

INTELLECTUAL PROPERTY LAW – WHY AND HOW INDIA SHOULD IMPROVE IT?

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INTRODUCTION

Intellectual property laws are the set of rules and regulations which protect the rights of inventors or manufacturers and protect their inventions, innovations, or manufactured products so only their original creators get benefit from it (but the exception lies when that invention is required for the larger public then govt can take decision accordingly after compensating original innovators). In today's world Intellectual property law is the most emerging field and also a necessity to make sure that intellectual property rights can be protected. This is the way by which a country can make sure that the great minds and corporates or companies who invent, write, or research for the society their works could be protected so they get to benefit from it and they can work more efficiently but in some places like India & China, this law is not that strict which poses a lot of problems and this the reason why foreign companies hesitate because their works, trademarks or symbols get copied.

There are instances when companies do court cases but since this takes a lot of time thus they have to bear the losses because of it along with these all, literary works and artistic works also get copied, and brands' unique designs and even names get copied by local companies and since the IP law is not that strong that's why they escape easily.

These problems and instances of violation of IP rights are getting serious nowadays and India's IP law covers various fields and these are –

- Trade Marks through Trade Marks Act, 1999
- Patents through The Patents Act, 1970 (amended in 2005)
- Copyrights and Related Rights through The Copyright Act, 1957
- Industrial Designs through The Designs Act, 2000
- Geographical Indications through The Geographical Indications of Goods (Registration and Protection) Act, 1999

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- Layout Designs of Integrated Circuits through The Semiconductor Integrated Circuits Layout Design Act, 2000
- Plant Varieties through The Protection of Plant Varieties and Farmers' Right Act, 2001
- Information Technology and Cybercrimes through The Information Technology Act, 2000
- Data Protection (Data Protection Act still is not in force till February 2023).

Despite such a wide coverage of laws, India's rank in International Intellectual Property Index¹ is 43 out of 55 countries in 2022 with its IP score of 38.6 percent.

TYPES OF INTELLECTUAL PROPERTY

There are various types of IPs²

- Copyright resides in literary, musical, dramatic, and artistic works in 'original' cinematic film, and in sound recordings set in a concrete medium, its general rule is that it lasts for 60 years in addition to the author's lifespan and it acknowledges both the economic and moral rights of the owner.
- Patent – It is an exclusive right granted to the owner of an invention to manufacture, use and market the invention, provided that the invention meets certain conditions laid down in law. The patents are granted for 20 years from the date of filling out the application. To qualify for patent protection, an invention must fall within the scope of the patentable subject and satisfy the statutory requirements of innovation, inventive step, and industrial application. After a patent is issued to anyone then no person can manufacture, use, or market that invention without the consent of the patent holder.
- Trademark – It indicates the origin of goods to which it is attached or concerning which it is used. It identifies the product, guarantees quality, helps advertise the product, and is also the objective symbol of goodwill that a business has created. It can be a combination of a name, word, phrase, logo, symbol, design, image, shape, color, personal name, letter, number, figurative element, and color as well as any combination

¹<https://www.government.nl/topics/intellectual-property/question-and-answer/what-are-the-criteria-for-patenting-my-invention>

² <https://ipwatchdog.com/2015/04/03/what-if-we-dont-have-sufficient-intellectual-property-rights/id=56169>

representing a graph. All registered trademarks have a limitation period of 10 years and they can be renewed.

- Geographical Indication – All goods are identified as the origin of a particular region or that region or locality. These goods given quality, reputation, or other characteristics are essentially attributed to their geographic origin.
- Industrial Design – It protects the visual design of an object which is not purely utilized, and also deals with the outer appearance of an article, including decoration, lines, colors, shapes, texture, and materials. It consists of 3D or 2D features. In India, the initial period of 10 years of protection of design can be further extended by a period of 5 years on the payment of renewal fees thus the maximum validity of a registration is 15 years.
- Plant Variety – These protect researchers and encourage their interest in discovering a better breed of plant. It encourages the development of a new breed of plants.

AUTHORITY IN INDIA

IP in India is administered by the office of the Controller General of Patents, Designs, and Trademarks (CGPDTM). This is a subordinate office of Govt. of India and administers the Indian law of Patents, Designs, Trademarks, and Geographical Indications.

Indian govt. approved its first IPR Policy in May 2016.

REASONS INDIA SHOULD IMPROVE ITS IP LAW

In India there is not much awareness about these things and one can easily find many fake products from branded companies at less price we also saw that at least basic laws exist but the problem is not under control and one reason behind this is the poor administration system and the contributory reason is that in India the Informal sectors exist in large number and the population size of the country is also a hurdle.

In this country, if a brand gets registered and its product came in demand then usually a local company that exists in another corner of the country will copy the design and will name it very similarly, and even if buyers know then also they will buy it because the price is less and they will show that they are wearing a branded thing.

Apart from this, for literary and artistic things even if the law is there but people know that it will take years and years even if they get caught.

Initially, it looks good to people that they get the things at fewer prices but after some time when the market became full of these fake products then the situation will become so worse that they will get fake things mostly and thus the quality and services will be compromised and this will violate their consumer rights therefore strong IP Law is required so that consumers can make an educated choice about the safety, reliability, and effectiveness of the product they choose and it ensures that their choice is authentic, and of the high quality and they will get what they expected from it because in copied products innocent people get cheated easily.

Also, different situations can be taken if IP laws don't get strengthened then patents of different medicines also will not be respected and if fake medicines will come into trend then it will cost people's lives and these cases can be easily seen worldwide.

IP law is most crucial for the patented invention as it usually costs heavy loss to general citizens if without knowing every detail many local companies take the risk to generate it then they not only hurt the real inventor's profit and credit they hurt India as a whole.

