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Navigating the Intellectual Property Landscapes in India: Unveiling Challenges and Solutions in Safeguarding IP Rights

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ABSTRACT

Intellectual property (IP) rights have emerged as vital in fostering innovation, creativity, and economic growth. In this rapidly evolving global landscape, the protection of IP rights has become a paramount concern for many businesses, inventors, and creators alike. Intellectual property (IP) incentivises innovation and creativity by providing legal protection to the ideas and creations of individuals and organisations. In today's interconnected and digital world, the value of IP has only increased, as technology advances. Challenges emerge, and this interconnected world has made it easier to reproduce and distribute creative works without creators' permission. In order to protect intellectual property rights, countries should strengthen their IP laws and its enforcement mechanisms. Beyond individual creators, intellectual property protection is fundamental for societal advancement, as it stimulates innovation, fosters idea exchange, and propels economic development. To tackle these contemporary challenges, intellectual property laws must evolve to encompass emerging technologies, digital platforms, and global information flows. Striking a delicate balance between safeguarding the inventor's rights and promoting broader social interests, such as ensuring access to knowledge and cultural expression, is imperative. Furthermore, legal strategies must navigate international complexities effectively to regulate intellectual property in an era defined by borderless digital interactions.

This article explores how intellectual property law protects IP rights in India, discussing the legal framework, challenges in enforcement, and the impact on economic development. It aims to contribute to the conversation on strengthening IP protection in the country.

Keywords: Intellectual Property Rights, IP Law, Patent Law, Copyright Law, Trademark Law.

I. INTRODUCTION

India has enhanced its economic output in the past few decades by opening its doors to

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multinational companies, by liberalization of trade and new trade agreements with various nations. The development of informational technology, software development, and biotechnology has resulted in a new type of industry. To protect the works of these industries, they need to have strong intellectual property rights laws being covered under international regimes such as TRIPS.

India is obligated to all these under the World Trade Organization agreement. At present, India has an impressive and progressing infrastructure for IPR protection. However, it is limited only to the registration of rights.

In today's knowledge-based globalized economy, intellectual property (IP) is seen as a valuable asset for businesses, individual creators, and countries. IP rights cover a wide range of intangible assets such as new inventions, creative works, brand creation, and trade secrets among the rest, all of which stem from human creativity and innovation. These rights must be protected and are crucial for driving innovation, attracting investment in research and development (R&D), and spurring economic growth. The protection of IP rights is now a global priority, with governments and international bodies recognizing the importance of strong legal frameworks and effective enforcement measures. As a fast and the largest growing economy and also a centre for innovation, creativity, and businesses, India has experienced a rise in IP-related activities, highlighting the need for a robust and efficient IP protection system.

II. IMPORTANCE OF INTELLECTUAL PROPERTY LAWS

It is said that law is valuable for society because it serves as a norm of conduct for citizens and acts as a guide for decision-making. Also, it acts as a standard of acceptable behaviour towards which it provides a warning of the likely consequence of deviation. It is also a mechanism for resolution of disputes and a regulator of power. From the individual point of view, it gives a sense of security, a feeling that there is legal protection available. So the above-mentioned importance of law is applied to the Intellectual Property Laws as these laws were made to protect the intangible property of the human mind.

With a more changing environment and digitalization, these laws become essential. As developing countries continue to integrate into the global economy, attributes such as branding, technology advances, and innovation are becoming a significant part of a country's development. It is these very same attributes which are protected under intellectual property law. With the worldwide harmonization of IP laws in place, it is feared that developing countries will now be exposed to a set of rules which will impede their technological and innovative development. Thus, the level of precise tips and norms for intellectual property rights has

become very important for further growth and research.

In the absence of suitable protection, it is feared that technology from foreign companies will have little difficulty in being delivered, thus being denied access to an innovative process. The issue of technology transfer is one of the biggest fears as this process is essential for any business to work properly and use the tech to the fullest. These issues concern a powerful group of foreign investors who have become a key target for the IP law in India

These diverse examples highlight the multifaceted ways in which intellectual property laws in India have been utilized to protect and uphold intellectual property rights across various industries and sectors.

