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IPR Management, Protection and Enforcement in India Need for Stronger IPR Regime

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ABSTRACT

Intellectual property rights are the cornerstone for promoting innovation, creativity and economic growth in the global knowledge-based economy. With a growing innovation ecosystem and diverse intellectual capital, India stands to benefit from a strong intellectual property system. However, the current landscape presents multifaceted challenges, from inadequate enforcement mechanisms to legislative gaps that prevent it from realizing its full potential. This dissertation critically reviews the IPR management, protection and enforcement landscape in India, identifies key gaps and makes recommendations. strategies to strengthen the country's intellectual property framework. Through a comprehensive review of the existing literature, case studies and policy analysis, the study explores the importance of a stronger intellectual property rights system to promote innovation, attract investment and secure the rights of authors and innovators. The study addresses complexity. protection of intellectual property rights. management, covering aspects such as patents, copyrights, trademarks and geographical indications, and sheds light on the challenges facing each sector. It emphasizes the need to streamline administrative procedures, increase transparency and develop skills that facilitate the effective management of intellectual property. In addition, the thesis examines the effectiveness of existing legal mechanisms related to the protection and enforcement of intellectual property rights and highlights gaps in the enforcement infrastructure, procedural delays, and the prevalence of counterfeiting and piracy. It advocates for increased enforcement agencies, adoption of advanced technical tools and strict penalties to prevent infringements and protect the interests of rights holders. Based on a comparative analysis and best practices of global jurisdictions, the study offers policy recommendations to strengthen the IPR ecosystem of India.. These include legislative reforms to align national laws with international standards, promote cooperation between stakeholders, and promote awareness and education about intellectual property rights and responsibilities. Finally, this dissertation underscores the need for a strong intellectual property system as a catalyst for innovation and economic growth.. and Social Development in India. By addressing the challenges that hinder the effective

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management, protection and enforcement of intellectual property rights, a country can leverage its intellectual capital to become a global leader in innovation and creativity.

Keywords: *IPR, Stronger Regime, National IPR Policy.*

I. INTRODUCTION

Recent areas of business, trade and commerce have undergone major changes in recent years and new management methods are urgently needed to deal with these changes. Business success now depends on achieving innovation, cost efficiency, adopting the latest technologies in the final product, creating added value through continuous improvement, using cyberspace in e-commerce, branding and ensuring absolute visibility of products and services. If the identified products and services offer real value for money and additional benefits, the public should patronize them. Such identification would be possible through the intellectual property rights (IPR) associated with the products and services. The customer relationship increases the understanding of producers/traders and provides the necessary space to invest in more such products and services. In this situation, manufacturers must protect their intellectual property rights.

(A) Meaning of Intellectual Property Rights (IPR)

The legal rights associated with intellectual property are called intellectual property rights. Such legal rights are recognized and protected by laws and the mechanisms provided for therein. Intellectual property rights are inviolable rights and their importance in the technological, economic, scientific and industrial development of the country has become great. Intellectual property rights, like all other assets, have value, goodwill, rights and obligations. Intellectual property rights commonly known as intellectual property rights are trademarks, patents, copyrights, designs, geographical indications and confidential information

India has been a pioneer in science, technology, medicine, dance, art, law and literature since ancient times., public administration and other fields. Ancient books and manuscripts like the Vedas and Upanishads not only provide spiritual power but also act as repositories of science and art. Our sages and intellectuals have developed these sciences over hundreds of years through constant observation, study and concentration through the gurukul system. This was achieved when other world civilizations lagged behind. Although India was the center of human knowledge in ancient times, our technology today cannot be compared to the best in the world in most fields. The ancient knowledge collected and practiced over the years was not documented in any form, and our ancestors did not pass it on to future generations to practice

or improve.

In addition, the scientific and technical knowledge we acquired was freely shared with other Western countries. Although our forefathers were so good and generous in sharing such important information for the benefit of humanity, they did not even think about the need to protect their knowledge, inventions and other innovations, which proved to be a major deterrent for India in its current economic climate. and financial environment. another development. Thus, India had to depend heavily on the intellectual property rights of other countries for its growth and development. The concept of organized intellectual property began to gain a foothold in India during the British rule when legislation such as the Trade Marks Act of 1940, the Copyright Act of 1709, the Designs Act of 1911 and the Patents Act of 1856 came in strength. In India, Parliament alone has the power to make laws relating to patents, inventions, designs, copyrights and trademarks under Article 246 49, List 1 of the Seventh Schedule of the Constitution of India.

Intellectual property rights are intangible assets that are separate from other tangible assets such as land, buildings, stocks, bonds, etc. Intellectual property law is very dynamic and has evolved tremendously over time. Every business and business relies heavily on their intellectual property rights to market their products or services to sell them. Consequently, it has become imperative for them to manage, protect and enforce their intellectual property rights against abusers, which would result in a huge loss of revenue and goodwill. World trade, previously considered closed, now opened up with little or no barriers between flourishing commercial and trading nations. Intellectual property rights have now acquired the character of international recognition with cross-border implications. Another important factor in intellectual property rights is that countries that have signed treaties and conventions comply with the provisions in them. Member states that have signed such agreements are expected to have uniform intellectual property rights and an appropriate formal mechanism to protect, uphold and enforce intellectual property rights in their geographic area. In addition, the dispute resolution mechanism ie. In order to ensure effective, timely and appropriate management of intellectual property rights, there must be established registers of intellectual property, courts, tribunals and law enforcement agencies to ensure the proper support, preservation and protection of constituent rights of intellectual property. In the absence of such effective management and mechanisms, it leads to many problems and chaos that harm business, trade and commerce. This in turn affects the entire economy.

The essence of the Law of the Intellectual Property Rights is meant to praise the researcher or an inventor for the efforts and paintings installed growing an invention or innovation. Thus the

author and inventor of highbrow assets are given the lawful proper to revel in his advent and invention to the exclusion of others. The justification in the back of the exploitation of highbrow assets rights is that folks that make investments time, electricity and assets for his or her invention, innovation that's able to industrial software have to be rewarded with the monopoly to supply the equal for the efforts installed. IPR laws (with exception to Trade Marks) offer the important safety best for a precise length and inside that length the inventor or innovator have to commercially take advantage of the equal his advantage. After this sort of length of monopoly furnished the regulation is over, the stated IPRs could come inside the purview of public area because of this that that everybody can positioned that into use and take advantage of the equal. Nevertheless the IPRs also can be used for non-industrial functions viz. education, studies and schooling throughout its validity..

(B) Objectives of the research

- 1) To study intellectual property rights and their importance in India.
- 2) To study the development of intellectual property law in India and its administration.
- 3) Explore why protection and enforcement of intellectual property rights is necessary against the background of international treaties, conventions and WIPO.
- 4) Assess the IPR Dispute Resolution Mechanism in India and its important pronouncements.
- 5) To maintain a stable and stronger IPR system in India..

(C) Scope

This study will provide an overview of the IPR management, protection and enforcement in India and address the current issues and challenges in the context. It will also provide an in-depth analysis of the effectiveness of the protection of intellectual property rights (IPRs) in India and the steps needed to achieve it. In addition, the study will present a case for strengthening the IPR system in India and propose ways to do so.

The research objectives formulated are pertinent for the Business Administration as it is essential to manage the valuable intellectual property assets owned by the business. It is also relevant for the Public Administration as it covers protection/enforcement of intellectual property rights and also the redress mechanism.

(D) Research Methodology

The study involves two categories of research methodology, historical and analytical. It includes primary data such as laws, rules and regulations, judgments, commentaries, published reports,

reports of government agencies/agencies and secondary data which includes books and professional journals. Research also includes information gathered from IPR registries, articles by various authors, communication with IPR experts, trademark and patent attorneys, attorneys, participation in the IPR Professional Development program.

II. TYPES OF INTELLECTUAL PROPERTY AND NEED FOR UNIFORM IPR REGIME

(A) Types of intellectual property

Intellectual property refers to certain types of intangible assets that have been created using one's mental faculties. The registration requirements for intellectual property may differ depending on the type of asset. Ownership of intellectual property rights grants various rights for protecting and commercializing these assets (which are governed by the law). Intellectual property rights are generally classified in a global manner (with slight variations in terminology and registration requirements depending on the jurisdiction). In India, the different types of intellectual property are Copyright, Trademarks, Patents, Geographical Indications, Designs, Semiconductor Integrated Circuit layouts, Plant varieties. We have discussed each type of intellectual property rights below:

1. The Copyrights Act, 1957 (“Copyright Act”)

Copyright protects the expression of an idea, not the idea itself.² According to Section 13³ of the Copyright Act, copyright protection can be obtained for "original literary, dramatic, musical and artistic works; motion pictures; and sound recordings". Interestingly, copyright protection can also be obtained for computer programs. Copyright is an "exclusive right" granted to a person to perform certain activities related to the copyrighted work or to authorize it, for example: in the case of a literary, dramatic or musical work, the owner (or the owner's authorized person) can perform the work, make translations, make changes to the work, etc. Section 17 of the Copyright Law clearly states that the author of an original work (for which copyright protection has been obtained) is the first owner of the work. In addition, the owner has the right to license the copyright of his work to third parties by written agreement. Copyright protection of published literary works, plays and works of art must be protected for 60 (sixty) years in addition to the lifetime of the author. The Copyright Law provides the author with certain special rights, in addition to the protection granted by copyright, according to Article 57. The author/owner of a copyrighted work, even if he has transferred the work to someone

² Copyright free and Creative Commons resources: Fundamentals of copyright, <https://guides.lib.monash.edu/CreativeCommons/Fundamentals>

³ THE COPYRIGHT ACT, 1957 (14 OF 1957)

else has the right to claim from the author of the work and the right to claim damages for "distortion, mutilation or modification" of the author's original work⁴, if such misrepresentation or other action damages the author's property. reputation.

2. The Trade Marks Act, 1999 (“Trademarks Act”)

According to Section 2 of the Trademark Law, a "trademark" is "a sign that can be represented graphically and that is capable of distinguishing the goods or services of one person from the goods or services of others, and that may also include the shape of the goods or services. goods, their packaging and colour combinations⁵." In other words, a trademark protects symbols, colours, shapes, words, which represent and are associated with goods or services Interestingly, a trademark application does not have to be made for trademarks in use (but can also be filed for marks intended for future use) the primary requirements are that it must consist of a sign that can distinguish goods/services from goods/services and must be able to be represented graphically.

The Trademark Law provides grounds for refusal of registration, such as –

- a) the trademark lacks distinctiveness.
- b) the sign is misleading and confusing for the public.
- c) if the sign violates religious sentiments;
- d) the trademark is offensive, scandalous, or unclear, etc.

