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Ambiguities in the Indian Patent Regime: A Critical Analysis with reference to TRIPS Agreement

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ABSTRACT

The Indian patent regime has undergone significant changes in recent years, with the country seeking to align its domestic law with the requirements of the TRIPS Agreement. However, there remain certain ambiguities in the Indian patent regime, particularly in relation to patentability standards and the protection of traditional knowledge. This paper critically analyses the Indian patent regime with reference to the TRIPS Agreement, highlighting areas of ambiguity and proposing recommendations for bringing greater clarity and consistency to Indian patent law. The paper also examines the impact of these ambiguities on the promotion of innovation and economic growth in India, as well as on the protection of public health and traditional knowledge. Overall, the paper argues that greater clarity and consistency in the Indian patent regime is necessary to ensure that the country can continue to promote innovation and economic growth while also protecting public health, traditional knowledge, and access to medicines.

I. INTRODUCTION

Patents were originally a tool of apprenticeship. The inventors/ discoverers in order to keep their creations alive taught their apprentices the art which they invented. Usually, the period took to completely impart their discoveries was 14 years hence, Patents were granted for that period. All of this was done for the benefit of the society at large so that no knowledge is lost. Thus, there existed no period of exclusivity to say as benefit of the society was the sole purpose for the inventor and his/her inventions.

Patents at first granted to chefs for their culinary inventions. However, their existed no period of exclusivity. Once something fell into the public domain, all were able to utilize the same. It is claimed that patent exclusivity works as a tool of encouraging research and inventiveness but, a counter-claim also exists that if something becomes accessible to all, all can work further on it and do not have to start from zero thus, progression of the society is encouraged. Another

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counter-claim is that what is initially worked on by the inventor/ researcher is something in public domain thus, someone at some point of time must have invented the same, carried on through traditional knowledge and hence, what one brings into something already in public domain must not be made exclusive to the inventor.

Diplomatic Tussle

There is an expanding tussle going among the developed and the developing nations with regard to recognition of Patents. Developed nations want everything under the sun to be patentable while the developing nations strive to push their growth. The developing nations suffer through the virtual domination of the developed nations exploit the weapon of international diplomacy to further the recognition of patents. Recognition of patents leads to attaining credits/ royalty for every product, utility or design utilized by the developing and underdeveloped nations. Thus, somewhat a colonial arrangement through international pressure over domestic patent regulations is being opted by first world nations for perpetual gains and dominance.

In a welfare State, every action/ inaction on the part of the State is for the benefit of the people. This also includes the legislations, statutes and the judicial precedents passed in the nation. Hence, Patent Law encouraged by the ideas of social welfare, is sought to benefit the people of country but, the developed nations maneuver the international diplomacy as a squeeze method to make the developing and underdeveloped nations recognize patents over everything. Thus, the international pressure put by the developed over the developing countries leading to widening the scope of Patent Law.

In contrast the developing nations want to narrow down the scope of Patent since, it is used as a machine of royalties and revenue by the developed counterparts. In most of the cases, the traditional knowledge in common through ages is being picked by agencies of first world nations, minimum criteria of patenting that knowledge is being fulfilled and traditional knowledge is patented. Such agencies then sell that traditional knowledge which originally belonged to the people through exclusive shops, now being a patented product and earn huge royalties & profits, thereby committing theft and opening selling the stolen products to the rightful owner at one hand and not allowing the rightful owners to copy their own knowledge and utilize further hindering the growth of the nation.

Patent Regime in India

Patent Law regime in India can be dated back to 1856. In 1856, through Act VI, the British Patent Law of 1852 was adopted in India for the protection of inventions. Thereafter, in 1859 the Act was modified period of exclusivity of 14 years was brought in, which including

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exclusivity to sell, use and licensing. Post to the aforesaid modification in 1872, The Patterns & Designs Protection Act was enacted and the scope of Patents was widened to include patterns and designs. In 1883, The Protection of Inventions Act was legislated and subsequently in 1888, all enactments about Patents were consolidated as the Inventions & Designs Act. In 1999, The Indian Patents & Designs Act was formulated and enacted which was elaborate and descriptive based upon the domestic policies.

Pre-independence period mostly saw the direct imposition of the British Patent regime. However, the 20th century saw the independence of the country. Thus, social welfare of the people became the central idea. The Patents Act was enacted in 1970 keeping in view the general benefit of the citizens of the country. However, in 1999, 2002 and 2005, The Patents Act was amended in order to comply with the international agreements.

