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# From the Age of Antiquity to the Age of Modernization: An Overview of Patent History in India

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## ABSTRACT

*India had a Patent Act which was a master piece legislation on Indian soil with deep rooted sentiments of Indian culture and traditions which did not provide for the product patents until 2005, It stood as an example to many countries which was able to protect Intellectual property and balanced the public interest which put the Indian Pharmaceutical companies to take advantage and helped in manufacturing the medicines at a very low cost of production.*

*Apart from the Modern times and the growing phase of intellectual property rights, India had never practiced and believed the concept of intellectual property rights which can be utilized for earning livelihood, some of the good examples have been traced above. Though there are almost no examples of Commercial utilization of intellectual property in ancient times but if in cases these secret inventions are used for commercial purpose and fail to serve the purpose of welfare, these secrets were directly disclosed to everyone rather being commercially used anymore.*

*This concept has led the Indian society follow the principle that if any invention or a new thing is invented or found must be donated or dedicated to the society's welfare instead of using it for personal benefit. This article therefore deals with exploring the concepts and practices of Intellectual Property specifically Patent Law from ancient times to British rule and then growing to modern life, its use in the society, its amendments, its growth as well as the overall development of society with changes beliefs and customs.*

**Keywords:** Patent, Law, History, India, Agreement.

## I. INTRODUCTION

The Object behind the Grant of patent is to encourage not only Research and Development but also Innovation. This has been very well enumerated by Supreme Court in the case of *Bishwanath Prasad Radhey Shyam v. Hindustan Metal Industries*<sup>2</sup>) which is as follows:

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<sup>2</sup> AIR 1982 SC 1444

The subject of Patent Law is to encourage scientific research, new technology and industrial progress. Grant of exclusive privilege to own, use or sell the method or the product patented for limited period, stimulates new inventions of commercial utility. The price of the grant of monopoly is the disclosure of the invention at the Patent Office, which after the expiry of the fixed period of the monopoly passes into the public domain.<sup>3</sup>

Going back to the ancient India, Social Welfare has always received much precedence over Individual's Interest. Referring to the great epics of Ramayana and Mahabharata we come to know that in cases where man has tried to deviate from the principles and teachings of Dharma, he has met with a bitter consequence. Our ancestors, rishis, saints have given their best to the society for its welfare in order to resolve the existed crisis.

India is looked by the world with a different perspective with regards to culture, traditions, teachings etc. Since beginning India has adopted a different style of teaching which is known as Gurukula System where in students were examined on the basis of various tests such as test of intellect, test of morality and test of character and the student who sets a High standard in these tests and upholds Dharma was held to be eligible for getting Education. The reason for practicing these tests was to ensure that the knowledge so transferred is not utilized for any commercial purpose or for the purpose of individual interest. There had also been a specific condition kept by spiritual gurus that they would impart education or a secret only on getting the assurance that the education or a secret so imparted should not be used for the personal interest or for any business purpose. Following points provide us a gist of such practices being followed in some parts of India till today:

- In the village named Kalagi of Chitapur taluka in Gulbarga district in Karnataka, a kind of medicine is manufactured by the leaves for the fractured broken bone and given to the needy patients. This unique medicine joins the bones by mere application of the medicine in order to ensure that the patient does not require any plaster. The person who manufactures and provides the medicine does this free of cost. The secret of producing this medicine is still practiced currently and as this medicine still remains a secret, the knowledge of producing this medicine has been imparted to these people by their ancestors on the condition that the person receiving the knowledge should not use that medicine for his interest or for any commercial use.
- With the similar concept, the antidote given to cure a snake bite and neutralize the poison, for curing jaundice is still in practice in few villages which as compared to the allopathic medicines does not cure cent percent.

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<sup>3</sup> Bilcare Limited v Amartara Private Limited MIPR 2007 (2) 42, Para-17

Apart from the Modern times and the growing phase of intellectual property rights, India had never practiced and believed the concept of intellectual property rights which can be utilized for earning livelihood, some of the good examples have been traced above. Though there are almost no examples of Commercial utilization of intellectual property in ancient times but if in cases these secret inventions are used for commercial purpose and fail to serve the purpose of welfare, these secrets were directly disclosed to everyone rather being commercially used anymore.