Besides absolute grounds for registration refusal, the law also provides relative grounds to refuse it, such as similarity to existing trademarks. In addition, India is a signatory to the Madrid Protocol under which trademarks can be applied for and registered internationally. The protection provided by trademark registration is necessary because it protects the trademark, logo, sound, shape, etc. and clearly identifies the goods/services of the trademark, bringing uniqueness to the trademark. Also, the validity period of a trademark registration is initially 10 (ten) years, which can be permanently extended for 10 consecutive years (provided that renewal requests are submitted on time).

3. The Patents Act, 1970 (“Patents Act”)⁶

A "patent" is an intellectual property right that protects any invention. This right is exclusive and safeguards the inventor's rights, while also prohibiting any unauthorized use or theft of the

⁴ Moral Rights Under Copyright-An Empowering Provision To The Personal Rights, <https://iiprd.com/moral-rights-under-copyright-an-empowering-provision-to-the-personal-rights/>

⁵ THE TRADE MARKS ACT, 1999, <https://www.indiacode.nic.in/bitstream/123456789/1993/1/A1999-47.pdf>

⁶ The Patents Act, 1970, https://www.indiacode.nic.in/handle/123456789/1392?sam_handle=123456789/1362

registered patent. The patent is issued for 20 (twenty) years from the date of submission of the application. A patent is only granted for a new invention if it is both "original" and "novel". The invention must not be accessible in India or other nations, but its industrial application necessitates the execution of "inventive steps," which must be achieved through a technical advancement or economic significance. The Patent Law gives certain rights to every inventor whose patent is registered, namely- in the case of a product patent, the right to prohibit third parties from using, selling, manufacturing, importing, etc. without prior authorization,

India has also signed the Patent Cooperation Treaty (PCT) which allows an applicant to file an international patent application. By applying, the inventor can obtain patent protection in several countries (members of the PCT) at the same time.

4. The Design Act, 2000 (“Design Act”)

Design, as defined in the Designs Act [Section 2 (d)], means "mere features of form, composition, pattern, ornament or composition of lines or colours applied to any object in two or three dimensions or both by any industrial process or means, whether by hand, or mechanical or chemical means, singly or in combination, which please the finished product, are judged by the eye alone.

"An application for registration of an industrial design is made to the Chief Commissioner. However, registration of a design can only be considered if –

- it is a new and original innovation, that is, it has not been produced before and has not been reproduced by anyone;
- has not been disclosed anywhere in India or outside the jurisdiction of India; and
- it is easily distinguishable from other known designs.

In addition, once a design is registered, the registered owner receives a period of initial protection of 10 (ten) years, which can be extended (after submitting an extension request) by another 5 (five) years.

5. The Geographical Indications of Goods (Registration and Protection) Act, 1999 (“GI Act”)

A geographical indication is an indication that identifies goods such as agricultural products, natural resources or industrial products that originate or are produced in a region of a country or a region or a place within a region, if they have a certain quality or reputation or other characteristics. of such goods is mainly due to its geographical origin and if they are manufactured goods, every operation of manufacture, processing or production of those goods

takes place in the relevant area, district or place, as the case may be". The Geographical Indication Law covers only goods such as agricultural products, food, handicrafts, industrial products and natural resources. The application for registration of goods under a Geographical Indication requires an explanation of how the Geographical Indication affects the origin of the goods, the quality, characteristics and reputation of the goods, the category of the goods, information on the appearance of the geographical indication and a map of the region/territory/country where the goods originate. A registered geographical indication receives protection for ten (10) years and may be renewed and extended for ten (10) years from the date of expiry of the initial registration.

6. The Protection of Plant Varieties and Farmer's Rights Act, 2001 ("Plant Varieties Act")

India's Plant Variety Protection and Farmers' Rights Act (2007) is designed to acknowledge the rights of farmers in the country and provide protection for plant varieties so as to encourage new growth and development.

India became a member of the TRIPS Agreement in 1994, which mandates that all members must maintain and adapt plant varieties [Article 27(3)(b)].⁷

All registered and protected plant varieties are registered and entered in the national register of varieties. This Law allows any breeder, farmer and authorized person to apply for registration of a new variety. If a new plant variety meets the criteria of "novelty, distinctiveness, uniformity and permanence", it must be registered. More precisely, the new condition requires that the plant variety not be sold. In addition, distinctiveness includes the requirement that it must have at least one distinctive factor from all other existing and protected plant varieties. For a variety to be considered uniform, every characteristic of it must be of the same quality. Finally, a registered plant variety must be "stable", meaning that the essential characteristics of the variety must not change after repeated propagation of such a variety. The validity period of registration for plant variety protection is nine (9) years for trees and vines and six (6) years for crops, renewal of registration if possible.⁸

7. The Semiconductor Integrated Circuits Layout- Design Act, 2000 ("SICLD Act")

"Semiconductor integrated circuit" is defined as "a product containing transistors and other circuit elements integrated on or within a semiconductor material or insulating material and

⁷ Background and the current situation, https://www.wto.org/english/tratop_e/trips_e/art27_3b_background_e.htm

⁸ Views, Experiences and Best Practices as an example of possible options for the national implementation of Article 9 of the International Treaty, <https://www.fao.org/3/ca7798en/ca7798en.pdf>

designed to perform the function of an electronic circuit". SICLD Acts requires all folding plans to be registered to be original; not in commercial use throughout India and in all the Contracting States; distinguishable in nature and distinguishable in nature from other registered layout designs⁹. The application for registration of design schemes must be written and sent to the Semiconductor Integrated Circuit Layout Design Registry located within the territorial limits of the applicant's headquarters. In addition, the protection of registered folding plans is valid for 10 (ten) years.

III. NEED TO PROTECT IP

Intellectual property rights must be protected because of the following

Firstly, inventors gain exclusive control over the use of their IP for their own benefit, both in terms of use and monetary gain. The inventor can decide the price of the invention, the marketing and distribution channel, as well as countless ways to make a profit and earn a high return on invested capital.

Second, an inventor can prevent others from benefiting financially from an IP application.

Third, if a competitor violates the intellectual property rights protecting the inventor, the inventor can exercise his right to file a lawsuit against the party seeking to benefit from the invention. In the event of a conviction, the court may award the inventor a monetary reward paid by an individual or entity seeking to benefit financially from the invention owned by the owner of the intellectual property.

Intellectual property rights are necessary in themselves because they give inventors an incentive to continue to innovate and profit from their inventions.

The progress and well-being of humanity is based on its ability to create and invent new works in the field of technology and culture.

Encourages Innovation: Legal protection of new creations encourages the use of additional resources for further innovation.

Economic growth: promoting and protecting intellectual property rights boosts economic growth, creates new jobs and industries, and improves the quality and enjoyment of life.

Protects the rights of authors: Intellectual property rights have an obligation to protect authors and other producers of intellectual property, goods and services by giving them certain time-

⁹ Semiconductor Integrated Circuit Layout Design Act, 2000, <https://www.studocu.com/in/document/university-of-lucknow/llm-general/semiconductor-integrated-circuit-layout-design-act-2000/60727919>

limited rights to control the use of industrial goods.

It promotes innovation and creativity and ensures ease of doing business. It facilitates technology transfer in the form of foreign direct investment, joint ventures and licenses.

(A) Need for uniform IPR regime

The need for a unified legal system has become even more important now that we live in a virtual world that has no borders. A unified intellectual property legal system will bring harmony around the world and facilitate the administration of intellectual property rights. It also helps all nations to understand the requirements of intellectual property rights laws and helps to comply with uniform laws, rules and regulations. When the intellectual property legal system is unified, the mechanism for solving problems related to intellectual property rights becomes uniform and simple worldwide, paving the way for a stronger and more efficient intellectual property system.

IV. COMMON ADVANTAGES OF THE IPR LEGAL SYSTEM

1. Promotes Research and Development
2. Develops technological advancement
3. Increases pressure for local competition
4. Builds innovative thinking across the country
5. Facilitates global research
6. Reduces infringement and passing off.

V. PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

(A) Protection Of Intellectual Property Rights: International Developments

The system of intellectual property rights was introduced by the Paris Convention for the Protection of Industrial Property in 1883 and then strengthened by the Berne Convention in 1886. This period was characterized by attempts to harmonize the intellectual property laws of different countries. Developing countries, which demand protection of intellectual property proportional to their economic growth, contribute greatly. Both the Paris and Bern Conventions have been revised several times since their conclusion in 1883 and 1886 respectively.

The United International Offices for the Protection of Intellectual Property, which are also known as BIRPI in France, are small offices of these two conventions. BIRPI later became the World Intellectual Property Organization, a specialized agency of the United Nations. The World Intellectual Property Organization is currently dealing with various agreements related to intellectual property rights. The international protection of intellectual property rights is

carried out by several international treaties and conventions.¹⁰

a. World Intellectual Property Organization (WIPO) –

The convention establishing the world intellectual property organization was signed in 1967 and entered into force in 1970 before 1974 the world intellectual property organization was an intergovernmental organization and had become an agency specific under United Nations the world intellectual property organization administers and number of agreements covering a wide range of intellectual property rights¹¹.

b. Evolution Of Trade Related Aspects Of Intellectual Property Rights Agreement (1995) –

After the Uruguay Round, it established a foundation for what is now known as the World Trade Organization: the Convention on Tariffs and Trade. To gain entry to the many international markets provided by the World Trade Organization, countries must ratify certain Trade Aspects of the Agreement on Intellectual Property Rights and ensure that intellectual property rights are stringent. Therefore, the Agreement on Trade-Related aspects of Intellectual Property Rights is the most important multilateral instrument for the globalization of intellectual property rights.

It is worth noting that the intellectual property rights trade agreements sets minimum status for protection of intellectual property rights and require its members to make these models and their own countries¹². It should also be noted that the Agreement on Trade-Related Aspects of Intellectual Property Rights does not specify the manner in which these obligations must be fulfilled¹³. This leaves matters of implementation to the discretion of the relevant Member States. However, the Agreement on Trade-Related Aspects of Intellectual Property Rights obliges its member states to fulfil their obligations in relation to trade-related aspects of intellectual property rights when enacting domestic legislation.

c. Trade Related Aspects of Intellectual Property Rights Agreement (1995) –

The Trade-related aspects of the IPR internationalized IPR protection. Most importantly, it dealt with various aspects of intellectual property rights. Considerations for Trade in Intellectual Property Rights The Treaty brought into force all IPR treaties and gave countries sufficient legal and political space to legislate within their own legal systems. Trade related aspects of intellectual property rights by bringing different parts of intellectual property rights under one

¹⁰ Retrieved from http://www.wipo.int/treaties/en/ip/paris/trtdocs_wo020.html on 13th April, 2015.

