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**Intellectual Property Rights: Conflict /**  
**Coexistence in Human Rights, Health and**  
**Indigenous Rights**

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**Proceedings of the International Conference on Intellectual Property Rights: Conflict/ Coexistence in Human Rights, Health and Indigenous Rights**

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## National IPR Policy 2016 - A Review

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**Abstract:** Intellectual property rights (IPR) have been defined as Ideas, Inventions, and creative expressions based on which there is a public willingness to bestow the status of property. IPR provide certain exclusive rights to the inventors or creators of that property, in order to enable them to reap commercial benefits from their creative efforts or reputation. There are several types of intellectual property protection like patent, copyright, trademark, Designs etc. Strengthening the protection of intellectual property (IP) rights will help expand the market. To achieve this, India has been making continuous efforts to alleviate problems so that we can promote creativity, innovation and commercialisation of IP. A step taken by India in fulfilling this goal was the release of the National IPR Policy in 2016, focusing on awareness, generation of IPRs, commercialisation, enforcement, human capital development, legal and legislative reforms, and management of IPRs. This paper tries to analyse the concept of IPR in Indian context in the light of new IPR policy.

**Keywords:** Human Capital, IPR, National IPR Policy, Commercialization

### I. INTRODUCTION

**E**CONOMIC activities are now increasingly driven by Inventions and Innovations. Each product is an outcome of several inventions. When we are paying for a product, a part of that payment goes to the inventor in the form of royalties. From an Economy angle, it is the inventions that are deciding the progress of the nation rather than the traditional factors like Land, labour and capital. Hence Intellectual property matters more than it appears.

Modern world's economic order which runs on capitalistic line has power to commodify almost anything. Clean air has been commodified by Kyoto protocol. Water is chargeable at most locations. One can also get Himalayan glacial water by paying much more. Electromagnetic waves are auctioned by government. In similar fashion, it is possible to buy and sell intellect, thanks to IPR regime.

IPR provides a secure environment for investors, scientists, artists, designers, traders etc. to foster innovation and scientific temper. This innovation often has potential to yield astronomical returns and rewards to creators and users. Obviously, original inventors shall have rights to such profits. However it is imperative that society at large should also be benefited by such outcomes. Thus, IPR regime aims to strike balance between public and private rights.

#### 1.1. Objectives

The main objective of this paper is to study the concept of Intellectual Property Rights and its operations in India in the light of IPR policy 2016.

#### 1.2. Methodology

Various literatures on Intellectual property Rights were collected from Books, Journals, magazines and from the official websites of related institutions. The collected secondary data are studied and presented in a simple manner in descriptive terms.

#### 1.3. Limitations

This conceptual paper discusses a broad outline of the types of IPR and its implications in India only. No detailed scrutiny regarding a particular IPR has not been made.

### II. THEORETICAL FRAMEWORK AND REVIEWS

A lot of literatures, both conceptual and empirical studies are available regarding the Intellectual property rights in various parts of the world. In this chapter, the basics and history of IPR treaties in the world and its application in India are incorporated.

#### 2.1. Various International Treaties and Its Implications in India

There are different subject matters of Intellectual property like Patents, Copyright, Trademarks, Industrial design, Plant Varieties etc. Need for protection in these different subjects arose in different periods. These are reflected in different treaties. Agreement on TRIPS, under aegis of WTO, remains most influential, comprehensive and inclusive of all. Other treaties are covered here for background information.

There are two main bodies - World Intellectual Property Organization (WIPO) under UN which administers 1-7 treaties mentioned below. 8<sup>th</sup> treaty is independent of any organization. Another relevant body is World Trading Organization. 9<sup>th</sup> (or TRIPS) is administered by WTO. 10<sup>th</sup> treaty comes under UNESCO.

1. **Paris Convention for Industrial Property, 1883** - Since it deals only with Industrial property, it covered only Patents and Trademarks. It was among first treaties to recognize various principles of International trade like National Treatment, Right of Priority, Common rules etc.