History reveals the facts that are altogether unknown to us till today. Some of them are as follows:

- It has been believed that the army of Tipu Sultan had the knowledge and the techniques used in the missiles, he had the knowledge of art of navigation.
- Sushruta, who is regarded as the father of surgery over 2600 years ago had conducted complicated surgeries then such as cataract, artificial limbs, fractures, urinary stones, kidney stones<sup>4</sup>.
- Budhyana, the Indian Mathematician had explained a very popular concept in mathematics named 'Pythagoras' as early as in 6<sup>th</sup> century.

Therefore, this clarifies that India has, from ages, never believed in protecting the intellectual property rights for personal benefits or in order to exploit the existing knowledge commercially.

## **II. HISTORY**

### **(A) Are we still following guruparampara?**

Knowledge is considered a product of invention and innovation today but was regarded as the most precious gift of god in the ancient times which was imparted freely to the aspirants by the gurus on the condition that the knowledge so transferred should not be used for the any personal benefit or commercial use, this concept was popularly called, Guruparampara and yes, knowingly or unknowingly we do follow it till today.

This concept has led the Indian society follow the principle that if any invention or a new thing is invented or found must be donated or dedicated to the society's welfare instead of using it for personal benefit, offering good to the society was treated to be salutation to the god.

New ideas further allow a bundle of inputs to produce better output. There have been number

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<sup>4</sup>Author name- Anonymous, Title- Acharya Sushruta: Father of Surgery, iaimhealthcare.org

of examples which prove new ideas bring technological improvements such as – Moore’s law, attributed to the former chairperson of intel, asserts that the number of transistors that can be packed onto computer chip doubles approximately every 18 months. Thus, this describes the need for intellectual property Rights in modern times.

Legally these rights are different from each other such as, Patent grant to the owner provides monopoly against the independent discoverer of the same invention, whereas copyright as the name suggests provides rights against copying the owner’s content but this does not prohibit the independent creation of the same work. Patent statues are basically meant to protect inventions and innovations under certain conditional criteria such as inventiveness, novelty etc.

### **III. BRITISH INFLUENCE ON INDIAN PATENT LAW**

The British influence in India had its beginning in 1600 when The Governor and Company of Merchants of London trading into East Indies was chartered. The Indian Patent Law was originated in 1856, for the purpose of granting certain exclusive privileges to inventors for over 14 years but experts later opined that the Legislative Council had no authority to pass it without prior sanction of British Queen. The reason stated was that since the grant of patents in India was a prerogative of the crown therefore, any patent law passed by the legislature required the prior permission of the crown.

- **Act VI of 1856:** Relates to Protection of Inventions was based on British Patent Law of 1852.
- **Act IX of 1857:** Repealed the above act because of enactment without the approval of the crown.
- **Act XV of 1859:** Fresh legislation for granting exclusive rights and privileges was introduced.
- **Act XIII of 1872:** Renamed the above act as ‘The Patterns and Designs Protection Act’
- **Act II of 1911:** The Indian Patents and Design Act replaced all previous acts.

Further amendments were made in 1930 and later in 1949 when government of India formed a committee (Tek Chand Committee) headed by Justice (Dr) Bakshi Tek Chand to examine the existing patent laws which led to further amendment in 1950.

### **IV. INDIA’S PATENT POLICY**

Promoting Inventions and Innovations, Balancing Developmental Concerns were the key policies that India focused on. Prior to the TRIPs Agreement the philosophy of Indian Patent

Act, 1970 was enormously different from the framework being established under TRIPs. One of the finest quoted statement made by Indira Gandhi with regards to the issue of Patents in India, especially on pharmaceuticals, read as- “The idea of a better-ordered world is one in which medical discoveries will be free of patents and there will be no profiteering from life and death”.

- G.V. Ramakrishna, Chairman of the Disinvestment Commission points out that in India, “We (Indians) are accustomed to the notion that knowledge is free. Our whole orientation has to change from one that stresses intellectual attainment to one that protects intellectual property.”<sup>5</sup>
- Patent Laws in Developing countries like India are considered ‘fundamentally an economic policy question’ whereas in developed nation ‘fundamental physical property Right’
- Indian perspective regards intellectual property as a public good that should be used to promote growth and economic development.
- Principle of Dharma has been the path that Indian policies and laws have been following therefore, on this basis Patent law was enacted so that the fruits of inventions and innovation be reached to least persons and no person is deprived of it as Indian Gurukula system was against the commercialization of one’s own intellect.