¹¹ Retrieved from <http://www.WorldIntellectualPropertyOrganisation.int/about-WorldIntellectualPropertyOrganisation/en>

¹² The *TRIPs* Agreement, Part III, Art. 41 (1)

¹³ The *TRIPs* Agreement Art. 41 (5)

roof¹⁴ changed this model. Trade-related aspects of IPR agreements provide for minimum national standards for IPR producers in various sectors. This includes the following fields.:-

- (i) Copyright and related rights;
- (ii) Trademarks;
- (iii) Geographical Indications;
- (iv) Industrial Designs;
- (v) Patents and Plant Variety Protection;
- (vi) Layout-designs (topographies) of Integrated Circuits;
- (vii) Protection of Undisclosed Information; and
- (viii) Control of Anti-competitive practices in contractual licenses.

d. Indian Intellectual Property Laws: Post Trade Related Aspects Of Intellectual Property Rights Agreement (1995) –

At the date of entry into force of the Treaty on Trade-Related Aspects of Intellectual Property Rights, India had the Patents Act, 1970, the Trade Marks Act, 1958 and the Copyright Act, 1957, which were considered the core of intellectual property protection. The Model Act of 1911 was also in force. However, the scope of the Agreement on Trade-Related Aspects of Intellectual Property Rights was broader and included some new areas such as geographical indications (GI) and integrated circuit design. Business-related aspects of intellectual property rights also defined "undisclosed information" and the scope of its protection. India had no laws or regulations in these areas. As mentioned above, Article 1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights stipulated that "Members shall implement the provisions of this Agreement". However, WTO members were not obliged to "establish in their domestic legislation a more extensive protection than that provided for in this Agreement, provided that such protection does not conflict with the provisions of this Agreement." Article 1 further stated that Members are "... free to determine the appropriate method of implementing the provisions of this Agreement in their legal systems and practices".

Initially, there were certain provisions in India's patent law that somehow conflicted with the Treaty on Trade-Related Aspects of Intellectual Property Rights, even though India had ten years to implement or amend those provisions. Copyright and trademark laws were more or less compatible with the Agreement on Trade-Related Aspects of Intellectual Property Rights. At

¹⁴ Various classes of Intellectual Property as Industrial property were dealt with under *Paris Convention*, 1883 and Literary and Artistic works under *Berne Convention*, 1886.

that time, there was no protection mechanism for geographical indications and layout plans of integrated circuits in India. New legislation was also needed to protect plant varieties. Since 1995, the Agreement on Trade-Related Aspects of Intellectual Property Rights came into force and India had until 2005 to change or implement new laws on intellectual property rights.

VI. AN OVERVIEW OF INDIAN INTELLECTUAL PROPERTY RIGHTS REGIME

There are several intellectual property rights laws in India. Patent, trademark (including design solutions) and copyright legislation could be considered the oldest of them. Legislation for these two systems of intellectual property rights was introduced during the colonial period. In fact, these laws were an extension of English legislation. For example, patent legislation was introduced in India as early as 1856, although it was only an extension of British legislation. It was expanded largely to protect colonial interests. The legislative history of copyright has a similar beginning, although it was less contested than that of patents. The Indian Trade Marks Act was enacted in 1940, which is equivalent to the English Trade Marks Act of 1938. The rest of the intellectual property legislation related to geographical indications (GI), plant varieties, semiconductors and biodiversity was post-WTO legislation. In other words, these laws were introduced in India as an extension of the TRIPS Agreement. Some of these regulations were introduced to implement WTO/TRIPS requirements. These are:

- The Copyright Act, 1957;
- The Patents Act, 1970
- The Trade Marks Act, 1999
- The Geographical Indications of Goods (Registration and Protection) Act, 1999
- The Designs Act, 2000
- The Semiconductor Integrated Circuits Layout Design Act, 2000 and
- The Protection of Plant Varieties and Farmers' Rights Act, 2001

(A) Protection of IPR in india

Currently IPR has various different terms of protection to the creator. Those are illustrated below

IPR	LAW RELATING	TERM (in Years)
PATENTS	Patents Act, 1970	20

TRADE MARKS	Trade Marks Act,1999	10
PLANT VARITIE	Protection of Plant Varieties and Farmers Rights Act,2001	Trees and Vines-9 Others- 6
DESIGNS ACT	Designs Act,2000	10
SEMICONDUCTOR INTEGRATED CIRCUIT LAYOUT DESIGNS	Semiconductor Integrated Circuits Layout Design Act,200	10
Copyright	Copyright Act,1957	60

VII. INDIA AND INTELLECTUAL PROPERTY

The origins of the Intellectual Property Rights system in India date back to the British colonial era when the country established various rules and enforcement mechanisms related to intellectual property rights as a colony¹⁵. After independence, India retained some of these structures while modernizing some regulatory rules and other bureaucratic structures. As India moved towards liberalization, privatization and globalization in the 1990s and beyond, Indian policymakers made further adjustments to keep pace with the growing needs of domestic and international stakeholders. India's intellectual property laws are fully compliant with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.

(A) Constitutional Dimensions of Intellectual Property Rights Protection

The Universal Declaration of Human Rights, the European Convention, the Constitution of India and other international human rights organizations affirm freedom of expression and access to information. Freedom of expression provides a mechanism by which an acceptable balance can be achieved between stability and social change. The framework of the Indian Constitution indicated the importance of this right in the preamble.¹⁶ This is freedom of thought and expression. enters first priority It has a significant place in the hierarchy and is rightly called the mother of all other freedoms.¹⁷ The human personality develops to the maximum in an

¹⁵ INTELLECTUAL PROPERTY RIGHTS IN INDIA, https://loksabhadocs.nic.in/Refinput/New_Reference_Notes/English/Intellectual%20Property%20Rights%20in%20India.pdf

¹⁶ Indian Express Newspapers v. Union of India, (1985) 1 SCC 641

¹⁷ "WE.....to secure to all its citizens LIBERTY of Thought, Expression, Belief, Faith and Worship."

atmosphere of freedom of speech and expression. The Supreme Court of India considered freedom of speech important. and expression.¹⁸ The final goal of any democratic state is that "no idea remains unheard". The beauty of free speech is not to give every idea the right expression, but in every idea you can find a myth to express that the truth has finally been found. Strictly speaking, this right is the true expression of all democratic freedoms such as freedom of speech and expression, freedom of assembly, association, movement, residence and establishment and freedom of profession, occupation or business¹⁹.

a. Constitutional Directive to Respect Treaty Obligations

According to Article 51 (c) of the Constitution of India, the state follows a constitutional directive to promote respect for international law and treaty obligations in the mutual relations of organized states. Although directive principles of state policy cannot be enforced in municipal courts, they are still fundamental from the point of view of state administration.²⁰ The constitutional concern for compliance with international law, including international agreements and conventions, is also reflected in Article 253²¹. Parliament has power to adopt legislation. which concerns the conclusion of agreements with foreign countries and the execution of treaties, agreements and conventions with foreign countries²². In addition to agreements that require legislation, however, international agreements concluded by the Union in the exercise of its executive power according to Article 73, which enters in the exercise of its executive power by the Union according to Article 73, but are not contrary to law; local courts must approve them. Keeping in view the requirement of various international treaties²³, the Indian parliament has enacted laws that fulfil the criteria mentioned therein. India has been a party to important treaties on intellectual property rights. As a member of the WTO, the TRIPS Agreement binds it under Article II of the WTO Agreement. Therefore, to adequately protect intellectual property rights, it is a contractual obligation to implement the provisions of the TRIPS Agreement. Under intellectual property laws, competent courts must provide effective and speedy remedies for all violations of intellectual property rights, taking into account the state's treaty obligations to interpret the law, exercising its discretion, and providing adequate relief for violations of intellectual property rights.

¹⁸ AIR 1950 SC 124

¹⁹ The Law of Expression, Asia Law House, Hyderabad, 2007, p.791

²⁰ *Minerva Mills v. UOI* AIR 1980 SC 1789.

²¹ Constitution of india

²² The Constitution of India, Art. 246 read with Entry 14 of the Union List of subjects on which it can legislate contained in Schedule VII.

²³ Berne Convention, 1883, P

(B) 'Property' Under Article 300A

Article 300-A of the Constitution of India enshrines the right to property, which states that no one shall be deprived of his property except by law. This ensures that a person cannot be deprived of his property without the law. Seizure of property can only be done according to law. The first obvious question is whether "intellectual property rights" fall within the definition of "property" in Article 300A. The judgment of the Supreme Court in *Entertainment Network India Ltd. case* supports the proposition that "property" within the meaning of Article 300A is broader than "immovable property" in the context of "intellectual property". (*ENIL*) vs. *Super Cassette Industries Ltd. (SCIL)*²⁴. Thus, it is clear from the above discussion that copyright is a fundamental right under Article 19 (1) (a) of the Constitution of India. Copyright is an extension of freedom of speech and expression, which means that if a person has freedom of speech and expression, he naturally has the right to protect the relevant intellectual work as property. Technological revolutions, innovations developed through intellectual achievements require adequate legal protection.

(C) Indian Constitution and Intellectual Property Rights

The Constitution of India enshrines fundamental rights, but intellectual property rights are not expressly included in any of the fundamental rights and are not expressly excluded from the ambit of fundamental rights by any provision of the constitution. When the constitution was created, the right to property was a fundamental right under Article 19 (1) (f), but it was reduced to a mere constitutional right by the 44th Amendment to the Constitution in 1978, adding Article 300A. There is no special provision on intellectual property rights in the Constitution.

We get a clue about intellectual property rights from Clause 49 of List 1 of Schedule 7 of the Constitution of India. Paragraph 49 specifically recognizes intellectual property rights as it mentions "patents, inventions and designs; copyright; trademarks and trade marks". Clause 49 does not explicitly recognize the concept of traditional knowledge, biodiversity and geographical indications. However, it can be assumed that such IPRs would also be included in Clause 49 as IPRs are not listed in Schedules I and III. Further, Article 248 gives parliament exclusive power to legislate on all matters not mentioned in the State List (List II) and the Concurrent List (List III).

The preamble of the Indian Constitution takes into account a mixed economic system and recognizes economic freedom as one of the most important freedoms. To this end, the Constitution guarantees the right to property to the citizens of India because "no one shall be

²⁴ (2008) 13 SCC 30.

deprived of his property except by operation of law".³ The Supreme Courts said that the term "property" under Articles 31 and 300A should be interpreted liberally and should be extended to all such well-recognized interests that have the characteristics of ownership. ⁴ This must include both tangible and intangible rights²⁵.