2. **Bern convention for literary and artistic works, 1886** - It provided for copyright system. It does not provide for any formality to claim protection. Protection is automatically accorded to any creation, provided work is original and other conditions under the treaty are fulfilled. It means that your work, if original, is already protected. You can claim that you have copyright.
3. **Madrid Agreement, 1881** - Governs the international recognition of trademarks. Made international filing easy and cheap.
4. **Patent co-operation treaty, 1970** - It was earlier not possible for an entity to claim protection in different countries by single application. This was made possible as it aimed for co-operation and it was open for all parties to Paris convention.
5. **Budapest Treaty of 1980** - It made possible patenting for micro-organisms. Claimant is required to deposit his invention on micro-organisms with an Authority - 'International depository of Micro-Organisms' under WIPO. He shall make all the adequate disclosures.
6. **Trademark Law Treaty, 1994** - Harmonized administrative procedures and introduced 'service marks' in ambit of trade marks. Earlier trademarks were accorded only to goods.
7. **The Hague agreement concerning the International Deposit of 'Industrial Design' 1925** - It created International Design Bureau of WIPO.
8. **International Union for protection of new varieties of plants, 1961** - This provides breeders and farmers right to new plant varieties.
9. **Agreement on Trade Related Aspects of Intellectual Property** - It is a landmark and most comprehensive treaty on Intellectual property. While earlier treaties' subject matters were specific, TRIPS deal with 8 kinds of property rights - Patents, Trademarks, trade dress, Copyrights, Industrial Designs, Plant Varieties, Integrated Circuits and layouts, and Geographical Indication. Further, almost all countries are party to TRIPS. In earlier treaties only limited countries participated. It also provides enforcement mechanism which was not available in WIPO treaties. It mandated all member countries to make their domestic laws compliant to TRIPS. India passed certain laws and amended others. India's IPR regime now stands fully compliant to TRIPS. For E.g. India amended patent law in 2005 to provide 'product' patent protection. Earlier protection was available only to 'processes'.

## 2.2. Various Subject Matters of Intellectual Property in India

### 1. Copyrights

Law - Copyrights Act 1957, amended in 2012

Ministry - Copyright Office, Ministry of Human Recourse Development

Copyright is a bundle of rights given by the law to the creators of literary, dramatic, musical and artistic works and the producers of cinematograph films and sound recordings. The rights provided under Copyright law include rights of reproduction of the work, communication of the work to the public, adaptation of the work and translation of the work.

The challenge in the future is the enforcement of copyright in digital platforms for which the statute has adequate provisions. Indian copyright owners are also victims of copyright violations and piracy. Apart from Copyrights Information Technology Act, 2000 too has certain relevant provisions for copyright in electronics and digital field.

### 2. Patents

Law - Patents Act, 1970, amended in 2006

Ministry - DIPP, Ministry of Commerce and industry

The object of patent law is to encourage scientific research, new technology and industrial progress. The grant of the monopoly is the disclosure of the invention at the Patent Office, which, after the expiry of the monopoly period (20 years) of the monopoly, passes into the public domain. The fundamental principle of Patent law is that patent is granted only for an invention which must have novelty and utility.

### 3. Trademarks

Law - Trademark Act 1999

Ministry - DIPP, Ministry of Commerce and industry

A trademark is typically a name, word, phrase, logo, symbol, design, image, or a combination of these elements. There is also a range of non-conventional trademarks comprising marks which do not fall into these statutory categories, such as those based on color, smell, or sound (like jingles). A trademark cannot be offensive.

### India joins Madrid Protocol, 2013

The Madrid System for the International Registration of Marks offers trademark owners a cost effective, friendly and streamlined means of protecting and managing their trademark portfolio internationally.



#### 4. *Designs*

Law - Designs Act, 2000

Ministry - DIPP, Ministry of Commerce and industry

Industrial designs refer to creative activity which results in the ornamental or formal appearance of a product and 'design right' refers to a novel or original design that is accorded to the proprietor of a validly registered design. Industrial designs are an element of intellectual property.

#### 5. *Geographical Indications*

Law - Geographical Indications of Goods Act, 1999

Ministry - DIPP, Ministry of Commerce and industry

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

#### 6. *Plant Varieties*

Law - Protection of Plant varieties and farmers' right Act, 2001

Ministry - Department of Agriculture and Cooperation, Ministry of Agriculture

The Central Government has notified 57 crops with their genera and species eligible for registration as new varieties.

#### 7. *Semi-conductors and integrated Layouts*

Law - Semi-conductors and integrated Layout design Act, 2000

Ministry - Department of Electronics and I.T, Ministry of Communication and I.T.

A semiconductor layout design means a layout of transistors and other circuitry elements and includes lead wires connecting such elements and expressed in any manner in semiconductor integrated circuits.

#### 8. *Traditional Knowledge*

Traditional Knowledge Digital Library

A collaboration - between the Council of Scientific and Industrial Research (CSIR) and the Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy (Dept. of AYUSH), Ministry of Health & Family Welfare, Government of India.

There is considerable unexplored potential for developing, promoting and utilizing traditional knowledge, which is a unique endowment of India.

