieties of Plants (UPOV), 1978, but also have sufficient provisions to protect the interests of public sector breeding institutions and the farmers. To implement the provisions of the Act the Department of Agriculture and Cooperation, Ministry of Agriculture established the Protection of Plant Varieties and Farmers' Rights Authority on 11<sup>th</sup> November, 2005.

#### **The main functions of the PPF&FRA are: -**

- Registration of new plant varieties, essentially derived varieties (EDV), extant varieties;
- Developing DUS test guidelines
- Developing characterization and documentation of varieties registered;
- Compulsory cataloging facilities for all variety of plants;
- Documentation, indexing and cataloguing of farmers' varieties;
- Recognizing and rewarding farmers, community of farmers engaged in conservation, improvement;
- Preservation of plant genetic resources of economic plants and their wild relatives;
- Maintenance of the National Register of Plant Varieties and
- Maintenance of National Gene Bank.

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

A common *sui generis* design right protects the design or topography of semi conductor materials, particularly integrated circuits. These are protected internationally by the IPIC Treaty of 1989, and in the European Union by Directive 87/154/EEC. The reproduction of a protected topography is prohibited, as is the import of infringing materials (Art-5). Protected topographies may be identified by a capital T in a variety of forms, including T (Art 9). The exclusive rights of the designer last for ten years from the first commercial exploitation or for fifteen years from the first creation for topographies that are not exploited (Art 7).

#### **The Designs Act 2000: -**

An Industrial design right is an intellectual property right that 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 colour, or combination of pattern and colour 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.

Under The Hague Agreement Concerning the international Deposit of Industrial designs, a WIPO administered treaty, a procedure for an international registration exists. An applicant can file for a single international deposit with WIPO or with the national office in a country party to the treaty. The design will then be protected in as many member countries of the treaty as desired. Design rights started in the United Kingdom in 1787 with the Designing and Printing of Linen Act and have expanded from there.

Throughout India, according to the Design Act, there is a 10-year term for the safety of industrial design. This term may be further extended to 5 years. By encouraging more aesthetically pleasing goods for society, an industrial design promotes innovation and skill development among the individual and manufacturing sectors. The product's form and shape not only produces visual appearance but also implicitly correlates with ergonomics in the case of vehicle, furniture, car etc. and plays a major role in the comfort of customers. Industrial design is also dealt with by patent officers at Chennai, Mumbai, New Delhi & Kolkata. The Patent Office Kolkata maintains the design registry as the statutory requirement of all of the submitted industrial design knowledge concerned.

#### **Copyright Act, 1957: -**

This Act has been amended five times since its enactment in 1957 (1983, 1984, 1992, 1994 and 1999 with the amendment of 1994 being the most substantial). This Act repealed the copyright Act of 1914, which was essentially the extension of the British Copyright Act, 1911 to India.

Copyrights protect expression of idea of author, artist and other creators which is concerned with mass communication. It protects only form of expression of idea, not the idea as such. Development of any country or society depends upon creativity of their people. Thus copyright encourage such type of activities. The following literary and artistic works are covered under copyrights:

- Literary and scientific works: novels, poems reference works, newspapers, plays, books, pamphlet, magazine, journals etc.
- Musical work: songs, instrument musical choruses, solos, bands, orchestras etc.
- Artistic works: such as painting, drawings, sculpture, architecture, advertisements etc.
- Photographic work: portraits, landscape, fashion or event photography etc.
- Motion pictures: it includes the cinematography works such as film, drama, documentary, newsreels, theatrical exhibition, television broadcasting, cartoons, video tape, DVDs etc
- Computer Programmes : computer programmes, software's and their related databases, Maps and technical drawings.

#### **Reproductive right and the associated rights:**

- A closely related area is "associated rights" or copyrights that are identical to copyright rights. The privileges protected by such rights are the rights of performers (such as actors and or musicians) in their performance; manufactures of phonograms (such as compact picture discs or sound or compositions) recording and transmitting them in radio and television programs. The WIPO performance and Phonograms Treaty (WPPT), which was adopted in Dec 1996 and entered into force on May 20, 2002, specifies that the concept of performer for treaty purposes includes performer of a folklore phrase. Someone automatically obtains copyright after completion of the work by virtue of creation, hence, registration of copyright is not necessary. Nonetheless, copyright registration provides evidence that copyright occurs in the workplace and that author is legitimate owner.
- **Copyright for Computer Software:** The Indian copyright Act, 1957, was amended in 1994 with regard to computer software, which came into effect from 10 May 1995. As per this Act, reproducing copies and transmitting software without permission or authorization is a criminal offence. Although this act gives authorized users the right to at least make backup copies of the software or any other computer programs. Copyright registration is done under the Indian Copyright Act, 1957. The Act was recently revised in 2012 as the Copyright (Amendment) Act, 2012. As a rule, the author gets copy rights immediately after creating his work without any formality, but work can be registered as prima facie evidence at the copyright register maintained in the Department of Education's copyright office.
- **Copyright Duration:** Copyrights for literary, dramatic, musical and artistic works remain in India for 60 years after the creator's death. In the case of Photography, video, copyright term for sound recording is 60 years from the beginning of the calendar year next year in which it is published or issued in. In addition to these, author always obtain moral rights for his works.
- **Copyright Infringement:** Violation of copyright means making, selling or taking financial advantage of copyrighted work without copyright owner's consent. It is a criminal offence and as per the act, minimum violation penalty is imprisonment for six months with a minimum Rs. 50,000/- fine.
- **Plagiarism:** When someone else's work of writing is taken without permission and said to be his own work than it is considered plagiarism. While facts regarded as common knowledge are not protected by copyright law, and can therefore be used by anyone. According to copyright, the fair use of some other work is permitted by paraphrasing the text or by using quotation marks with the original author's credit giving appropriate reference or citation.