1. Patent Protection: Case of the pharmaceutical industry where patent laws have been instrumental in protecting drug formulations and processes, encouraging innovation and investment in research and development.

2. Trademark Enforcement: Successful cases of trademark infringement litigation where companies have been able to protect their brand identity and reputation through legal action under the Trademarks Act.

3. Copyright Protection: Examples from the entertainment industry showcasing how copyright laws have been used to prevent unauthorized copying and distribution of creative works such as movies, music, and literature.

4. Geographical Indications: Instances where geographical indications laws have safeguarded products with unique regional identities, such as Darjeeling tea or Banarasi sarees, from unauthorized use.

5. Design Protection: Case studies highlighting how design laws have been utilized to protect the aesthetic appearance of products, preventing imitation and counterfeiting in industries like fashion and consumer goods.

6. Software Copyright Protection: Instances where software companies have successfully enforced their copyright protections to prevent unauthorized use or reproduction of their software products, ensuring fair compensation for their intellectual property.

7. Plant Variety Protection: Examples from the agricultural sector where plant breeders have utilized plant variety protection laws to safeguard their newly developed plant varieties from unauthorized propagation or commercialization.

8. Trade Secret Protection: Cases where businesses have relied on trade secret laws to protect confidential information, such as formulas, processes, or customer lists, from being misappropriated by competitors or former employees.

9. Domain Name Disputes: Instances where companies have resolved domain name disputes through mechanisms like the Uniform Domain-Name Dispute-Resolution Policy (UDRP) to protect their online brand presence and prevent cybersquatting.

10. Enforcement Against Counterfeiting: Successful enforcement actions against counterfeit products in markets like electronics, fashion, and consumer goods, demonstrate the role of intellectual property laws in combating piracy and protecting consumers from substandard or unsafe products.

III. EXPLANATION OF THE ROLE OF INTELLECTUAL PROPERTY LAW IN SAFEGUARDING VARIOUS FORMS OF INTELLECTUAL PROPERTY RIGHTS

Intellectual property law plays a crucial role in safeguarding the various forms of intellectual property rights, which are the creations of human intellect (creativity, ingenuity, and innovation). These rights encompass a wide range of intangible assets, including inventions, literary and artistic works, brand names, and trade secrets, among others. The protection of intellectual property (IP) rights is vital for fostering innovation, promoting economic growth, and ensuring fair competition in the marketplace.

Patents: Intellectual property law, through patent legislation, grants inventors exclusive rights over their inventions for a limited period. Patent laws define the criteria for patentability, such as novelty, non-obviousness, and industrial applicability, and establish the process for obtaining patent protection. These laws safeguard inventors' rights by preventing others from making, using, or selling their patented inventions without permission, thereby incentivizing research and development efforts.

Copyrights: Copyright laws protect original literary, artistic, musical, and dramatic works by granting exclusive rights to the creators. These laws define the scope of protection, including the rights of reproduction, distribution, adaptation, and public performance. Copyright laws also establish limitations and exceptions, such as fair use or fair dealing, to strike a balance between protecting creators' rights and promoting the dissemination of knowledge and creative expression.

Trademarks: Trademark laws safeguard the distinctive signs, symbols, or names that identify the source of goods or services. These laws regulate the registration process, define the rights

conferred to trademark owners, and provide legal remedies against infringement. By protecting trademarks, intellectual property law prevents consumer confusion, maintains brand integrity, and fosters fair competition in the marketplace.

Trade Secrets: Trade secret laws protect confidential business information that provides a competitive advantage to its owners. These laws establish the requirements for trade secret protection, such as the measures taken to maintain secrecy and provide legal recourse against misappropriation or unauthorized disclosure. Trade secret laws encourage companies to invest in research and development while ensuring the protection of their valuable proprietary information.

Geographical Indications (GIs): Intellectual property law, through the protection of geographical indications, safeguards the geographical names associated with products that possess specific qualities or reputations derived from their place of origin. GI laws define the registration process, establish the rights conferred to GI holders, and provide legal remedies against unauthorized use or misrepresentation.