In the book *K.T. Plantation Pvt. Ltd Vs. State of Karnataka*²⁶ the Supreme Court said that "the term property in Article 300A is not limited to land. It includes intangible property such as copyright and other intellectual property rights and includes all possible interests recognized by law." Thus, IPRs can now be said to fall under Article 300A "property", although not directly, but through legal interpretations. The right of property mentioned in Article 300 A of the Treaty is not a fundamental right, so it lacks the protection of fundamental rights. If intellectual property rights are violated, they have a constitutional right, but as a fundamental right, they can be challenged directly in the Supreme Court under Section 32 of the Constitution. While this means that intellectual property has no special constitutional status, it also means that there are no constitutional restrictions on the establishment of intellectual property laws. Article 300A of the Constitution of India provides constitutional safeguards against misappropriation of property.

Article 253 empowers parliament to make laws affecting the whole or part of the territory of India to implement treaties and international agreements with other countries or any decisions taken at any international conference, association, or other body. This article is very important for the implementation of international agreements and conventions related to intellectual property rights. Parliament implemented the provisions of WIPO (World Intellectual Property Organization) and TRIP (Trade Related Aspects of Intellectual Property Rights) using Article 253 powers. Further, a certain provision of Article 372 also asserts a pre-constitutional right under certain conditions under the provisions. Article 372(1) states that: "Notwithstanding that an Ordinance is repealed by this constitution, all laws in force in the territory of India immediately before the coming into force of this constitution shall continue in force therein until they are amended, repealed or amended. by the competent authority, the Parliament or another competent institution". Thus, Article 372 allows pre-constitutional intellectual property laws to remain in force in India and Indian legislation can adopt various international treaties or conventions on intellectual property rights. For example, Article 372(1) of the Constitution of India empowered the parliament or any competent authority to repeal, amend or amend pre-constitutional legislation, which led to the repeal of the Patents Act, 1911 and the enactment of

²⁵ Dwaraka Das Srinivas v Sholapur Spg. & Wvg Co. Ltd. AIR 1954 SC 112

²⁶ AIR 2011 SC 3430

the present Patents Act 1970.

(D) Intellectual Property Rights as Fundamental Rights

The Constitution of India guarantees fundamental rights to citizens and non-citizens as well. The fundamental rights thus guaranteed also include and complement human rights according to international human rights treaties. Intellectual property rights are not part of any fundamental right, but they can be part of a fundamental right, such as the right to life, because some patented medicines and inventions have become lifesaving.

a. Patent and Fundamental Rights

Now, the Indian judiciary has expanded the scope of fundamental rights, especially the right to life under Article 21. The right to life also includes health, a healthy environment, which indirectly guarantees human rights. A violation of these rights is a violation of fundamental rights and everyone has the right to request compensation according to Articles 32 and 226 of the Constitution. If a person or company has invented a life-saving drug or medicine and obtains a patent for it, but does not make the drug available to the public at a reasonable price, the Patent Law²⁷ gives the government the power to do the life-saving. drug the medicine in question available to the public. the fundamental right to life includes affordable medical care²⁸. The state guarantees this fundamental right by issuing a compulsory license to the public if the general requirement is not met. Article 19 (1) (g) guarantees the right to citizens of India to engage in any profession, trade or business. However, this right is subject to reasonable limitations set by law. If a citizen is granted a patent after due process, the patentee is entitled to be protected under the patent law. A patentee has the exclusive right to prevent third parties from manufacturing, using, selling or importing the patented product into India²⁹. Although intellectual property rights are expressly mentioned in Article 19(1)(g), it can be assumed by a legal entity.. interpretation that the patent owner has the right to be protected also based on Article 19(1)(g) according to the paragraph, if his rights are violated, because the right of the patent owner arising from the patent law is a right arising. of the law, which cannot contradict the provisions of Article 19(1) of the Constitution. g). Furthermore, an infringer cannot claim the protection of Article 19(1)(g) because there are reasonable limitations.

b. Copyright and Fundamental Rights

One of the most important fundamental rights granted by the constitution is freedom of

²⁷ Section 84 of Patent Act 1970

²⁸ State of Punjab v. Mohinder Singh Chawla (1997) 2 SCC 83

²⁹ Section 48, Patent Act 1970

expression⁴. Freedom of expression is the right to freely express one's thoughts, opinions and ideas in words, in writing, in print, in presentation, images or in other ways, for example in electronic media. This right is the basis of a healthy and strong democracy³⁰. Freedom of speech includes expressing one's opinion by writing and publishing a book. In *State of Maharashtra v. Prabhakar Pandurang*³¹ person was arrested under Preventive Detention Act. In prison, he wrote a book and asked for permission to publish it, but the government refused to grant permission. The Supreme Court found that this violated his personal freedom under Article 21 of the Constitution, because he had the right to write and publish a book. Thus, a person has the right to copyright if he has written a book and has protection under both the fundamental right and the copyright law, but that right is limited by reasonable limitations according to Article 19 (2) of the Constitution. The Supreme Court took the position that the fundamental right of speech and expression cannot be limited by geographical boundaries³². If the owner of the copyright refuses to republish his work or refuses to communicate it to the public, the Copyright Office grants a compulsory license³³. A compulsory license is granted as part of the right to know or receive information.

c. Trademark and Fundamental Rights

Article 19(1)(g) guarantees the right to practice any profession or engage in any profession, trade or business. The right is not absolute but is accompanied by the reasonable limitations specified in Article 19, paragraph 6. Nowadays brand is very important for companies and the public knows about the company through its brand and therefore brand is the goodwill of the company. If a person's registered trademark is infringed, the owner of the trademark has the right to be protected based on the fundamental right specified in Article 19(1)(g) and the Trademark Law. According to Article 19(1)(a), the public has the right to know or receive information about the company's product or its brand. Citizens have the right to receive information about the products they intend to use. This right to information protects the public from misleading information and unfair business practices. The trademark is therefore not a fundamental right directly, but by interpretation.

d. Geographical Indications and Fundamental Rights

Geographical indications guarantee that the product comes from a specific geographical origin and has the quality and characteristics specific to the region. Producers who claim that their

³⁰ Romesh Thaper v. State of Madras AIR 1950 SC 124

³¹ AIR 1966 SC 424

³² Maneka Gandhi v. Union of India, 1978 AIR 597, 1978 SCR (2) 621

³³ Section 31 of Copyright Act 1957

products originate from a particular region are protected under Article 19(1)(g), and consumers also have the right to know whether or not goods or products bear certain characteristics of origin. Accordingly, geographical indications are protected under the Fundamental Rights and Geographical Indications for Goods (Registration and Protection) Act 1999.

e. Traditional Knowledge and Constitution

The Constitution of India requires the State to help the Scheduled Tribes^{and} for the protection of economic interests and to protect the tribal population against social injustice and all exploitation. The Biodiversity Act was passed to protect their traditional knowledge by conserving biological resources and thus empowering them economically. Indigenous peoples and traditional knowledge are also protected under the Biodiversity Act and their interests are protected by the Constitution of India.

VIII. THE ENFORCEMENT PROCEDURES OF INTELLECTUAL PROPERTY RIGHTS IN INDIA

The institutional mechanism in the area of intellectual property rights mainly consists of, first, an administrative mechanism, which is mainly concerned with the granting or registration of intellectual property rights, and second, a judicial mechanism, which mainly deals with complaints, violations and related matters against orders of administrative bodies.

(A) Administrative Mechanism

The Office of the Controller General of Patents, Designs and Trademarks (CGPDTM) is an office under the Department of Industrial Policy and Promotion (DIPP) of the Ministry of Commerce and Industry. The primary source of advice for the Indian government on industrial rights matters is this agency which has a legal responsibility to manage patents, trademarks and customary designs. Due to the enactment of the Geographical Indications for Goods (Registration and Protection) Act in 1999, the CGPDTM is now also responsible for the protection and management of geographical indications.

The Office of The Controller General Of Patents, Designs And Trademarks (CGPDTM)

The CGPDTM is one of the main administrative institutions in India in the intellectual property area. It administers and manages patents, trademarks, designs and geographical indications and is therefore probably the most important and leading agency in this regard. Patent Office The Patent Office consists of patent examiners and other officials who, according to the Patent Law 1970 perform tasks related to the administration and granting of patents for new inventions.

Each patent office maintains a patent register where the following information is entered.:

- The names and addresses of grantees of patents;
- Notifications of assignments and of transmissions of patents, of licenses under patents, and of amendments, extension and revocation of patents;
- Particulars of such other matters affecting the validity or proprietorship of patents as may be prescribed.

(B) The Trademarks Registry

The Trademarks Act 1999 provides for the registration of goods and services. CGPDTM is the trademark registry referred to in the law. The jurisdiction of the offices of the Trademark Registry is not affected by a change in the address of the headquarters or service. All registered trademarks are registered in the Register of Trademarks³⁴ maintained at the headquarters of the Registrar of Trademarks in Mumbai. The notary has all the powers of a civil court in all pending judicial proceedings¹⁵⁸. The notary has the right to review his decision on the request made in the prescribed manner. All proceedings of the Registrar of Trade Marks when acting as a "court". Section 127 of the Act gives the registrar the right to review his decision

(C) The Copyright Office

The first step in obtaining a copyright is through the Copyright Office. It was established in New Delhi in 1957 to administer various provisions of the Copyright Act. The Copyright Act of 1957³⁵ provides a comprehensive mechanism for the administration and registration of copyright.¹⁶¹ It is worth mentioning that copyright takes effect immediately after the creation of a work, and registration is not a prerequisite for the right to exist³⁶. Therefore copyright registration is not mandatory.

a. Register of Copyright

A register is required by law to record the names, titles, addresses, and other relevant information in the copyright register. This includes authors, publishers, or copy rights holders. Every entry in the copyright register must be published in an official publication. The registrar has the right to register the copyright owner's work after receiving the application. It should be said that the registrar also has the right to refuse to register a copyrighted work.

³⁴ Trademarks Act, 1999, s 3(1).

³⁵ ss. 9(1),(2) headed by the Registrar of Copyrights as appointed by the Central Government.

³⁶ Copyright Act, 1957

IX. JUDICIAL MECHANISM

(A) Intellectual Property Appellate Board (IPAB)-

The Board was established under the Trade Marks Act 1999³⁷.164 It was established to challenge registrant decisions under the Trade Marks Act 1999. The Patents Act 1970 was amended by the Patents Amendment Act, 2005, which provides for the establishment of a Patent Appeal Board. Accordingly, the Act provides that the IPAB, established under section 83 of the Trade Marks Act 1999, is a patent appeal board. The primary purpose of establishing the IPAB is to ensure that legal and technical experts deal with complaints quickly. Orders made by the IPAB may be appealed to the Court of Appeal.