International diplomacy was under the indirect control of the first world nations especially the US thus, the international agreements were generally formulated and imposed on nations like India to appease the developed nations and their giant monopolist corporations. However, the municipal legislations were enacted for the social welfare of the masses. The tussle among the international agreements and the domestic welfare legislative intent led to ambiguity and clash among the different provisions of The Patents Act.

II. AMBIGUITIES IN PATENT LAWS IN INDIA

The Indian patent regime has been subject to criticism for its ambiguities, which can make it difficult for inventors and companies to understand the requirements and procedures for obtaining and enforcing patents. Here are some of the key ambiguities in the Indian patent regime:

a) Section 3(d) of the Patents Act: This provision, which deals with the patentability of new forms of known substances, has been subject to interpretation and controversy. Some critics argue that it creates an unfair burden of proof for patent applicants, while others argue that it is necessary to prevent "evergreening" (the practice of extending the life of a patent by making minor modifications to a known substance).

b) Lack of clarity on software and business method patents: While the Indian Patent Office has granted patents for some software and business methods, there is no clear guidance on the types of inventions that are eligible for patent protection in these areas. This has led to uncertainty and inconsistency in the patent examination process.

c) Lengthy examination process: The patent examination process in India can be lengthy

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and time-consuming, with some applications taking several years to be granted. This can make it difficult for inventors and companies to plan and execute their business strategies effectively.

d) Lack of transparency in patent examination: The Indian Patent Office does not publish detailed examination reports or provide clear reasons for rejecting patent applications. This can make it difficult for inventors and companies to understand the reasons for their application's rejection, and to address any issues that may have led to the rejection.

e) Lack of specialized patent courts: India does not have specialized patent courts, which can lead to delays and inconsistencies in patent litigation. This can be a deterrent for foreign companies seeking to enforce their patent rights in India.

f) Lack of clear guidelines on compulsory licensing: India has granted several compulsory licenses for drugs in the past, which has raised concerns among foreign pharmaceutical companies. While the Indian Patent Act allows for compulsory licensing in certain circumstances, there is no clear guidance on the criteria that will be used to determine whether a license should be granted. This has created uncertainty for both patent holders and potential licensees.

g) Ambiguity in the interpretation of patent claims: The Indian courts have been criticized for their approach to interpreting patent claims, particularly with respect to claims that are directed to computer-related inventions. Some experts argue that the courts have applied a narrow interpretation of patent claims, which can make it difficult for inventors to obtain broad patent protection.

h) Inadequate enforcement: The Indian patent regime has also been criticized for its inadequate enforcement mechanisms. While the Indian government has taken steps to improve enforcement, including the creation of special courts and a dedicated Intellectual Property Rights Cell within the police force, there is still room for improvement. Enforcement remains a challenge, particularly in the case of counterfeit and pirated goods.

i) Lack of harmonization with international patent standards: India's patent laws are not fully aligned with international patent standards, which can create challenges for foreign companies seeking to do business in India. For example, India's patent laws have stricter requirements for patentability than some other countries, which can make it more difficult for inventors to obtain patent protection.

j) Limited patent term: India has a shorter patent term than many other countries, with patents generally expiring after 20 years from the date of filing. This can make it difficult for companies to recoup their investments in research and development, particularly in industries

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with long development cycles.

k) Limited patent scope: India's patent laws also have a narrower scope than some other countries, particularly with respect to software and business method patents. This can limit the ability of inventors and companies to obtain patent protection for their inventions in these areas.

l) Lack of uniformity in patent examination: India's patent examination process can be inconsistent, with different examiners applying different standards for patentability. This can create uncertainty and unpredictability for patent applicants, particularly for those seeking to obtain patents in multiple jurisdictions.

m) Patent opposition: The Indian patent regime allows for third-party oppositions to be filed against patent applications or granted patents. While this can be a useful mechanism for weeding out invalid patents, it can also be abused by competitors seeking to delay the grant of a patent or to undermine its validity.

n) Lack of clear guidelines on patent infringement: India's patent laws do not provide clear guidance on what constitutes patent infringement, particularly with respect to software and business method patents. This can make it difficult for inventors and companies to determine whether their inventions are infringing on existing patents, and can lead to costly litigation.

o) High litigation costs: Patent litigation can be expensive and time-consuming in India, which can be a deterrent for inventors and companies seeking to enforce their patent rights. This is particularly true for small and medium-sized enterprises (SMEs), which may not have the resources to pursue patent litigation.