Establishing a comprehensive legal framework for the protection of these various forms of IP rights will provide legal certainty and enforceability, enabling rights holders to benefit from the commercial exploitation of their intellectual assets while preventing unauthorized use or misappropriation.

Furthermore, intellectual property law largely contributes to economic growth by facilitating technology transfer, promoting fair competition, and attracting foreign investment. It fosters an environment conducive to research development, and artistic expression, ultimately benefiting society through the dissemination of knowledge, technological advancements, and cultural enrichment.

However, intellectual property law must strike a delicate balance between protecting the rights of creators and inventors while ensuring access to knowledge and promoting the public interest. It must continuously adapt to emerging challenges posed by technological advancements, globalization, and evolving societal needs, ensuring a robust and effective system for safeguarding intellectual property rights.

IV. INDIA'S COMMITMENT TO PROTECTING INTELLECTUAL PROPERTY RIGHTS: A LOOK AT INTERNATIONAL TREATIES AND AGREEMENTS

India is a signatory to several international treaties and agreements aimed at harmonizing and strengthening intellectual property rights (IPR) on a global level. These agreements establish

obligations on India to align its domestic laws and practices around international standards to safeguard the rights of creators and industries. A comprehensive study of these treaties sheds light on the impact they have on India's IPR landscape and the obligations they impose on the country.

1. **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)** - India is a signatory to this agreement which is part of the World Trade Organization (WTO) it sets out minimum standards for the protection of IPR. India, as a member of the WTO, is bound by the TRIPS Agreement, which requires it to provide effective protection and enforcement of various forms of intellectual property, including patents, trademarks, copyrights, and trade secrets.
2. **Paris Convention:** India as a member of the Paris Convention for the Protection of Industrial Property, which provides for the mutual recognition of IPR among member countries. This agreement obligates India to grant equal treatment to foreign nationals in terms of IPR protection, ensuring that industries from other member countries receive the same level of protection as domestic industries.
3. **The Patent Cooperation Treaty (PCT)** - India is a signatory to this treaty which is administered by the World Intellectual Property Organization (WIPO) That simplifies the process of filing patent applications in multiple countries. By being a signatory to the PCT, India facilitates the filing of international patent applications, streamlining the patent process for industries seeking protection in multiple jurisdictions.
4. **Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled** This treaty allows for the creation and distribution of accessible format copies of copyrighted works without the need for prior authorization from rights holders.
5. **Berne Convention** for the Protection of Literary and Artistic Works - India is a signatory to this international agreement for the protection of copyrights. which establishes minimum standards for copyright protection. This treaty obligates India to provide automatic protection to works from other member countries, ensuring that the rights of creators are respected across borders.
6. **Madrid Agreement** Concerning the International Registration of Marks - India is a signatory to this agreement which is administered by the WIPO for the protection of trademarks. The agreement allows trademark owners to protect their marks in multiple countries by filing a single application with the World Intellectual Property

Organization (WIPO). This simplifies the process of obtaining trademark protection in multiple countries, as opposed to filing separate applications in each country.

7. **Budapest Treaty** on the International Recognition of the Deposit of Microorganisms for Patent Procedure - India is a signatory to this treaty which is administered by the WIPO. aimed at facilitating the recognition of microorganism deposits for patent purposes. The treaty allows for the deposit of biological material with an international depository authority, such as the World Intellectual Property Organization (WIPO), which then issues a certificate confirming the deposit. This certificate can be used to satisfy the requirements of patent offices around the world when filing a patent application that involves the use of the deposited microorganism.

V. AN OVERVIEW OF CURRENT IP LAWS IN INDIA

Intellectual Property (IP) laws in India are governed by a comprehensive legal framework that covers various aspects of intellectual property rights. Here's an overview of the major IP laws in India:

1. **The Patents Act, 1970:** This act regulates the grant of patents for inventions in India. It provides guidelines for patentability criteria, patent application process, rights conferred by a patent, and the duration of patent protection.