(B) Copyright Board

According to section 12 of the law, the Copyright Office has the authority to determine its own procedures, including confirming the places and times of meetings. Generally, the Board deals with actions brought before it in the area where the plaintiff actually or voluntarily resides or does business or personally earns a profit.

According to the Act, the Board has the following powers:

- i. to deal with appeals against the orders of the Copyright Reporter
- ii. process requests for correction of entries made in the copyright register.
- iii. resolve copyright assignment disputes.
- iv. grant public compulsory licenses to Indian works kept secret; grant compulsory licenses for the publication of unpublished Indian works.
- v. grant compulsory licenses for the production and publication of translations of literary or dramatic works.
- vi. grant compulsory licenses for the reproduction and publication of certain categories of literary, scientific or artistic works for certain purposes.
- vii. hears and resolves disputes regarding the publication of a work or the date of publication of a work or determines whether a copyright term for a work is shorter in another country than that prescribed for the work.
- viii. approve royalty rates for sound recordings in accordance with the cover version provision

³⁷ Trademarks Act, 1999, s. 83.

- ix. assign resale rights to original works of painting, sculpture or drawing and original manuscripts of literary, dramatic or musical works and others.
- x. Any order issued by the Copyright Board may be appealed to the Court of Appeal within whose jurisdiction the appellant resides or carries on business, except under section 6 of the Act.³⁸

(C) Civil Litigation in Intellectual Property Law

The main purposes of civil litigation are:

- (i) compensation for damage caused by violations;
- (ii) properly remove infringing copies;
- (iii) properly dispose of the devices used in the infringing activity
- (iv) issue injunctions to prevent further violations.

Typically, the remedies available in an IPR infringement action are injunctive relief, damages, and liquidated damages. Most measures start with temporary or interim measures and in most cases do not go beyond the preliminary stage.

(D) TRIPS and India: Implementation Issues

The Uruguay Round of the Agreement on Tariffs and Trade (GATT) negotiations and the establishment of the World Trade Organization (WTO) led to India signing the WTO Agreement on 15 April 1994. The WTO Agreement entered into force on 1 January 1995. Together with the WTO Agreement, the TRIPS Agreement entered into force on the same day. Article 1 of the TRIPS Agreement obliges Member States to implement the provisions of the Agreement³⁹. Member States were also required to legislate on the minimum standards contained in the various provisions of the TRIPS Agreement. The transition period starting on January 1, 1995 was ten years for developing countries. Thus, India had ten years to implement the minimum requirements set out in the TRIPS Agreement. However, there were some immediate obligations that required inclusion, such as exclusive marketing and rapid acceptance of product patent applications to protect chemicals and agrochemicals in countries that did not grant product patent protection to those areas.²¹ India pointed out. 1999 to implement these two provisions. When India granted patent protection to the product in 2005, these changes were removed from the Indian Patent Act of 1970.

³⁸ For determining the term of copyright, s 72

³⁹ TRIPs Agreement, Art. 65

X. TREATIES UNDER INTELLECTUAL PROPERTY RIGHTS

Intellectual property rights cover various topics such as patents, copyrights, trademarks, industrial designs, plant varieties, etc. The need for protection of these different areas arose at different times. They can be seen in various contracts. The TRIPS agreement under the auspices of the WTO remains the most influential, the most comprehensive and the most comprehensive. There are two main bodies, the World Intellectual Property Organization (WIPO) of the United Nations and the World Trade Organization..

Every WTO agreement is based on some principle, which are

- National Treatment - No foreign product should be discriminated in any way when entering the domestic territory. This also applies to intellectual property. Members must treat foreign creations as well as domestic creations.
- Most-favoured-nation - if a member offers privileges, preferential treatment or exemptions to another country or group, other members must receive the same preferential treatment. • Right of priority - If the same patent application is filed in two different countries, the earlier applicant has the right to the patent.
- Concept of Minimum Standards - This agreement sets the minimum protection that each member must provide to intellectual property. Members may offer more coverage than the minimum requirements.

(A) Berne Convention For The Protection Of Literary And Artistic Works

On September 9, 1886, the convention was adopted in Bern, and it became effective on December 4, 1887. The Berne Convention for the Protection of Literary and Artistic Works, commonly known as the Berne Convention, is an international treaty governing copyright. It was first adopted in Bern, Switzerland in 1886. Protection of works and the rights of their authors is a key aspect of the Bern Convention. The provisions of the Bern Convention can be divided into three main categories: Protection of all literary, scientific and artistic production in any form. The translation right makes adaptations and adaptations, publicly performs, communicates to the public, transmits and copies. According to the Berne Convention, all works, except cinematography and photography, are protected by copyright for at least 50 years after the death of the author, but extended periods can be offered to relatives. This copyright treaty is based on three basic principles: national treatment, automatic protection and independence of protection; it also contains some provisions defining the minimum protection afforded. It came into force in India on 1 April 1928.

(B) Convention Establishing The World Intellectual Property Organization (WIPO)

The WIPO Convention is a multilateral agreement that created the World Intellectual Property Organization (WIPO). The convention was signed in Stockholm, Sweden on July 14, 1967 and entered into force on April 26, 1970. WIPO dates back to 1883 and 1886, when the Paris Convention for the Protection of Industrial Property and the Berne Convention were adopted. Works of literature and art were signed. Both conventions provided for the establishment of an international representative office. The two offices were merged in 1893 and replaced by the World Intellectual Property Organization under the WIPO Convention in 1970.

WIPO's two main objectives are:

- to promote the protection of intellectual property throughout the world and
- to ensure administrative cooperation between the intellectual property associations established by treaties administered by WIPO.

India became a member of WIPO in 1975. It is currently a member of the following treaties administered by WIPO: Berne Convention (1928), Audiovisual Convention (1975), Nairobi Convention (1983), Paris Convention (1998), PCT (1998). Budapest Convention (2001), Madrid Convention on the International Registration of Marks and Protocol to the Madrid Convention (2013).

India continued to engage helpfully with WIPO and actively participated in the meetings of the WIPO Standing Committees on Intellectual Property Rights and Development, Patents, Copyrights and Related Rights, Trademarks, Industrial Designs and Geographical Indications and the Intergovernmental Committee on Traditional Knowledge..., Folklore and Genetic Resources, Advisory Implementation Committee, PCT Working Group and other bodies dealing with organizational issues.

(C) Agreement Establishing The World Trade Organization (WTO)

adopted on 15 April 1994 at Marrakech, and came into effect on 1 January The WTO was established to provide a common institutional framework for trade relations between its members in matters related to agreements and related legislation. India became a member of this treaty on January 1, 1995.

(D) World Trade Organization (WTO) Agreement On Trade-Related Aspects Of Intellectual Property Rights (TRIPS AGREEMENT)

Adopted on April 15, 1994 in Marrakesh, and came into effect on January 1, The TRIPS Agreement covers various categories of intellectual property rights and specifies minimum

standards, procedures, and measures for the enforcement and protection of such rights in litigation. India became a member on 1 January 1995. TRIPS was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1989-90 and is administered by the WTO. This agreement entered into force on January 1, 1995. This agreement sets a minimum standard for many provisions related to intellectual property rights. The agreement is the most comprehensive multilateral agreement on intellectual property to date..

Following areas of Intellectual Property covered under the agreement are:

- Copyrights and related rights
- Trademarks
- Geographical indications
- Industrial designs
- Patents
- Layout-designs of integrated circuits
- Trade secrets

Features of Agreement-

- **STANDARDS:** For each area of intellectual property rights covered by the agreement, all member states must establish minimum standards for the protection of intellectual property rights. Each area of intellectual property rights is covered in such a way that the main elements of protection are clearly described, ie. the object of protection, the rights granted and the exceptions allowed and the minimum duration of protection.
- **ENFORCEMENT:** Each member state must provide national procedures and legal means for the protection of intellectual property rights. In addition, the agreement contains some other provisions to enable rights holders to effectively enforce their rights. These regulations provide detailed descriptions of civil and administrative procedures and remedies, as well as specific requirements for border operations and criminal procedures.
- **DISPUTE SETTLEMENT:** Suggested conflicts among WTO Members concerning their responsibilities under the TRIPS Agreement should be reported to them through dispute resolution procedures.

(E) Paris Convention For The Protection of Industrial Property

Adopted on March 20, 1883 in Paris and entered into force on July 7, 1884. It contains basic guidelines for the protection of industrial rights (patents, utility models, industrial designs, trademarks, service marks, trade names, references or names of origin. and prevention of unfair competition) and contains substantive provisions on national treatment, on privileges and common rules. This treaty entered into force in India on December 7, 1998. This international treaty was the first important step to help authors secure protection for their intellectual works in other countries. This convention created a national treatment. In accordance with the provisions on national treatment, the Convention stipulates that, with regard to the protection of industrial rights, each State Party shall grant the same protection to the nationals of other State Parties as to its own nationals. Nationals of countries that are not party to the Convention are also entitled to receive national treatment under the Convention if they have a permanent residence or a real and functioning industrial or commercial enterprise in a Contracting State.

(F) Patent Cooperation Treaty (PCT)

Adopted on June 19, 1970 in Washington and entered into force on January 24, 1978. It facilitates the simultaneous patent protection of an invention in several countries; it entered into force in India on 7 December 1998

The Patent Cooperation Treaty (PCT) is an international patent law treaty concluded in 1970. It provides a uniform procedure for filing patent applications to protect inventions in each state party. PCT focuses on bringing the world to your fingertips, simplifying the process of meeting various formalities, delaying the high costs of international patent protection, creating a strong basis for patent decisions, and is used by the world's largest companies, research institutes and universities. apply for international patent protection.

The procedure under the PCT has the following advantages for the applicant:

An international and individual patent application that is compliant with the PCT, but only submitted in a single language and with corresponding fees. International Search, where the International Searching Authority (ISA) analyses the invention and issues a declaration of potential patentability. International publication where the content of the international application is published internationally immediately after 18 months from the earliest filing date (priority date). At the request of the applicant, the authority responsible for the international preliminary examination may perform an additional patentability analysis, usually on a modified version of the application. After the end of the international phase, the application moves to the domestic phase where the patent is sought and #039; in the national patent offices

of the countries requesting protection. Granting patents is still the responsibility of national patent offices. India accepted the PCT and the Ministry of Foreign Affairs deposited the requested document with the Director General of WIPO on 7 September 1998 and the PCT became applicable to India since December 7, 1998.

(G)Budapest Treaty On The International Recognition Of The Deposit Of Micro-Organisms For The Purposes Of Patent Procedure

Adopted in Budapest on April 28, 1977 and entered into force on August 19, 1980. It contains instructions for the deposit of microorganisms in any "international repository" for patent litigation. This Agreement entered into force in India on December 17, 2001..