#### **The Trade Marks Act, 1999: -**

A trademark is a unique symbol that distinguishes one dealer's goods from those offered for sale or placed on the market by another. Trademarks in India have been protected for more than four decades by the Trade and Merchandise Mark Act, 1958. India has been a member of the World Trade organization since its foundation. One of the agreements in that concerned intellectual Property rights was signed (TRIPS). India joined the Paris

Convention in December of 1998. Furthermore, the Trademark Bill, which was introduced in 1994, is the result of extensive changes to the Trade and Merchandise Marks Act, 1958. The said modification can be referred to as modernization as it was made to facilitate trading and commercial practices, to increase international trade through globalization, to attract foreign investment, and, most importantly, to make trademark management as simple as possible, with greater recognition of the same in the legal system. The bill was not passed, but it did highlight the areas where significant changes were needed. As a result, the Trademarks Bill of 1999 was presented, which included a fresh review of the necessary developments in different areas, such as trade and commercial practices, globalization, and so on. It international trade demands and the framework of trade requests for harmonization of numerous parts of Indian law relating to intellectual Property Rights led to the formation of the World Trade Organization. The TRIPS agreement established basic standards for the protection of IPR rights, as well as a deadline by which countries must amend their laws to meet the requisite level of protection. In light of this, India has taken steps in recent years to alter and amend various IP Acts. Throughout India, the initial period for registration of trademarks is 10 years, and must be extended from time to time afterwards. The applicant may apply at Trademark Registry Office, Mumbai (head office), Delhi, Kolkata, Ahmadabad and Chennai for registration of a trademark.

#### **Collective and Certificate Marks:**

Collective marks and certificate marks are used in many countries to show that the output of the companies has specific standards. For example, in the case of textile chemical processing (dyeing and printing), a group of companies that use herbal or eco-friendly chemicals strictly that think of some collective marks in addition to their individual marks. The collective / certificate mark is just a few examples of the ISO, hallmark, wool label etc. Therefore, certificate marks; safeguard the interest of the consumer by helping them choose among the deceptive goods, the quality product.

#### **Trade Secrets:**

Every innovation or information that is not revolutionary (not patentable) but economically useful and offers economic benefits can be kept as a trade secret. Besides this novel or artistic information, when patent registration, copyright, industrial design, etc. is pending or in process, is often held as a trade secret. Technological knowledge or processes such as recipes, concepts, tools, software, blue prints, designs, formulas, charts, architectural plans and manuals or any commercial information or business strategy or secret in the form of any data collection or databases, marketing plans, financial information, personal records, etc. can be kept as trade secret. This right has huge potential to transform secret knowledge into economic gains. Hence, most companies shield their inventions by trade secret rather than patent. Trade secrets serve as an opportunity for incremental technical progress which does not satisfy the non-evident requirements of patent law and copy rights. It takes years of experience, study and skill to create a trade secret. Coca-Cola's structure for its formula is a good example of trade secrets. Specific rules for trade secrets exist in some jurisdictions, such as the Unfair Competition Prevention Act in Japan, the Uniform Trade Secrets Act in the USA. Under undisclosed details, the TRIPS. agreement acknowledges trade secrets but remains silent on processes and modalities.

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

A geographical indication (GI) 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). The use of a GI may act as a certification that the product possesses certain quality, is made according to traditional methods, or enjoys a certain reputation, due to its geographical origin.

Requirements or regional or local origin to classify products for commercial purposes are no new phenomenon. Many agricultural products have special characteristics which are affected by geographical environment or soil. WIPO has chosen the term Geographical Indication (GI) to include all existing means of protecting such names and symbols, irrespective of whether they indicate that the qualities of a given product are due to its geographical origin (such as appellations of origin) or merely indicate the place of origin of the product (such as indication of source).

The Champagne, Havana, Darjeeling tea, Arabian horses, Alphonso Mango, Nagpur Orange, Basmati etc are some well-known examples of names that are recognized worldwide with their unique quality product and registered as GI. Likewise, the basic qualities of the goods are linked to human factors and their expertise in the field of handicrafts, textiles, etc. Brand reputation is built up and preserved in the best suited environment by masters or creators of their talent which belongs to a particular region or locality. The ability is typically passed from one generation to the next by particular tribe or area, with great cautions and compromises. Known examples of Geographical indicators for state of the art craftsmanship are the Dhaka Muslin, venetian glass, China Silk, Mysore Silk, Chanderi Sari, Kanchipuram Silk Saree, Kully Shawls, Solapur Chaddar, Solapur Terry Towel, Kashmiri Handicrafts etc.