Also if we take the example of geographical indications product so if IP law will not be strong and respected so fake copies and products will be sold and this will hurt the livelihood of farmers, and artisans of those places and those things and it will end up hurting their uniqueness and culture.

If in a country where IP laws are not as good that people don't worry about their IP rights then the problem of brain drain also happens because they don't simply want to do their innovations in a place that will not safeguard it and thus it demotivates the innovators, writers, artists, and entrepreneurs.

In an environment where IP laws get implemented strictly and IP laws provision provides incentives in form of security then it impacts the economy positively as business houses don't hesitate in investing in new talents because they are assured that if the thing will popularise on which they are investing then it will only benefit them and not some random local company

who just made a prototype and sold it after labeling original one's name and in this way the original creators don't get exploited.³⁴

It also can be seen that in the countries which have strict IP laws with real on-field implementation, their economy gets a boost because their market doesn't experience the flood of similar products it can also be said that it enhances the consumer's choice but we have to see that in reality, it is not enhancing the choice but the only thing it is doing is that making the consumers fool and since our markets get flooded with a similar product which looks similar and named same then we can see that it sometimes makes the business houses to shut their production because they don't get the expected even if they provide the quality.

Apart from all these a strict IP law also helps businesses, writers, innovators, etc. to market their products exclusively and it also gives them the privilege to set and control the pricing of that product.

As a business, companies, factories & entrepreneur comes into an economy that has a good reputation for its IP law so it also creates job for youth and helps govt to deal with unemployment.

It is also a fact that if India improves its reputation in this field then it will get benefited because of the market size it has and also India will have a good reputation in the western world.

Countries such as East Timor, Suriname, Somalia, Eritrea, or the Maldives do not have local laws that regulate the granting or enforcement of patents and in these places, we can see the lack of investments.

The strengthening of IP laws is also required for the reason that in this world of digitization, the infringements of IP Rights don't get restricted and even common citizens worldwide can see the copied products and this makes a wrong perception for those countries like China, every average internet user in today's world knows about cars, shoes, and software copied by them but luckily the condition is not that worse in India and things can be easily managed by political and administrative actions.

³ <https://dpiit.gov.in/sites/default/files/IPR-Reforms-11June2021.pdf>

⁴ <https://www.nibusinessinfo.co.uk/content/importance-protecting-intellectual-property>

HOW INDIA SHOULD IMPROVE IP LAW?

Today India is going on the path of development and govt is also taking steps to improve the situations related to IP laws some steps they have taken are that:

- The period of examination of new trademark applications has reduced from 13 months to less than 30 days and the trademark is being registered in about 6 months, if there is no objection or opposition filed, as compared to the 3-5 years required earlier.
- Examination of Patent applications has increased more than two folds in 2019-20 vis-à-vis 2016-17. The time required for Patent examination has reduced from an average of 72 months in 2015 to 12-30 months at present, depending upon technology fields. The fastest granted patent is the one which was granted in 41 days after filing a request for expedited examination.

But these are the initial steps toward making things better for IPR through IP laws. The first thing is a speedy process towards which govt is doing good, Then the next thing came is that govt should also arrange fast-track hearings for the cases related to IP violations and punishments with compensations should be there. Also, govt needs to clear its backlog for registration because this sometimes can snatch the first mover advantage from someone.

Patent filing and registration should be encouraged by simplifying the process more as although the situation improves it requires more reforms regarding simplifying the process in general public awareness should be also in policy because, in a country like India which is so rich in herbs and cultures, people should know that they are using some unique technique or herb which can get patent so they can get benefit because of this lack of awareness leaves our people vulnerable for big companies and they exploit them as they patent someone else's searched herb or invented a technique for making herbal medicines, etc.

Also, the govt should promote Research & Development as India is a developing nation so if govt will put money into this then surely it will be profitable for the country as then we can make products exclusive to our country like if R&D will be promoted then apart from economical gain, India will also earn goodwill through Geographical indications and export of our products to the international markets.

Policies like of Indian govt 'Make in India' and 'Atmanirbhar Bharat' is encouraging people to make products in our country but as they can't market them so its govt's the responsibility to build a platform where after taking patents and other Intellectual Property Rights people becomes able to make the world know about the product.

Strict regulation or vigilance department for the protection of patents allowed, both nationally and internationally so the ranking of India can improve as it is required for foreign funding. Awareness in public of not copying well-established brands will also help a lot and govt and civil societies should also make the local manufacturers aware of the consequences. Govt should review its all law on the international standards and as the criteria for patents is a novelty, inventive step, and industrial application so it's required to redefine these criteria because today an idea that can be so general could be performed uniquely and inventive steps should not stop people from getting patents they discovered or is historical for them and industrial application should be analyzed liberally.

CONCLUSION

IP law is a new requirement like human rights and India should take advantage of its market size by strengthening its IP law because foreign companies will want to enter our huge market but our lenient approach towards their Intellectual Property Rights is not letting us get this advantage. Also by strengthening IP laws we will encourage innovation in our own country and will also create more jobs and we will be able to deal with the problem of unemployment also we will earn goodwill like now we are earning through our products like Kashmir saffron, Rasagola, Mysore silk, Darjeeling tea, etc. It will also help in making our industries well known and the IP law is also a way to get investments both in our startups and small-scale industries which as investors will not hesitate to do so we already know the potential of India can be explored in pharma and other sectors.

India can also strengthen IP law by matching its laws with international standards and should loosen the complexity in getting the patents and should make the vigilance department so violations could be controlled and copying of products like manufacturing ABIBAS, LATA instead of BATA, etc. doesn't happen and writers, business houses, entrepreneurs and creators don't need to worry for their IPR. Also investing in R & D and public awareness is a good idea for this and a basic requirement.