#### 2.3. *National IPR Policy 2016*

The Union Cabinet has approved the National Intellectual Property Rights (IPR) Policy on 12<sup>th</sup> May, 2016 that shall lay the future roadmap for IPRs in India. The Policy recognises the abundance of creative and innovative energies that flow in India, and the need to tap into and channelize these energies towards a better and brighter future for all.

The National IPR Policy is a vision document that encompasses and brings to a single platform all IPRs. It views IPRs holistically, taking into account all inter-linkages and thus aims to create and exploit synergies between all forms of intellectual property (IP), concerned statutes and agencies. It sets in place an institutional mechanism for implementation, monitoring and review. It aims to incorporate and adapt global best practices to the Indian scenario.

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

With this document, India aims to place before the world a vibrant and predictable IP regime, which stimulates creativity and innovation across sectors, as also facilitates a stable, transparent and service-oriented IPR administration in the country.

An IPR Think Tank was constituted to undertake an in-depth study on the IPR scenario in the country and prepare a draft National IPR Policy. It engaged actively with various stakeholders from all over the world. Based on the comments received from the public, various Ministries/ Departments, in-depth deliberations and the inputs received from the Think Tank, the National IPR policy was formulated.

The broad contours of the National IPR Policy are delineated below:



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

### Mission Statement

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

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

### Objectives

The Policy lays down the following seven objectives:

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

These objectives are sought to be achieved through detailed action points. The action by different Ministries/ Departments shall be monitored by DIPP which shall be the nodal department to coordinate, guide and oversee implementation and future development of IPRs in India.

### Salient Features

- i. **Cell for IPR Promotion and Management (CIPAM):** A Cell CIPAM shall be created as a professional body under aegis of DIPP to address the 7 identified objectives of the Policy. Among other aspects, it shall study IP processes to simplify and streamline them, monitor public grievances, oversee capacity building of human resources and institutions for outsourced search activities, promote commercialization of IPRs and endeavor to provide a platform to connect innovators and creators to potential users, buyers, investors and funding institutions. It will coordinate with agencies at State level and with the various Ministries/ Departments of the Union Government. The data generated at CIPAM shall serve as a valuable resource for future policy.
- ii. **Awareness Campaign:** To be launched in schools, institutions of higher education like engineering colleges and law schools, centres of skill development, industry clusters etc, it aims to foster an IP culture in the country by creating awareness about the economic, social and cultural benefits of IPRs among all sections and enabling people to realize the value of their IPs as also respect for other IPRs. Syllabi and suitable course materials to emphasize importance of IPRs, shall be formulated for educational institutions at all levels.
- iii. **IP Cells:** IP cells shall be created in key Ministries/ Departments of the Govt of India, which are vital the field of IPRs, as well as in State Governments, Industry associations and clusters and major academic institutions. CIPAM shall coordinate with the Cells.
- iv. **Generation, registration and commercialization:** The Policy aims to encourage creativity and innovation leading to generation of IPs and their protection through IPRs. Registration of Geographical Indications (GIs) shall be encouraged through support institutions. Action shall be taken to encourage R&D as well as to improve IPR output from Govt laboratories and organizations, with special focus on national priority areas. Apart from creation of IPRs, for their effective commercialisation, it is essential to Identify for marketing Indian IPR-based products, especially GIs, and services to a global audience.
- v. **Traditional Knowledge Digital Library (TKDL):** TKDL's ambit is to be expanded to include other fields besides Ayurveda, Yoga, Unani & Siddha. The possibility of using TKDL for furthering R&D by public research institutions and private sector will be explored.
- vi. The Policy recognizes the importance of effective coordination between Patent office and National Biodiversity Authority for speeding up the disposal of patent applications using biological resources and associated TK.
- vii. **Cadre Management in IP Offices:** The Policy recognizes the crucial role of a motivated work force in productivity enhancements. The organizational and cadre structure of the Indian IP Offices shall be studied and reviewed with a view to enhance efficiency and productivity.
- viii. **Access to Medicines:** Access to affordable medicines and other healthcare solutions is becoming a challenge for all countries. India too faces a growing challenge on this count. The Policy recognises this and aims to