(H)Protocol Relating To The Madrid Agreement Concerning The International Registration Of Marks:

Adopted on June 27, 1989 in Madrid and entered into force on December 1, 1995. The sole purpose of the Madrid Agreement was to create a mechanism for an individual to register a single international trademark. This process not only simplified global registration, but also made it a cost-effective and affordable method of international trademark registration. The Madrid Agreement not only simplified the international trademark registration process, but also eliminated the need to file, process or maintain separate registration applications in multiple countries. It came into force in India on 8 July 2013..

(I) Universal Copyright Convention, 1952

The Universal Copyright Convention (UCC) was adopted in 1952 in Geneva, Switzerland. It was developed by the United Nations Educational, Scientific and Cultural Organization (UNESCO) as an alternative to the Berne Convention.

Although countries can still become members of the UCC, the UCC has lost its relevance because most countries are members of the World Trade Organization and adhere to the provisions of the TRIPS Agreement..

The main features of the UCC are as follows:

- No signatory country can give its domestic authors more favorable copyright treatment than authors of other signatory countries, even if no minimum protection is provided for domestic or foreign authors.
- The official copyright notice must appear on all copies of the work and must include the symbol, the name of the copyright owner and the first year of publication, the signatory

country, and may require additional formalities if such formalities do not favour the domestic work over foreign works.

- The minimum duration of copyright in member states must be the life of the author plus 25 years, except for photographic and artistic works, which have a validity of 10 years.
- All acceding countries must grant, under certain conditions, exclusive rights to the translation under a compulsory license for seven years to balance the copyright period.

XI. NATIONAL IPR POLICY

India ranked 29th out of 30 countries in the Global Intellectual Property Index 2015 published by the US Chamber of Commerce. The United States also raised concerns about the country's intellectual property rights system when it placed India on a "priority watch list" in a 2014 report by the United States Trade Representative (USTR). In addition, the judiciary also viewed the matter with suspicion. Recognition of intellectual property rights, especially in relation to medicines. This was emphasized by the Supreme Court when it refused to grant patent protection to the cancer drug Gilvec produced by Novartis.

Considering such developments, the government has taken a firm approach to frame an action plan for intellectual property rights in the country. The National Policy on Intellectual Property Rights was established to improve the investment climate, promote innovation and facilitate the commercial use of industrial rights. This practice is in line with India's declaration of declaring this decade as the Decade of Innovation.

National IPR Policy 2016 encompasses all IPRs into a single vision document setting in place an institutional mechanism for implementation, monitoring, and review of IP laws.⁴⁰

The policy was approved by the Union Cabinet on 12 May 2016. It recognizes India's TRIPS overarching legal framework for the protection of intellectual property rights and seeks to balance India's development challenges using the flexible options offered by the international system. The policy specifically focuses on IPR awareness and emphasizes the importance of IPR as assets and also as an economic tool. The call to action is "Creative India; Innovative India"

(A) Features of National IPR Policy

The policy recognizes the importance of innovation and creativity in the growth and development of the information economy. It equates innovation with the creation of IP

⁴⁰ Intellectual Property Rights Policy Management framework covers 8 types of intellectual property rights, <https://pib.gov.in/PressReleasePage.aspx?PRID=1941489>

addresses. The main focus of the practice is to enable the monetization of IP addresses through awareness, and alleviating administrative bottlenecks by streamlining procedures. Copyrights, currently managed by the Ministry of Human Resources, are sought to be submitted to the Department of Industrial Policy and Promotion (DIPP) to match them with other IPs. To commercialize and add value to IPs, the policy offers a study that examines IPs - interchangeability. Such an exchange of proprietary intellectual property can facilitate investment in IP-based industries by bringing together investors and owners/users of intellectual property. The policy also encourages the government to explore the option of fast-track patent applications to boost manufacturing in India. The policy also considers rural and marginalized economies. It states that financial support should be preferred to less empowered IPR owners or donors such as farmers, weavers, craftsmen, artisans etc. through rural banks or cooperative banks. To speed up dispute resolution and ensure IPR enforcement, practice recommends the establishment of commercial courts that would deal with matters related to intellectual property rights. It also recommends exploring the possibility of resolving intellectual property disputes through an alternative dispute resolution mechanism. Therefore, one of the policy objectives is to strengthen the enforcement mechanism. This can be achieved through various government agencies and non-governmental actors (e.g. private sector and non-governmental organizations); and encourage the implementation of technology-based solutions to enforce intellectual property rights.

Other measures proposed in the policy include criminalizing the unauthorized copying of films, incentivizing CSR tools for open innovation, and building IPR capacity, through education, teaching, research and skills development. However, this decision aims to promote intellectual property rights as an end in itself, rather than placing it in the wider innovation ecosystem. It proposes that publicly funded research institutions must turn their discoveries into intellectual property assets by linking the career development of researchers in those institutions to the creation of intellectual property. This can hinder the free flow of information in the long run.

- It encompasses and brings all IPRs under one platform, considering all connections. Therefore, the goal is to create and utilize synergies between all types of IPR, relevant laws and agencies.
- It creates an institutional mechanism for implementation, monitoring, and review. It aims to incorporate and adapt global best practices to the Indian scenario.
- The commercial policy of the Government of India and Department of Promotion (DIPP) The Government of India has been designated as the Coordinating Department,

guides and monitors\ the implementation and further development of IPRs in India.

- The Cell for Promotion and Management of Intellectual Property Rights (CIPAM) established under DIPP is now envisaged as a focal point for implementation of national IPRs. of political goals.
- India's intellectual property system follows the WTO's Trade Related Aspects of Intellectual Rights (TRIPS) agreement.

(B) Salient Features of National IPR Policy

a. Access To Information and Public Awareness:

The policy emphasizes the importance of increasing IPR awareness among all stakeholders, including innovators, creators, businesses and the general public. It aims to provide easy access to information on the meaning of intellectual property rights and the procedures for obtaining and enforcing rights.

b. Legal And Legislative Framework:

Practice emphasizes the need for a strong legal and legislative framework to support protection and enforcement. protection of intellectual property rights. It emphasizes harmonizing national laws with international standards and including best practices to ensure an environment conducive to innovation and creativity. Governance and governance of intellectual property rights: The policy focuses on increasing the efficiency and transparency of intellectual property management and administration. property rights It calls for the establishment of dedicated intellectual property offices and the introduction of simplified procedures for the registration, investigation and enforcement of patents, trademarks, copyrights and other intellectual property rights.

c. Promotion of Innovation and Creativity:

The policy aims to promote innovation and creativity across economic sectors by encouraging research and development, fostering collaboration between academia, industry and research institutes and facilitating technology transfer and commercialization of intellectual property rights.

d. Commercialization and Technology Transfer:

The policy recognizes the importance of facilitating the commercialization and transfer. of technology through licensing, franchising and through other mechanisms. It encourages the establishment of technology transfer offices and the promotion of technology parks and incubators to support start-ups and small and medium-sized enterprises (SMEs).

e. Enforcement And Protection:

The policy emphasizes the importance of effective enforcement mechanisms in the struggle. infringement of intellectual property rights., piracy and counterfeiting. It recommends the strengthening of enforcement agencies, the use of advanced technical tools for monitoring and enforcement, and the imposition of deterrent sanctions to prevent violations.

f. International Cooperation and Collaboration:

The policy emphasizes the importance of international cooperation and collaboration in this area. protection of intellectual property rights. It aims to strengthen bilateral and multilateral relations with other countries, international organizations and stakeholders to address global challenges and opportunities in the field of intellectual property rights.

(C) Objectives

- IPR Awareness: Outreach and Promotion - Increasing public awareness of the economic, social and cultural benefits of intellectual property rights in all parts of society.
- Generation of IPRs - To promote the generation of IPRs.
- Legal and Legislative Framework - To have strong and effective IPR laws, which balance the interests of rights owners with larger public interest and stronger implementation.
- Administration and Management - To modernize and strengthen service-oriented IPR administration.
- Commercialization of IPRs - Get value for IPRs through commercialization.
- Enforcement and Adjudication - To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements.
- Human Capital Development - To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs.

(D) Achievements Under New IPR Policy

- Improvement in GII Ranking: India's rank in the Global Innovation Index issued by WIPO has improved from 81st in 2015 to 52nd place in 2019.
- Strengthening of institutional mechanism regarding IP protection and promotion. Clearing Backlog/ Reducing Pendency in IP applications: Augmentation of technical manpower by the government, has resulted in drastic reduction in pendency in IP

applications. Automatic issuance of electronically generated patent and trademark certificates has also been introduced.

- **Increase in Patent and trademark Filings:** Patent filings have increased by nearly 7% in the first 8 months of 2018-19 vis-à-vis the corresponding period of 2017-18. Trademark filings have increased by nearly 28% in this duration. IP Process Re-engineering Patent Rules, 2003 have been amended to streamline processes and make them more user friendly. Revamped Trademarks Rules have been notified in 2017.
- **Creating IPR Awareness:** IPR Awareness programs have been conducted in academic institutions, including rural schools through satellite communication, and for industry, police, customs and judiciary. Technology and Innovation Support Centres (TISCs): In conjunction with WIPO, TISCs have been established in various institutions across different states.

XII. CASE LAW

1. Nokia Vs Oppo [FAO (OS) (COMM) 321/2022]

In a recent turn of events, the Supreme Court emphasized the importance of protecting intellectual property rights and promoting a culture of innovation. It is a patent dispute between two giants of the technology industry, Nokia and Oppo. The decision of the Supreme Court marks a turning point in the protection of intellectual property rights and underlines the importance of respecting patents and licenses.

(A) Background of the case

In November 2018, Nokia entered into a patent licensing agreement with Oppo, covering both core patents and non-SEP patents.. Under the agreement, Oppo was granted permission to use certain Nokia technologies for three years. However, the agreement did not include the use of patents related to 5G standards. That license agreement expired in mid-2021 and the parties could not agree on terms to renew those licenses. After the expiry of the contract, Nokia claimed that Oppo's sales grew like never before, selling around 77 million devices in India without paying a single rupee in royalties. In July 2021, Nokia argued that it offered to discuss the renewal of the agreement, but Oppo refused to negotiate, thus leading Nokia to sue BBK owned Chinese android devices maker Oppo and subsequently its affiliate OnePlus for infringing some of its 4G and 5G patents.

(B) The decision of the single judge- Delhi High Court

Nokia has requested an interim deposit from Oppo, an amount based on either the Chinese company's latest global licensing counteroffer or an amount equal to royalties paid under the

2018 deal.

Despite the request, a HC judge rejected the application for interim deposit due to lack of jurisdiction as the court cannot grant temporary deposit without first going into the merits of the matter. The judgment was based on the fact that Nokia had clearly and unequivocally demonstrated that, based on the license between the parties until 2021 and the various offers and counter-offers, Oppo had shown its willingness to acquire Nokia's license.