2. **The Copyright Act, 1957:** This act protects literary, dramatic, musical, artistic works, cinematograph films, and sound recordings. It defines the rights of copyright holders, the term of copyright protection, and provisions related to fair use and infringement.

3. **The Trade Marks Act, 1999:** This act governs the registration and protection of trademarks in India. It defines the criteria for registrability, the application process, rights conferred by a registered trademark, and provisions related to infringement and passing off.

4. **The Geographical Indications of Goods (Registration and Protection) Act, 1999:** This act provides legal protection for geographical indications (GIs), which identify goods as originating from a particular region or locality where a given quality, reputation, or other characteristic is attributable to its geographical origin.

5. **The Designs Act, 2000:** This act regulates the registration and protection of industrial designs. It defines the criteria for registrability, the application process, rights conferred by a registered design, and provisions related to infringement.

6. The Semiconductor Integrated Circuits Layout-Design Act, 2000: This act protects the layout designs of semiconductor integrated circuits and provides guidelines for their registration and protection.

7. The Protection of Plant Varieties and Farmers' Rights Act, 2001: This act provides for the establishment of an effective system for the protection of plant varieties, and the rights of farmers and plant breeders, and encourages the development and cultivation of new varieties of plants.

8. The Biological Diversity Act, 2002: This act aims to preserve biological diversity in India, regulate access to biological resources and associated traditional knowledge, and ensure fair and equitable sharing of benefits arising from their use.

These acts, along with relevant rules and regulations, form the backbone of India's IP regime. The implementation and enforcement of these laws are carried out by various government bodies, such as the Office of the Controller General of Patents, Designs, and Trademarks, and the Copyright Office.

VI. CHALLENGES FACING IP PROTECTION IN INDIA'S LEGAL CULTURAL AND ECONOMIC PERSPECTIVE

Intellectual property (IP) protection in India faces several challenges from legal, cultural, and economic perspectives.

Legal Challenges:

- 1. Delays in the judicial process:** The Indian judicial system often faces backlogs and delays in resolving IP disputes, which can be detrimental to the effective enforcement of IP rights.
- 2. Lack of specialized IP courts:** While some specialized IP courts exist, there is a need for more dedicated IP courts across the country to handle the increasing volume of IP-related cases.
- 3. Inconsistent judicial interpretation:** Inconsistent interpretation of IP laws by different courts can lead to uncertainty and confusion for IP owners and users.

Cultural Challenges:

- 1. Lack of awareness:** There is a general lack of awareness about the importance of IP rights among the public, businesses, and even some government agencies, which can lead to infringement and piracy. In some cases, cultural norms, consumer behaviour, and perceptions of IPR may contribute to a lax attitude towards infringement, making it challenging to enforce intellectual property laws effectively.

2. Traditional knowledge protection: Protecting traditional knowledge and genetic resources from misappropriation remains a challenge, as the existing legal framework may not be adequate.
3. Perception of IP as a barrier: In some sectors, IP rights are perceived as a barrier to access to knowledge, technology, and affordable products, which can create resistance to IP protection.
4. Resource Constraints: Limited resources, including funding, manpower, and infrastructure, can hinder the effective enforcement of intellectual property laws. Insufficient resources may lead to delays in processing cases, inadequate training of enforcement officials, and difficulties in monitoring and combating IPR infringement.

Economic Challenges:

1. Enforcement costs: Enforcing IP rights can be costly, especially for small and medium enterprises (SMEs), which may lack the resources to pursue legal action against infringers. Enforcement mechanisms for intellectual property (IP) laws in India include civil and criminal remedies. Civil remedies typically involve court proceedings where rights holders can seek injunctions to prevent infringement, recover damages, and account for profits earned by infringers. Criminal remedies involve prosecution for offences such as counterfeiting and piracy, leading to fines and imprisonment.
2. Counterfeiting and piracy: The prevalence of counterfeiting and piracy, especially in certain industries like pharmaceuticals, software, and entertainment, can undermine the economic benefits of IP protection.
3. Technology transfer and licensing: There are concerns about striking a balance between protecting IP rights and facilitating technology transfer and licensing, which can impact innovation and economic growth.