## **V. KEY FEATURES OF INDIAN PATENT ACT, 1970**

- a) The Original Indian Patent Act, 1970 tries to strike a balance between the rights granted to the patent holders and the patentholder’s obligation to the society that grants him such rights.
- b) Section 83 of the Act lays down the basic philosophy that patents are granted for the purpose of encouraging inventions and innovations and to accelerate indigenous industrial growth by securing their working in India on a commercial level.
- c) The philosophy also includes that patents are not granted just to enable patentees to enjoy monopoly in the market.
- d) One cannot obtain any sort of patent in the fields of atomic energy and methods of agriculture as specified in section-3 of the Act.

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<sup>5</sup> Author Name- Vishal Vijayvargiya, Title-China and USA: Conflict arises in the IPR Protection in consideration with India, [legalservicesindia.com](http://legalservicesindia.com)

- e) The Act permits product patentability for all inventions, but includes certain exceptions such as- food, medicines, drugs and substances produced by chemical processes. These exceptions include Process patent and therefore, enables the other competitors to innovate new, improved, economical and technological processes for producing the same product rather than using an obsolete method.
- f) The Act provided Patent Protection (Section- 53) for a period of 14 years from the date of filling.
- g) It provides compulsory working i.e. Manufacturing of the product in India. This means that the patentee cannot hold the right of patent in India and import the product from another country thereby forcing the natives of the country to pay higher price.
- h) In Public Interest, Patents are subject to strict and extensive governmental control and use.
- i) Section 84 of the Act provides for the Compulsory Licensing which ensures the working of the patent after three years from the date of sealing. The reason behind compulsory licensing is that the state provides protection to IPRs in order to provide new products at cheaper rates.

The Indian Patent Act,1970 acted as a model for various developing countries such as- Argentina, Mexico, Egypt and Chile but was later replaced by Indian Patent Act, 1999 established on the basis of TRIPs (Trade- Related Aspects of Intellectual Property Rights) Agreement. Other than TRIPs India has been a part of following International Treaties with regards to Intellectual Property Rights:

- Convention establishing World Intellectual Property Organization (WIPO)
- Paris convention for the protection of Industrial property.
- Patent Cooperation Treaty (PCT).

## **VI. KEY FEATURES OF THE TRIPS AGREEMENT**

The Trade Related Intellectual Property Rights is an internationally accepted agreement of intellectual property regulation. The agreement was negotiated at the end of Uruguay Round of General Agreement of Tariffs and Trade (GATT) in 1994 when United Nations lobbied with the help of EU, Japan and other developed countries.

The agreement basically focused on introducing the global minimum standards for enforcing and protecting all forms of Intellectual property rights (IPR) but did not completely succeeded

in specifying the global standards for patent. The main features of the TRIPS Agreement are as follows:

- **Standards:** This consists of Elements of protection, subject matter to be protected, the rights to be conferred, permissible exceptions to those rights, minimum duration of the protection.
- **Enforcement:** This set deals with provisions related to procedures, remedies for enforcement of intellectual property rights, civil and administrative procedures, provisional measures, special requirements etc.
- **Dispute Settlement:** Follows WTO's dispute settlement procedure.

#### **Following are the key issues covered by the TRIPs**

1. How basic principles of the trading system and other international intellectual property agreements should be applied
2. How to give adequate protection to intellectual property rights
3. How countries should enforce those rights adequately in their own territories
4. How to settle disputes on intellectual property between members of the WTO
5. Special transitional arrangements during the period when the new system is being introduced.

The amendments made in Indian Patent Law, 1970 seeks to implement the obligations entered into by signing TRIPS Agreements and make the new act as compliant to TRIPs as possible.

### **VII. PATENT AMENDMENTS POST-TRIPS AGREEMENT**

The TRIPs agreement which came into force on 1<sup>st</sup> January, 1995, provided a frame for countries like India which contained no provision for grant of product patent rights in pharmaceuticals. Other added features are as follows:

- a) A facility of 'mail box' was received from 1<sup>st</sup> January, 1995 in order to receive and hold product patent applications in the fields like pharmaceuticals and agricultural chemicals.
- b) Compliance with the obligations of TRIPs such as rights of patentee, term of patent protection, compulsory licensing, reversal of burden of proof etc. from January 1, 2000.