The Single Judge bench also insisted Nokia that it must first satisfy the following four-factor test –

1. The claimed patent is in fact a Standard Essential Patents (SEP)
2. The technology used by the defendant infringes the Standard Essential Patents (SEP)
3. The royalty that the plaintiff agrees to license that the Standard Essential Patents (SEP) is FRAND (Fair, Reasonable and Non-Discriminatory)
4. The defendant is unwilling to take the license at the stated FRAND (Fair, Reasonable and Non-Discriminatory) price.

Aggrieved by the decision, Nokia filed an appeal.

(C) Appeal To The Division Bench

Oppo argued that a patent owner cannot legitimately seek a temporary or permanent injunction. The company also argued that Nokia's demands were not in line with the Fair, Reasonable and Non-Discriminatory (FRAND) agreement, which aims to ensure fair practices in the use of patents.

The court concluded that it had the power to grant a temporary deposit without going into the merits of the case in detail. It explained that such an arrangement does not mean that the company will stop using the patent. The court acknowledged that if Oppo does not make a temporary deposit, Nokia would suffer irreparable harm because its patents are used without royalty. In addition, the court considered that Nokia had initiated 13 patent infringement lawsuits against Oppo around the world, and 11 of them were settled in favour of Nokia. As a result, the single judge's order was set aside, and a two-judge bench ordered Oppo to contribute 23 percent of the Indian sales.

It said that SEP owners are entitled to a security payment (although such payments are, of course, subject to litigation and a final court decision). The term pro-tem means temporary or indefinite, and when used in the SEP context, refers to payments made by the implementer as a guarantee to protect the interests of the SEP owner until the dispute is fully resolved.. The court

found that the single judge had wrongly required Nokia to show that Oppo had unequivocally acknowledged its obligation to make interim payments. Indian law under CPC Order 39 Rule 10, 1908 empowers the court to make interim orders for depositing the amount in the court if the defendant admits that he is indebted to the plaintiff. Following the line of old "lessee-lessee" cases, Nokia argued that Oppo should at least deposit the amount under the expired 2018 contract before the court hears the main case.

The summary of the decision of the Division bench

The Division bench agreed with Nokia's contention and ordered Oppo to pay 23 percent of the amount paid under the license agreement that expired in 2018. This is because Oppo's sales in India represent 23% of its global sales.

- Some of the key outcomes of the law that will greatly benefit all SEP holders are as follows:
- In order to achieve a modern and fair system of patent law, the court should accept a pro-tem warranty without a special thorough investigation. Sometimes such orders can even be issued at the first hearing.
- Delay favors implementers and works against the interests of SEP holders.
- If the security fee is not imposed, implementers create an asymmetric advantage over SEP owners because they are allowed to sell their devices while the SEP owner fights in court.
- A per-issue warrant is not the same as an order because it simply balances the inventory. This makes the executor who did not pay the patent owner responsible for using the SEP.
- The analogy of lessor-tenant or licensor-licensee under Order 39 Rule 10 is fully applicable in the SEP context where the previous licensee refuses to pay after the license expires.
- No one offers good money for controversial patents. Making counter offers and leaving FRAND tariff matters abroad or offering interim payments until the end of the negotiations suggest that the implementer acknowledge the SEP of the patents. These factors also constitute a prima facie case of patent infringement.
- Counteroffers are admissible in court against the person who made them because they demonstrate an obligation to pay money to the SEP holder. The fact that offers are made "without prejudice" does not make them voidable in court
- Pro-tem security does not require judicial review of third-party patent license agreements.

- A pro-tem collateral claim or even an injunction can only be made under one patent. There is no need to enforce multiple patents or the entire portfolio.

This decision marks a paradigm in the handling of SEP cases in India and puts the interests of SEP holders at the forefront of the discussion on technology availability, innovation in society and an enabling environment for additional investment. in research and development, knowledge transfer.

(D) Supreme Court's Verdict

On 4 August 2023, the Supreme Court dismissed Oppo's appeal against the Delhi High Court order. The Supreme Court emphasized how important it is that the trial of a trademark infringement case can proceed unimpeded. A test involving a thorough examination of the evidence would allow a thorough assessment of the case. The Supreme Court ruling underscores its commitment to ensure due process and protect intellectual property rights. In addition, the Supreme Court granted Oppo a 10-day grace period to file an affidavit of compliance with the order. This gesture underscores the court's willingness to provide reasonable options for resolution and compliance with legal guidelines.

(E) Implications For The Protection of Intellectual Property Rights

The decision of the Supreme Court in favour of Nokia sends a strong message to the technology industry about the importance of respecting intellectual property rights. It reinforces the principle that innovation thrives in an environment where intellectual property is protected and promotes a culture of fair competition and progress. This judgment is an important milestone in the dispute between Nokia and Oppo. This underscores the court's commitment to protecting intellectual property rights and ensuring fair practices in patent agreements. The deposit is a temporary measure to protect Nokia's interests during the trial, underlining the court's commitment to a balanced approach to these issues.

XIII. CHALLENGES TO IPR IN INDIA

These problems include copyright violations, duplicate features, stolen content, plagiarism, piracy, trademark infringement and other modern challenges. Intellectual property rights can drive economic growth, innovation, inventions and new start-ups, so addressing these challenges is imperative. To address these issues, many democratic countries have taken steps to improve and restructure their intellectual property regimes. Governments have initiated various measures to strengthen the governance system, such as the establishment of intellectual property cells, information on intellectual property rights, and participation in international

agreements affecting intellectual property rights. Digitization projects and resource allocations have begun to address the backlog of patent and trademark applications, and facilitators are supporting startups seeking intellectual property protection and filing patent applications.

1. Change From Process to Product Patents

Despite India being a signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and a member of the World Trade Organization (WTO), a change from process patents to product patents was made to reflect the TRIPS Agreement. As the name suggests, a product patent protects the final product, while a process patent protects the manufacturing process of the product. In a developing country like India, where intellectual property work is the main source of monetization, this reduces the monopoly in the market.

2. Section 3(D) Indian Patent Act

Section 3(d) of the Indian Patent Act pertains to patents that are perpetual. This section is problematic because it prohibits the extension of a product patent for minor changes. In order for MNCs to obtain patent protection for already issued patents, courts require substantial "therapeutic efficacy."

3. Section 84 India Patent Act

One of the biggest problems with intellectual property rights in India is this law that governs compulsory licensing, which requires owners of organizations that have a license to effectively produce a drug. This is a problem because some companies can take advantage of this and charge too much for their products. On the other hand, some organizations may not have the ability to bring in sufficient supplies.

4. Reduce Subsidies

Government of India offers various grants. The term "aid" refers to assistance provided by a state or other public entity to individuals in the form of money or services. However, the government must reduce or even eliminate these subsidies to meet the requirements of the TRIPS Agreement. As a result, balancing subsidies and intellectual property rights can help India address some of its intellectual property problems.

(A) India And IPR Related Issues At The Global Level

India's major intellectual property problems have been brought to the attention of the United States Trade Representative (USTR). The "priority watch list" of USTR still includes India, China, Indonesia, Saudi Arabia, and other countries. Additionally, 10 countries are listed on the list.

While India has made significant strides in enhancing the enforcement and protection of intellectual property rights, these problems persist among US businesses due to the challenges faced by developers seeking to operate within the country. In addition, government-issued information drug manufacturing licenses are opaque. According to the report, certain agrochemicals are not protected from unfair commercial use or disclosure.

India and the US are locked in an ongoing intellectual property dispute over patents, copyrights, trademarks and geographical indications. India remains on the US priority list. The United States Trade Representatives (USTR) publishes a report on the priority alert that violates WIPO's intellectual property rights. The main issues between both countries are.

The most contentious issue is Sections 3 and 84 of the Indian Patents Act, 1970. The first consists of Evergreening, which means patenting new forms of existing medicines and then compulsory licensing of.

The reasons for the same have been summarized as-

- Make patent rights more difficult and protect their inventors.
- Limit the transparency of information.
- Outdated and inadequate legal framework for trade secrets, a system that protects against inappropriate commercial use.
- Criteria for compulsory licensing that provides an advantage for domestic companies
- Distribution of royalties to the rights holder.
- Copyright practices do not provide incentives or commercialization of content.
- Unauthorized disclosure to obtain marketing authorization for pharmaceuticals and agrochemicals.
- Copyright issues in the entertainment industry.

(B) Technological Challenges and Threats

The emergence of new technologies and advances in the digital world have set new barriers to intellectual property. Ensuring digital enforcement of these rights has become an urgent matter. Protecting intangible assets in a globalizing environment has become increasingly difficult as organizations face the common threat of imitation and exploitation of brand attributes, leading to consumer confusion.

The following are some serious threats to intellectual property.

3D Printing The development of technology and the improvement of the quality of materials encouraged the mass production of printed objects, which led to potential IP violations. Current

legislation generally deals with these offences, although some changes may be necessary, especially in the context of nanotechnology or 3D printing..

Artificial Intelligence Artificial intelligence presents both challenges and opportunities for intellectual property protection. While AI can be used to protect digital content, it can also be used to imitate layouts, logos, patterns and other elements, which threatens intellectual property rights. Policing such as audio and video impersonation, cyber quality, typos and unauthorized live streaming of copyrighted digital content requires legislative changes and an updated legal environment capable of dealing with AI-related issues.

Spatial Computing: Spatial information technology is still in its infancy and lacks clear anti-piracy measures and protection against infringement. The use of augmented reality (AR) can lead to the manipulation of proprietary products, skins, copyrights and trademarks. Implementing a certification stamp for authentic data and creating a digital system can help combat GIS abuse.

(C) Reforms Needed In IPR Regime In India

- Indian scientists/innovators had to be informed about the basic precautions to be followed. The teaching of intellectual property had to be accelerated throughout the country and its feasibility in schools had to be determined.
- Incentives for IPRs were needed to encourage SMEs, start-ups, talented scientists and engineers to create IPRs.
- Need to facilitate basic innovation
- Better enforcement and adjudication of IPRs is needed to reduce dependency and strengthen institutional mechanism.
- The Intellectual Property Rights facilitate acquisition and prosecution. - transparency and efficiency through digitization, modernization, and integration of national IPR agencies.
- The need for greater international cooperation and understanding of industry best practices.

(D) Steps Taken For Indian IPR Regime

- Digitization of the IP system and offices: transition to electronic filing and processing; encouraging electronic applications; introduction of electronic communication.
- Promotion of IP education: Four new NIDs (National Institute of Design) were

established and all NIDs were given INI (Institute of National Importance) status. Inclusion of IPR content in NCERT syllabus.