Additionally, globalization and the increasing use of digital technologies have introduced new challenges, such as online piracy, cross-border infringement, and the need for harmonization of IP laws with international standards.

However, enforcing IP laws in India faces several challenges. One of the major challenges is the lack of specialized IP courts, leading to delays in resolving disputes. The overburdened court system and backlog of cases further exacerbate the issue. Additionally, the limited resources and capacity constraints within enforcement agencies hinder effective investigation and prosecution of IP infringement cases. Another significant challenge is the widespread presence

of counterfeit and pirated goods, particularly in sectors like pharmaceuticals, software, and consumer products. Combating these activities requires robust enforcement efforts, international cooperation, and public awareness campaigns.

VII. ANALYSIS OF THE ROLE OF THE INDIAN JUDICIARY IN INTERPRETING AND ENFORCING INTELLECTUAL PROPERTY LAWS

The Indian judiciary plays a crucial role in interpreting and enforcing intellectual property laws. Courts have the responsibility of adjudicating disputes related to IP rights, determining infringement, granting remedies to rights holders and punishing the infringers.

Through their judgments and interpretations, courts have shaped jurisprudence on various aspects of IP law, such as patentability criteria, fair use of exceptions in copyright, and the protection of well-known trademarks. The judiciary has played a pivotal role in balancing the interests of rights holders with maintaining public interest considerations, such as access to affordable healthcare and promoting innovation. However, the Indian judiciary has faced various challenges in dealing with complex IP cases. The lack of specialized IP courts and the backlog of cases have led to lengthy and complex litigation processes, which can be costly and time-consuming for the parties involved. Additionally, inconsistent judgments across different courts and varying interpretations of IP laws have created uncertainty and potential conflicts in the legal landscape. The judiciary has also grappled with the complexities of adapting IP laws to emerging technologies and digital challenges. Interpreting IP rights in the context of AI-generated works, 3D printing, and online infringement has required careful deliberation and the application of legal principles to novel situations.

Overall, the Indian judiciary's role in interpreting and enforcing IP laws is critical to maintaining a robust IP regime, fostering innovation, and ensuring fair competition in the market.

(A) Addressing the gap between IP legislation and its effective implementation in India is a significant challenge that requires a multi-faceted approach involving various stakeholders.

Despite having a comprehensive legal framework for intellectual property rights (IPR) protection in India, there exists a significant gap between the enacted legislation and its effective implementation on the ground. Bridging this divide necessitates a multi-pronged strategy involving concerted efforts from various stakeholders. *Strengthening the judicial infrastructure by establishing specialized IP courts, increasing the number of trained judges, and expediting dispute resolution processes is crucial. Enhancing enforcement mechanisms through capacity-*

building of law enforcement agencies, stricter penalties for infringement, and improved inter-agency coordination can deter violations.

Simultaneously, widespread awareness campaigns, incorporating awareness and education in academic curriculum, and industry-led practices can cultivate a culture of respect and knowledge for IPR. International cooperation through harmonization of laws, cross-border enforcement collaborations, and participation in global IP treaties is imperative in an interconnected world. Leveraging technological solutions like blockchain, digital watermarking, and online monitoring tools can aid in the detection and prevention of infringement. At last providing incentives, subsidies, and access to affordable legal services can encourage inventors and businesses, especially small and medium enterprises, to actively protect and commercialize their intellectual assets.

VIII. TO STRENGTHEN THE IP PROTECTION REGIME IN INDIA, THE FOLLOWING SUGGESTIONS CAN BE CONSIDERED

1. Streamlining administrative processes: Efforts should be made to streamline the processes for IP registration, examination, and opposition proceedings, reducing delays and backlogs. This can be achieved through increased capacity building, automation, and the adoption of best practices from other jurisdictions.