p) Limited access to patent information: The Indian Patent Office does not provide comprehensive or user-friendly patent information, which can make it difficult for inventors and companies to conduct prior art searches or to monitor the patent landscape in their field. This can create barriers to innovation and limit the ability of inventors to build on existing technologies.

q) Lack of transparency in patent examination: The Indian patent regime lacks transparency in the examination process, which can lead to inconsistent and unpredictable outcomes. There is a lack of clarity on the criteria used by examiners to evaluate patent applications, as well as the procedures for conducting patent searches and prior art assessments.

r) Limited access to patent data: The Indian Patent Office does not provide public access to all patent data, which can hinder research and development in certain industries. Access to patent data is critical for understanding the patent landscape, identifying potential collaborators

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and competitors, and developing new technologies.

s) Insufficient patent examiners: The Indian Patent Office is understaffed, with a limited number of patent examiners available to evaluate the growing number of patent applications. This can lead to delays in the patent examination process, which can be frustrating for inventors and companies.

t) Inadequate training for patent examiners: The Indian Patent Office does not provide sufficient training for patent examiners, which can lead to inconsistent and erroneous patent decisions. It is important to ensure that patent examiners are well-trained and up-to-date on the latest developments in their field.

Overall, these ambiguities in the Indian patent regime can make it challenging for inventors and companies to navigate the patent system effectively, and may deter foreign investment in research and development in India. However, the Indian government has taken steps in recent years to address some of these issues, including the establishment of a National Intellectual Property Rights Policy in 2016 and the creation of specialized Intellectual Property Appellate Board (IPAB) for hearing patent disputes.

A. Stronger Patent Protection

India needs stronger patent protection laws to encourage innovation and promote economic growth. A strong patent protection regime is critical for attracting investment in research and development and fostering an environment that rewards innovation.

One of the primary benefits of a strong patent system is that it provides inventors and companies with the legal protection they need to invest in research and development. When innovators know that their inventions are protected by patents, they are more likely to invest in developing new technologies and products, knowing that they will be able to profit from their efforts. This, in turn, can lead to the creation of new industries and job opportunities.

Strong patent laws can also help to attract foreign investment in technology and research. When foreign companies know that their intellectual property will be protected in India, they are more likely to invest in research and development in the country, which can help to spur economic growth.

Furthermore, strong patent laws can also help to address some of the public health challenges that India faces. By providing protection for innovative medicines and treatments, patents can encourage the development of new drugs and therapies that can improve health outcomes for people in India and around the world. Overall, stronger patent protection laws can play a crucial

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role in driving innovation, promoting economic growth, and addressing important societal challenges in India.

B. Weaker Patent Protection

While strong patent protection laws can offer several benefits to a country, there are also arguments in favour of weaker patent protection laws, particularly for countries like India. Here are some reasons why India might consider weaker patent protection laws:

a) Access to essential medicines: Weaker patent protection laws can make it easier for Indian companies to produce and distribute generic versions of essential medicines at a lower cost. This can help to increase access to life-saving drugs for millions of people who would not be able to afford them otherwise.

b) Encouraging innovation: Weaker patent protection laws can also encourage innovation by making it easier for researchers and entrepreneurs to build on existing ideas without fear of legal challenges. This can promote a more open and collaborative innovation ecosystem, leading to more rapid progress and breakthroughs.

c) Protecting traditional knowledge: India is home to a wealth of traditional knowledge and medicinal practices that have been developed over centuries. Weaker patent protection laws can help to prevent the misappropriation of this knowledge by foreign entities, allowing India to retain control over its own cultural heritage.

d) Balancing public and private interests: Weaker patent protection laws can help to strike a better balance between private interests (such as those of patent holders) and public interests (such as the need for affordable healthcare). This can help to ensure that patents are granted only for truly innovative and valuable inventions, rather than for incremental improvements or minor variations on existing ideas.

Overall, weaker patent protection laws can offer certain advantages to India, particularly in terms of promoting access to essential medicines and encouraging innovation. However, it is important to strike a balance between the needs of private and public interests, and to ensure that intellectual property rights are respected and protected in a fair and transparent manner.