- c) Full Product Patent Protection was introduced in all fields inclusive of pharmaceuticals from January 1, 2005. The mail box examination from January 1, 2005 with regards to take up pending product patent applications.

#### **(A) Patent Amendment Act, 1999**

##### **Salient features:**

- Mail box mandatory for product patent applications filed at the time of TRIPs transition period and to assign them a filing date.
- Grant of EMR's for mailbox applications fulfilling specified conditions during the transition period.
- The mailbox facility and the EMRs failed which prompted the United States to use WTOs dispute resolution system to address India's failure to the EMRs and Mail box facility into a law.
- In March 1999, Indian Parliament passed an amendment which formally implemented the mailbox procedure for pharmaceuticals product patent applications which was retrospectively applicable from January 1, 1995.

#### **(B) The Patent Amendment Act, 2002**

The most significant features of the Act are follows:

- The Patent term was extended from seven years to Twenty Years, this amended the 1970 law so as to ensure that the grant of patent would expire 20years after their application filling date.
- The Act cemented India's accession to the Patent Co-operation Treaty and the Paris Convention.
- The act brought new definitions for the term's 'invention' and 'inventive step' and brought new exclusions from subject matter like business methods, algorithms and traditional knowledge.
- It also gave way to patentability of microorganisms and streamlined the compulsory licensing system.
- Provisions were established for reversal of burden of proof in case of process patent.
- The provision for licence of right was excluded.

- Provision for exemption from infringement proceedings for use of a patented invention for obtaining regulatory approval for product based on that patented invention was introduced.<sup>6</sup>

### **(C) The Patent (Amendment) Act, 2005**

This act introduced such changes that finally brought Indian Patent Law compliant to TRIPS Agreement. Following are the key features of the act:

- This amendment for the first time since 1970 provided provisions for patent protection to substances capable of being used as pharmaceuticals, food and agricultural chemicals.
- This amendment introduced various controversial features which further resulted in debates and disputes. These controversial features include provisions relating to what is and is not considered patentable subject matter, a new definition of 'inventive step', criterion of patentability, procedures concerning pre and post grant opposition, and a more liberal framework of compulsory licensing.

## **VIII. CONCLUSION**

India had a Patent Act which was a master piece legislation on Indian soil with deep rooted sentiments of Indian culture and traditions which did not provide for the product patents until 2005, It stood as an example to many countries which was able to protect Intellectual property and therefore led to balance the public interest which put the Indian Pharmaceutical companies to take advantage and helped in manufacturing the medicines at a very low cost of production which ensured that the prices of medicines are within the reach of the general public and the manufacturers were free to utilize the technologies within the limitations for the welfare of the society and for suffering patients it was a God sent gift. The problem was first initiated when the developing and underdeveloped countries were asked to 67 comply with the strict implementation of TRIPs Agreement beginning with grant of process patents, exclusive marketing and mail box applications initiating in the year 1995-2005 during which India witnessed that the prices of the drugs were increased by the process patent holders but due to the reason of adopting reverse engineering the other manufacturers were able to produce the same medicines by different methodology. Hence this ensured that there were other alternatives available in the market which probably might not be possible under product patent regime and

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<sup>6</sup> Author Name-Hans-Rainer and Johann, Title- 'Research Exemption/Experimental Use in the European Union: Patents Do Not Block the Progress of Science', Pitz ncbi.nlm.nih.gov.

the affordability to life saving drugs and enforce right to health would be a distant dream for the poorer sections of the society and puts an extra burden on the middle class families. The health protection is very much essential and hence there is a binding on the patients to have those medicines which has been prescribed to them they don't have any kind of choice before them. Though there were significant efforts taken to provide certain flexibilities as a measure for controlling the prices and affordability of medicines. There is a need to balance the issue of public health and IP protection by properly utilizing the flexibilities.<sup>7</sup>.

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<sup>7</sup> Author Name-Vaibhav Chaudhary, Title- 'Granting of Patent Under Patent law 1970' Journal Name- International Journal of Science and Research- ISSN 2319-7064.