2. Enhancing enforcement mechanisms: Effective enforcement mechanisms, including specialized IP courts or tribunals, should be established to ensure prompt resolution of IP disputes and deterrent penalties for infringement. Collaboration between enforcement agencies, rights holders, and stakeholders can also improve compliance and reduce counterfeiting and piracy.

3. Promoting IP awareness and education: Initiatives aimed at raising awareness about IP rights, their importance, and the consequences of infringement should be undertaken. Educational programs and capacity-building efforts targeting various stakeholders, including businesses, creators, researchers, and the general public, can foster a culture of IP respect and compliance.

4. Addressing emerging issues: Continuous monitoring and adaptation of IP laws and policies are crucial to address emerging challenges posed by technological advancements, such as artificial intelligence, 3D printing, and digital transformation. Striking the right balance between IP protection and access to knowledge, while promoting innovation and creativity, should be a key consideration.

5. International collaboration and harmonization: India should actively participate in international forums and negotiations related to IP rights, aligning its policies with global best practices and contributing to the development of harmonized IP standards. Bilateral and multilateral cooperation with other countries can facilitate cross-border enforcement and address global IP challenges.

6. Encouraging R&D and innovation: The government should continue to provide incentives and support for research and development activities, fostering an environment conducive to innovation and creativity. This can include tax incentives, funding opportunities, and collaborative initiatives between academia, industry, and research institutions.

7. Enhance human resource capacity: Increasing the number of IP professionals, such as patent agents, trademark attorneys, and IP lawyers, through focused training and educational programs can strengthen the IP ecosystem. Collaborations between industry, academia, and professional bodies can facilitate this

8. Promote IP commercialization: Providing incentives, tax benefits, and funding support for IP commercialization, especially for startups and SMEs, can encourage IP creation and exploitation. Establishing technology transfer offices and IP facilitation centres can assist in this process.

9. Encourage industry self-regulation: Promoting industry-led best practices, codes of conduct, and self-regulation measures can complement government efforts in IP protection and foster a culture of IP respect within various sectors.

10. Continuous review and updates: Regularly reviewing and updating IP laws and policies to align with emerging technologies, global developments, and evolving business practices can ensure the IP regime remains robust and relevant.

IX. CONCLUSION CHARTING A PATH FORWARD FOR AN ENHANCED IPR REGIME IN INDIA

India has made significant strides in strengthening its IPR regime over the years, but there is still room for improvement to create a robust and effective system that not only fosters innovation, but attracts investment, and promotes economic growth. Going forward, a multi-pronged approach is necessary to address the challenges and capitalize on the opportunities presented by emerging trends and technologies.

Firstly, it is crucial to continue updating as the changing times and harmonise India's IPR laws with international standards and best practices. This includes addressing gaps and ambiguities

in existing legislation, streamlining procedural aspects, and ensuring a consistent interpretation and enforcement of IP laws across the country. Establishing specialized IP courts and building judicial capacity through training and resource allocation can greatly enhance the efficiency and quality of dispute resolution.

Secondly, increasing awareness about IPR among various stakeholders, including businesses, and research institutions, and educating the general public, is vital. It calls for Collaborative efforts involving the government, industry bodies, and educational institutions helping in demystify IPR concepts and highlight their importance for innovation and economic development.

Thirdly, leveraging technology is crucial in strengthening IPR protection and enforcement. Adopting advanced tools like blockchain, digital watermarking, and online monitoring systems can aid in detecting and preventing infringement, while also improving transparency and accountability in the IP ecosystem.

Fourthly, fostering international cooperation and participation in global IPR initiatives can help align India's IPR framework with global norms and facilitate cross-border enforcement. Collaborating with foreign agencies, rights holders, and international organizations can enhance knowledge-sharing and capacity-building efforts.

Finally, providing incentives, support mechanisms, and access to affordable legal services can encourage businesses, especially small and medium enterprises (SMEs), to protect and commercialize their intellectual assets effectively.

By addressing these areas through a comprehensive and coordinated approach, India can develop a robust IPR regime that not only safeguards the rights of creators and innovators but also promotes a culture of innovation, attracts foreign investment, and contributes to the country's overall economic growth and global competitiveness.

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