III. ANALYSIS OF INDIAN PATENT REGIME VIS-À-VIS TRIPS AGREEMEMT

The TRIPS Agreement and Indian Patent Law differ in several ways. Here are some of the main differences:

a) Patentability criteria: The TRIPS Agreement mandates that patents must be granted for any invention, whether products or processes, in all fields of technology, as long as they meet

the criteria of novelty, non-obviousness, and industrial applicability. Indian patent law, on the other hand, has some restrictions on the patentability of certain types of inventions, such as those relating to atomic energy, traditional knowledge, and methods of agriculture and horticulture.

b) Term of protection: The TRIPS Agreement mandates a minimum term of 20 years for patents. Indian patent law also provides for a minimum term of 20 years for patents, but it also includes provisions for extensions of the term under certain circumstances.

c) Compulsory licensing: The TRIPS Agreement allows for compulsory licensing in certain circumstances, such as when a patent holder abuses their rights or when there is a national emergency. Indian patent law also provides for compulsory licensing, but it has some additional criteria that must be met, such as the requirement that the licensee must show that they have tried to obtain a voluntary license from the patent holder.

d) Traditional knowledge: The TRIPS Agreement does not specifically address the issue of traditional knowledge, while Indian patent law includes provisions for the protection of traditional knowledge.

e) Working requirement: The TRIPS Agreement requires that patents must be worked in the territory where they are granted. Indian patent law also includes a working requirement, which mandates that a patent holder must manufacture the patented product in India within a certain period.

f) Pharmaceutical patents: Another significant difference between the TRIPS Agreement and Indian patent law is the treatment of pharmaceutical patents. The TRIPS Agreement requires that patents must be granted for all inventions, including pharmaceuticals. However, it also allows for certain flexibilities to be implemented by member countries to protect public health, such as allowing to produce generic drugs during a public health crisis. Indian patent law also provides for the grant of pharmaceutical patents, but it includes additional criteria for the grant of such patents, including a requirement for enhanced efficacy, which makes it more difficult to obtain a patent for a new form of an existing drug.

g) Patent infringement: The TRIPS Agreement provides for remedies for patent infringement, including injunctions, damages, and seizure of infringing goods. Indian patent law also includes provisions for remedies for patent infringement, but it also includes provisions for criminal penalties for wilful infringement, which can include imprisonment and fines.

h) Opposition and revocation: The TRIPS Agreement does not require member countries to provide for opposition or revocation procedures for patents, but it allows member countries

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to do so if they choose. Indian patent law includes provisions for opposition and revocation of patents, which allows interested parties to challenge the validity of a patent after it has been granted.

i) Disclosure requirements: The TRIPS Agreement requires that patent applications must include sufficient disclosure of the invention to enable a person skilled in the art to carry out the invention. Indian patent law also includes disclosure requirements, but it also includes additional requirements for the disclosure of biological material and traditional knowledge.

j) Geographical indications: The TRIPS Agreement provides for the protection of geographical indications (GIs), which are indications that identify a product as originating from a particular geographical region and possessing certain qualities, reputation, or characteristics attributable to that place of origin. Indian patent law also provides for the protection of GIs, and it has established a registration system for GIs in India.

k) Patent office procedures: The TRIPS Agreement requires that member countries establish a patent office to process and grant patents. Indian patent law provides for the establishment of the Indian Patent Office, which is responsible for processing and granting patents in India.

l) International treaties: The TRIPS Agreement requires that member countries must comply with other international treaties relating to intellectual property rights, such as the Paris Convention and the Berne Convention. Indian patent law also complies with these international treaties.

However, there are still challenges faced by India in the implementation and enforcement of its patent law, particularly in relation to traditional knowledge. India has a rich cultural heritage and traditional knowledge that has been developed over centuries by indigenous communities. This knowledge includes traditional medicine, agriculture, and handicrafts. While the TRIPS Agreement does provide for the protection of traditional knowledge, it has been argued that the current legal framework is insufficient to protect traditional knowledge from misappropriation and exploitation.

One of the challenges faced by India in the protection of traditional knowledge is the lack of a clear legal definition of traditional knowledge. This makes it difficult to identify and protect traditional knowledge from misappropriation by third parties. Another challenge is the lack of a robust system for the registration and protection of traditional knowledge. India has established a Traditional Knowledge Digital Library, which contains information on traditional knowledge, but this information is not legally binding.

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Another challenge is the issue of biopiracy, which refers to the unauthorized use of biological resources or traditional knowledge for commercial purposes. India has had several cases of biopiracy, including the case of turmeric and neem, which are traditional medicinal plants that have been patented by foreign companies. These cases have highlighted the need for stronger legal protection for traditional knowledge.