- ix. enhance this by (a) encouraging cross-sector partnerships between public sector, private sector, universities and NGOs; (b) promoting novel licensing models, and (c) developing novel technology platforms.
- x. Piracy/ Counterfeiting: Offline and online piracy is a serious concern and needs to be combated through public awareness as also legal and enforcement mechanisms.
- xi. Assistance to smaller firms: Smaller firms need assistance for protection of their IPRs internationally. Schemes such as Deity's Support for International Patent Protection in Electronics and IT (SIP-EIT) are to be enhanced.
- xii. Judicial Awareness & Resolution of IP disputes: Since IPRs are a specialised discipline, awareness amongst the judiciary is crucial since judicial precedents set the tone of the country's IP regime. For this, it is important that IP modules for judges be formulated, including regular IP workshops / colloquia at the judicial academies. Commercial Courts set up at appropriate levels will be responsible for adjudicating IP disputes.
- xiii. Resolution of IP cases through Alternate Dispute Resolution methods shall reduce burden on judiciary and provide speed and inexpensive resolution of disputes. Mediation and conciliation centres need strengthening, and ADR capabilities and skills in the field of IP developed.
- xiv. Review: A detailed review of IPR Policy shall be undertaken every five years. Continuous and regular Review will be done by a Committee to be constituted for this purpose under the Secretary, DIPP.

**Evaluation**

"Creative India, Innovative India" is the goal that India wishes to achieve. Strengthening the protection of intellectual property (IP) rights will help expand the market. To achieve this, India has been making continuous efforts to alleviate problems so that we can promote creativity, innovation and commercialisation of IP. A step taken by India in fulfilling this goal was the release of the National IPR Policy in 2016, focusing on awareness, generation of IPRs, commercialisation, enforcement, human capital development, legal and legislative reforms, and management of IPRs. The Cell for IPR Promotion and Management is a body set up by the Department of Industrial Policy and Promotion for the effective implementation of the IPR policy, and they have successfully conducted several awareness drives for existing and potential users of the IP system.

Issues of patentability of life sciences, concerns around online piracy, clarity on the supporting evidence to substantiate supplication of enlisting well-known trademark still need attention. To some extent, these issues reflect lack of faith in the patent system and enforcement mechanisms. While intense debate rages to balance access, affordability and availability of pharmaceutical drugs and devices, recent government policies have eroded incentives to innovate. Scholars claim that India witnesses significant delays in marketing of drugs. There is more work to be done to provide further clarity in assessing and granting tags of geographical indication. An index of IPRs created by two scholars—Ginarte and Park, in 1997 (followed by a revision in 2008)—is one of the earliest cross-country empirical works to assess strength and protection of IPRs. Among other parameters, they relied on coverage, enforcement mechanisms, membership in international treaties and restriction of patent rights. India's score in the index improved more than three times from 1990 to 2005.

For quite some time, an unsettled issue had been patentability of computer-related inventions (CRIs). With the release of revised guidelines for examination of CRIs last year, more clarity has been provided to the contentious Section 3(k) of the Patent Act. This has been a major indicator in pushing India up the ladder in the US Chamber International IP Index, 2018. Enforcement of standard essential patents has also made things easier for stakeholders. According to this Index, India saw a growth of 30%, compared to the last year. Because of the initiatives included in the IPR policy, India obtained a full point on the indicator on consultation with stakeholders and education campaign, and raising awareness on IPR. India scores ahead of 21 other economies benchmarked in the Index in the systemic efficiency category. India ranked 60 out of 127 countries in the Global Innovation Index, 2017, released by WIPO.

There is empirical evidence suggesting that stronger IPRs positively affect the volume of FDI and exports, particularly in countries that have technical absorptive capabilities in place, but where the risk of imitation is high. Studies show that stronger IPRs seem to encourage FDI in production and R&D (rather than in sales and distribution), encourage international tech transfer through market-based channels in developing countries and encourage domestic innovation.

**III. FINDINGS, SUGGESTIONS AND CONCLUSION**

As per the data furnished by the Minister C.R Chaudary in Rajyasabha, In 2017-18, around 14000 patents were granted in India, twice as many as in 2015. Although there have been several positive developments in India, we still need to produce stronger and clearer legislative provisions and enforcement mechanisms. To survive in the innovative and inventive market and compete with the developed economy, the following suggestions are made:

- i) Development of indigenous technology- This technology development can be achieved by Industry and Universities. Central as well as State Government should promote research abilities of Indian Universities and also of the industry by conscious effort.
- ii) There is a need to have an effective mechanism for technology transfer and for commercialisation of IP assets. Confidence of investors in India's market seems to be high, resulting in high expectations from all kinds of



stakeholders. The National IPR policy 2016 is a quite relief in all regards, but there is still some ambiguity in IP rule-making. Several countries, including the US, Germany and Sweden, have worked hard to ensure that their IP ecosystem is not just easily accessible and efficiently administered, but that it keeps pace with new challenges that are faced by the users and owners of IP. We need to continue to identify the shortcomings within our IP ecosystem, and find solutions.

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