- Establishment of CIPAM: Established as a professional body under DPIIT to ensure focused action on IPR related issues and achieve policy objectives.
- International Cooperation: Alignment of India's IP System with International Treaties and Classification Model. Implementation of MoUs on IP cooperation to share best practices and exchange information with IP administrations of countries such as Japan, USA, Denmark, Sweden, etc.

XIV. SUGGESTIONS & CONCLUSION

Development of a country is greatly affected by the rights to intellectual property. Intellectual property law gives the inventor the right to use his invention for a certain period of time and thus encourages ingenuity and creativity. In recent years, India's intellectual property rights system has undergone a major transformation.

Statutory compensation mechanisms also have their place in India. India has several laws to deal with IPR infringers, including the Indian Penal Code, Trademark Act, Copyright Act, Indian Patent Act, Consumer Protection Act, Prevention of Food Failure Act, Legal Metrology Act, Model Act, Drugs and Cosmetics Act. Act, Drugs and Toilets Act etc. All these laws contain penal provisions and have made infringement of intellectual property rights a cognizable offence. Even if the requested relief is granted, the IP infringers will move to another store or area and continue to operate. Thus, enforcement of court orders does not act as a deterrent to infringers of intellectual property rights..

Based on the Apex Court rulings and scientific literature, it can be inferred that intellectual property rights for socially valuable goods like basic medicines do not raise significant ethical questions. This means that although a personal perspective is sometimes offered, the main purpose of the final remarks is not to argue and defend a particular solution to the discussed topics. Rather, the aim is to highlight, clarify and put into perspective several important debates about international conventions dealing with the changing nature of intellectual property rights and technological advances. It is further argued that while the journey to achieve a TRIPS compliant system has been quite difficult for the Indian legal system, it has nonetheless provided India with the material to become the IP investment hub of the 21st century. The impact of this change will be seen in the coming years.

India has implemented various modifications to its intellectual property rights system to

streamline the process and decrease the time it takes to patent. Innovation culture has taken a central position in the country. India is well positioned to focus on Research and Development. This has been reflected in the improved position in the Global Innovation Index over the years. The government's efforts to strengthen the National IPR Policy, IP Appellate Tribunal, e-government and commitment to implement the WTO TRIPS Agreement in letter and spirit will help improve India's perception globally.

- **Suggestions For a Stronger IPR Regime**

- a. Intellectual Property Rights Awareness**

Sensitization of people/businesses/industry and other interested groups. It is imperative that people from all walks of life are aware of the basics of intellectual property rights and should know what constitutes infringement or infringement. Ordinary people and the general public should be informed about the different types of intellectual property rights. They should be able to distinguish between different types of intellectual property rights. It may also be necessary to educate them about what fake goods and counterfeits are and how they differ. Many naive and even educated people cannot distinguish between what is an original product of if there has been any infringement.

- b. The Necessity For A More Stringent Adherence To Intellectual Property Laws.**

India has implemented all IPR laws as per WIPO requirements and updated its IPR registry through digitization. Being a signatory to several treaties, India followed other member states of the treaties/conventions. India has strong intellectual property rights and management. It does not respect intellectual property rights. The Indian judiciary, especially the Supreme Courts, can easily handle IPRs effectively. However, there are bottlenecks in the lower court system and also in the lower police stations. This needs to be changed and awareness raised at this level to ensure effective protection and enforcement. The law has several tools against infringement of intellectual property rights. The sad thing is that the severity of the crime is not enough, which is time-consuming and the compensations are absurdly small compared to developed countries. This systemic deficiency encourages IPR infringers to commit IPR crimes and avoid the discipline of the law. Therefore, penalty rates and prison terms must be significantly tightened based on the current procedure. Only if civil and criminal remedies are truly rigorous can they deter misguided IP infringers. Law enforcement agencies at the sub-inspector level should be notified and empowered to deal with IPR crimes. It is also imperative that there is continuous knowledge improvement and updating for all stakeholders in the administration of

civil/criminal justice, as the subject of intellectual property rights is a dynamic and ever-evolving legal subject that changes quite frequently.

c. Need For Responsive Enforcement Machinery

For the IPR system to be effective, there should be a responsive Enforcement Machinery in place. IPR Law is exhaustive in India and we follow the UNICITRAL Laws and India is a signatory to various Conventions and Treaties. It is necessary that a proper and effective law enforcement machinery be kept. Not only that, a country to be successful, needs to have a solid, strong and responsive IPR Protection System. A country might have number of laws to protect IPR, but to be really successful, a solid redressal mechanism should be in place. There should be a responsive Registry, Tribunal and Couli to protect and uphold the rights of the owner or IPR holder. Thus this thesis titled "IPR Management, Protection and Enforcement in India - Need for Stronger IPR Regime

The following are the essential requirements for an effective IPR enforcement mechanism:

- It should be effective in providing an immediate remedy.
- Alternative remedies should be provided to the aggrieved person to defend his case.
- There should be a speedy trial system.
- There must be compensatory measures such as monetary compensation, share of profits, compensation for loss of sales which must be time bound.
- Proper authorization and communication of information to all levels of police/quasi-judicial/judicial authorities..

e. There is a need to strengthen IPR redressal mechanisms

It is also imperative that the IPR rectification machinery needs a complete overhaul which includes greasing by inviting qualified, young, experienced and dynamic candidates for various posts. The registry should be strengthened by introducing innovative practices such as online registration, online generation of registration certificate and all such practices that minimize physical presence in the registry. There should be a process whereby examiners and other officials should consult records of good practice elsewhere and opportunities for continuous learning. Refresher courses and information exchange forums should be organized for ministries and registrars, police agencies and law enforcement agencies to improve their knowledge, which would be useful to appreciate the complexity of IPR issues at the pace of new developments. All this is fruitful if India has a highly responsive IPR management system.

f. Awareness Of The Importance Of Managing And Protecting Intellectual Property Rights Is Necessary

Intellectual property rights, like any other asset, require constant attention and must be closely monitored for infringement or unauthorized use. Actions must be taken immediately upon detection of infringement or unauthorized use. Failure or delay by the owner or authorized licensed user may cause pain or delay and deny them the relief required by law. Therefore, it is important that wherever IPRs are created and/or used, an appropriate IPR monitoring system is in place.

g. Smooth Patent Examination Process:

The patent examination process in India is often delayed, resulting in a backlog of pending applications. Reforming this process by making patent offices more efficient, hiring qualified researchers and updating examination procedures could speed up the issuance of patents.

h. Balanced Approach To Compulsory Licensing:

India's compulsory licensing provisions allow licensing of patented inventions under certain conditions, such as public health emergencies. However, the process lacks clarity and transparency, leading to disputes and uncertainty. Reforms are needed to ensure a balanced approach to compulsory licenses and ensure both innovation incentives and public benefits.

i. Reforming Copyright Laws:

Copyright laws in India are outdated and do not adequately address the issues of digital technology and online content distribution. Reforms to modernize copyright laws, including provisions on digital rights management, digital content protection and fair use, could better adapt the legal framework to modern realities.

j. Co-Ordination Between Different Agencies and The Government Needs To Be Improved

If an IPR monitoring mechanism is designed to meet the above conditions, it will go a long way in building a stronger and better IPR system in India. A high-level working group composed of representatives from industry, government and other enforcement agencies should be established to further strengthen the IPR enforcement mechanism. The control mechanism of intellectual property rights must be regularly reviewed and the necessary changes made by the government and other authorities. This helps make enforcement mechanisms very effective

k. International Cooperation and Alignment:

India must actively participate in international forums and collaborate with other countries to harmonize industry and copyright standards and practices. This can facilitate cross-border trade, improve global competitiveness and ensure that India's interests are effectively represented in international IP negotiations.

Creating an environment conducive to innovation is essential to foster the development and commercialization of intellectual property. Initiatives such as encouraging research and development, supporting technology transfer and commercialization, and fostering collaboration between academia, industry and government can strengthen India's innovation ecosystem.

Ultimately, India can establish a robust intellectual property rights regime that promotes innovation, safeguards rights, and fosters economic progress and development. Achieving an interesting reform, however, requires the joint effort of decision-makers, interest groups and society in general.

(B) Conclusion

Indian industry, trade and commerce have undergone many changes since globalization. More and more investors are coming to India to set up factories and units to produce goods and services. They want their IPR assets to be protected and never used by anyone without permission. In today's world there are no borders and intellectual property laws have taken on greater importance. Thus, there have been major changes in the IPR Act as per WIPO provisions and India has signed many conventions and treaties. Intellectual property rights are more valuable for their benevolence, so protecting against all infringements cannot be taken lightly.

Protecting their intellectual property rights against unauthorized use, transfer and infringement has become an important task for companies. Both preventive and reactive measures have become necessary to ensure their protection and control. Preventive measures include enforcement of intellectual property rights, registration of intellectual property rights, periodic renewal of the intellectual property brand, etc. In case of violation, it is necessary to start an appropriate procedure immediately.

In addition to success, the country must have a strong, robust and responsive intellectual property protection system. A country may have several laws to protect intellectual property rights, but to be truly successful, it must have a strong redress mechanism. There should be a responsive registry, court and Court to protect and preserve the rights of the owner or owner of intellectual property rights.

Finally, the need for a strengthened IPR regime in India is obvious as it can stimulate

innovation, promote economic growth and protect the rights of creators and innovators. Despite significant progress in recent years, the current landscape reveals critical gaps that must be addressed through comprehensive reforms and concerted efforts.

Successful innovation ecosystems rely on the management, safeguarding, and enforcement of intellectual property rights as essential components. Simplifying administrative procedures, increasing transparency and raising awareness among stakeholders are essential for effective intellectual property management. In addition, strengthening enforcement mechanisms, strengthening enforcement agencies and using advanced technical tools are crucial to fight against infringement, piracy and counterfeiting.

Legislative reforms to align national laws with international standards, promote innovation and achieve a balance between rights holders. Interests and general well-being are paramount. In order to foster a culture of innovation and entrepreneurship, it is necessary to strengthen the legal framework for patents, copyrights, trademarks and geographical indications, while promoting an enabling environment for technology transfer and commercialization.

In addition, international cooperation and collaboration is necessary to address this. problems global challenges and opportunities in intellectual property. Active participation in international forums, harmonization of standards and strategic alliances with other countries can strengthen India's position in the global innovation scene and ensure effective protection of its interests in the international arena.

In conclusion a strong intellectual property system- rights in India is not only a legal necessity, but a strategic necessity to realize the full potential of the country, to realize it as a center of innovation, creativity and economic prosperity. By undertaking comprehensive reforms, promoting respect for intellectual property rights and fostering collaboration among stakeholders, India can pave the way for a brighter future based on innovation, knowledge and sustainable growth.

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