In India, registration of such goods can be performed under the Registration and Protection of Geographical Indication of Goods Act 1999 and the Registration and Protection of Geographical indication of goods Regulations 2001. The GI Act is governed by GI's Registrar the Controller General of Patents, Copyright and Trade Marks. Chennai's central government has set up "Geographic Indication Registry" where right holders from all Indian Jurisdictions can register their GI. Protection under these laws is granted under GI for 10 years, and extension is possible for another 10 years from time to time.

#### **Biological Diversity Act, 2002: -**

The National Biodiversity Authority (NBA) was established in 2003 to implement India's Biological Diversity Act (2002). The NBA is a Statutory, Autonomous Body and it performs facilitative, regulatory and advisory function for the Government of India on issues of conservation, sustainable use of biological resources and fair and equitable sharing of benefits arising out of the use of biological resources. The Biological Diversity Act (2002) mandates implementation of the Act through decentralized system with the NBA focusing on advising the Central Government on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of benefits arising out of the utilization of biological resources; and advising the State Governments in the selection of areas of biodiversity importance to be notified under Sub-Section (1) of Section 37 as heritage sites and measures for the management of such heritage sites; The State Biodiversity Boards (SBBs) focus on advising the State Governments, subject to any guidelines issued by the Central Government, on matters relating to the conservation of biodiversity, sustainable use of its components and equitable sharing of the benefits arising out of the utilization of biological resources; The SBBs also regulate, by granting of approvals or otherwise requests for commercial utilization or bio-survey and bio-utilization of any biological resource by Indians. The local level Biodiversity Management Committees (BMCs) are responsible for promoting conservation, sustainable use and documentation of biological diversity including preservation of habitats, conservation of land races, folk varieties and cultivars, domesticated stocks and breeds of animals and microorganisms and chronicling of knowledge relating to biological diversity. The NBA with its headquarters in Chennai, Tamil Nadu, delivers its mandate through a structure that comprises of the Authority, Secretariat, SBBs, BMCs and Expert Committees, since its establishment, NBA has supported creation of SBBs in 28 States and, facilitated establishment of around 31,574 BMCs.

#### **Finding and Suggestions: -**

- A more proactive stance is required from the scientists and policy makers. There will be substantial support from the private sector to make these types of changes. More training and education is required for institutions to develop strategies that will keep down patent costs by selecting the focus countries of the technology. The use of innovative partnerships, where the partners share or bear all of the costs of filing is also important.
- More integrated training is required to deal with the whole issue of "Product Stewardship", there are a wide range of different issues surrounding product deployment that need to be teased apart, then reintegrated to meet both local and global standards for food and health.
- There should be more focused education at the University Level on IPR and the development of business activities. Scientists should also be made aware of the enabling environment that can be associated with effective IP Management.

- New technologies and new trained relationships offer tremendous opportunities for new growth, including the rapid expansion of new markets being available to developing countries. There is still a need for greater access to markets. New markets provide the opportunity for greater diversification, greater output and as such more and better employment opportunities. Clearly greater access to markets creates internal competitive pressures that in a positive environment can be translated into creased efficiency and higher productivity. The initial impetus must be focused on the developing world gaining greater access to industrial markets. This will turn lead to greater general market access, benefiting all parties concerned. Again the use of innovative partnerships, particularly in the private sector, will be crucial to the success of this transformation process.
- Some work in private investment in agricultural and product development has already been undertaken by a number of organizations including the World Bank and IFPRI. More studies are required, and are needed across a range of models. The focus should not be peruse on the major agricultural multinationals, but also on the small venture capital seed companies in the developing world.

### 3. Conclusion

Intellectual property rights have grown to such prominence in India over the last two decades that they now account for a significant portion of the economy. IPR laws and regulations have existed in India since independence, but after the mid-1990s, existing laws were revised, and new rules were enacted to improve the IP regulatory structure. In today's market, IPR protection is critical for trade and business. As our country has a wide range of competition, IPR protection supports ethical business practices and innovation. India has recognized the importance of protecting intellectual property rights and has signed a number of international accords and conventions to that end. Intellectual property rights are very important for the sustainable development of society. The IPR is a basic necessity to be part of local as well as global fair exchange, since without disseminating IPR awareness and application, it is really impossible to create the creative environment. Including IPR in the basic education system and facilitating IPR recognition by imporing innovators and developers is important for policy makers. India has all the resources available in terms of raw materials, cheap labour, innovative and dedicated creative manpower. There is no question that by pursuing intellectual property rights, India and other developing countries will certainly leverage its proportionate share of world trade. Recent judicial decision and measures by other agencies demonstrate that India is heading towards an economy with efficient intellectual property protection. Without a question, India has taken several initiatives to improve IPR, but there are still many more steps to be taken.

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