India has taken steps to address these challenges by developing a legal framework for the protection of traditional knowledge. In 2001, India established the Traditional Knowledge Digital Library, which contains information on traditional knowledge and is accessible to patent examiners. India has also established the Protection of Plant Varieties and Farmers' Rights Act, which provides for the protection of plant varieties and the rights of farmers.

Thus, the TRIPS Agreement has had a significant impact on Indian patent law, and India has taken steps to ensure that its domestic law follows the TRIPS Agreement while also protecting its own interests, particularly in relation to traditional knowledge, public health, and access to medicines. However, there are still challenges faced by India in the protection of traditional knowledge, and there is a need for stronger legal protection for traditional knowledge to prevent biopiracy and ensure that indigenous communities benefit from the commercialization of their knowledge.

IV. RECOMMENDATIONS TO BRING UNIFORMITY IN PATENT REGIME

In order to bring greater uniformity between Indian patent law and the TRIPS Agreement, the following recommendations could be considered:

a) Amend the Indian Patent Act to provide greater clarity and consistency in the definitions and standards for patentability. This would help to ensure that patents are granted only for genuine inventions and not for trivial or obvious improvements.

b) Develop a system for the recognition and protection of traditional knowledge that is consistent with the TRIPS Agreement. This could involve establishing a legal framework for the registration of traditional knowledge, as well as mechanisms for the protection of traditional knowledge from unauthorized use.

c) Strengthen the Indian Patent Office by providing additional resources and training to patent examiners. This would help to ensure that patents are granted in a timely and efficient manner, while also ensuring that the patent system is not abused by applicants seeking to monopolize certain areas of technology.

d) Develop stronger mechanisms for the enforcement of patent rights, including the

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establishment of specialized patent courts with trained judges and technical experts.

e) Increase public awareness and education about the patent system and its benefits, particularly in relation to the promotion of innovation and economic growth.

f) Foster greater collaboration between industry, academia, and government in the development and commercialization of technology, particularly in emerging fields such as biotechnology and nanotechnology.

g) Encourage greater participation in international patent cooperation agreements, such as the Patent Cooperation Treaty (PCT), to help facilitate the international patent system and reduce duplication of effort.

By implementing these recommendations, India can strengthen its patent system and bring greater uniformity between Indian patent law and the TRIPS Agreement. This would help to ensure that India can continue to promote innovation and economic growth while also protecting public health, traditional knowledge, and access to medicines.

V. CONCLUSION

In conclusion, this paper has examined the ambiguities in the Indian patent regime with reference to the TRIPS Agreement, and has proposed recommendations for bringing greater clarity and consistency to Indian patent law. The paper has highlighted the challenges posed by the lack of clear patentability standards and the inadequate protection of traditional knowledge in the Indian patent regime. It has argued that these ambiguities have the potential to undermine the promotion of innovation and economic growth in India, while also posing risks to public health and access to medicines.

The paper has demonstrated the need for greater clarity and consistency in the Indian patent regime, in order to ensure that the country can continue to promote innovation and economic growth while also protecting public health, traditional knowledge, and access to medicines. It has proposed a range of recommendations aimed at achieving this objective, including the amendment of the Indian Patent Act to provide clearer and more consistent patentability standards, the development of a system for the recognition and protection of traditional knowledge, and the strengthening of the Indian Patent Office to improve the efficiency and effectiveness of the patent granting process.

In addition to these recommendations, the paper has emphasized the need for greater public awareness and education about the patent system and its benefits. This is essential for building public trust and confidence in the patent system, and for ensuring that the system is not abused

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by applicants seeking to monopolize certain areas of technology.

Finally, the paper has highlighted the importance of fostering greater collaboration between industry, academia, and government in the development and commercialization of technology. This is essential for ensuring that the benefits of innovation are shared more widely across society, and that the patent system is used to promote the common good rather than narrow commercial interests.

In conclusion, the Indian patent regime is a critical component of the country's innovation ecosystem, and its effective functioning is essential for promoting economic growth, social development, and public welfare. By addressing the ambiguities in the Indian patent regime and bringing greater clarity and consistency to Indian patent law, the country can continue to promote innovation and economic growth while also protecting public health, traditional knowledge, and access to medicines. The recommendations proposed in this paper provide a roadmap for achieving this objective, and should be considered by policymakers, stakeholders, and experts in the field of patent law.

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