

## **THE IMPORTANCE OF INTELLECTUAL PROPERTY RIGHTS AND INNOVATION**

*By Sheetal Ajay Warankar\* & Amar Vijay Jamnekar\*\**

### **ABSTRACT**

*Intellectual property has increasingly assumed a vital role with the rapid pace of technological, scientific and medical innovation that we are witnessing today. Moreover, changes in the global economic environment have influenced the development of business models where intellectual property is a central element establishing value and potential growth. In India several new legislations for the protection of intellectual property rights (IPRs) have been passed to meet the international obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Intellectual property has therefore grown into one of the world's biggest and fastest-growing fields of law thereby necessitating the demand for IP professionals well versed in this area to deal with (IPRs) across the national and international borders. India is ranked 42nd out of 55 global economies in the International Intellectual Property (IP) Index 2023 released by the U.S. Chambers of Commerce. Despite this ranking, the report suggests that India has the potential to become a leader for developing markets seeking to drive IP-driven innovation in their economies.*

**Keywords:** Intellectual Property Rights, Patent, Trademark, Indian Act etc.

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\* Assistant Professor, School of Law, G H Raison University, Amravati Maharashtra, India. Email: [sheetal\\_warankar@rediffmail.com](mailto:sheetal_warankar@rediffmail.com).

\*\* Assistant Professor, Department of Management, G H Raison University, Amravati Maharashtra, India. Email: [sheetal\\_warankar@rediffmail.com](mailto:sheetal_warankar@rediffmail.com).

## I. INTRODUCTION

The concept of intellectual property originated in England during the 17th and 18th centuries. The term "intellectual property" came into use in the 19th century. However, it was not until the late 20th century that intellectual property became widely recognized and incorporated into legal systems worldwide. Intellectual property can be categorized into two main types: industrial property and copyright. Industrial property covers inventions (patents), trademarks, industrial designs, and geographic indications of source. On the other hand, copyright encompasses literary and artistic works like novels, poems, plays, films, musical compositions, visual arts such as drawings, paintings, photographs, sculptures, and architectural designs.

The World Trade Organization (WTO) recognizes the significance of intellectual property protection through the Trade-Related Intellectual Property Systems (TRIPS) Agreement. This agreement was negotiated at the conclusion of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) treaty in 1994. The TRIPS Agreement, in effect since January 1, 1995, is currently the most comprehensive international agreement on intellectual property. It encompasses various areas of intellectual property, including:

1. Copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organizations)
2. Trade marks including service marks
3. Geographical indications including appellations of origin
4. Industrial designs
5. Patents including protection of new varieties of plants
6. The lay-out designs (topographies) of integrated circuits
7. The undisclosed information including trade secrets and test data.

## II. What is Intellectual Property?

Intellectual Property (IP) encompasses creations of the mind, including inventions, literary and artistic works, symbols, names, and commerce-related images. IP is protected through Intellectual Property Rights (IPR), which grant individuals or companies legal protection for their creative and innovative works. These rights are outlined in Article 27 of the Universal

Declaration of Human Rights, enabling creators to control the use of their work and prevent unauthorized use or reproduction.<sup>1</sup>

❖ **Types:**

1. The main types of IP include **patents for inventions**, **trademarks** for branding, **copyrights** for artistic and literary works, **trade secrets** for confidential business information, and industrial designs for product appearance.

❖ **India and IPR:**

1. India is a member of the World Trade Organization and committed to the Agreement on Trade Related Aspects of Intellectual Property (TRIPS Agreement).
2. India is also a member of **World Intellectual Property Organization**, a body responsible for the promotion of the protection of intellectual property rights throughout the world.
3. The National Intellectual Property Rights (IPR) Policy 2016 was adopted in May 2016 as a vision document to guide future development of IPRs in the country.
4. Its clarion call is “**Creative India; Innovative India**”.

Intellectual property rules have a profound impact on innovation, accessibility, and quality of ideas and products. They are vital for sustainable development, safeguarding human health, and protecting the environment. The extent of intellectual property protection impacts the transfer of technologies between developed and developing countries. These standards also affect community control over traditional knowledge, access to medicines and education, and various aspects of sustainable development. In the last 20 years, there has been a worldwide movement towards more robust intellectual property rights. The scope of protection has widened from inventions to discoveries, from mechanical devices to living organisms. It covers both privately and publicly funded research and development and includes information about technology and scientific research. It now includes services, financial and administrative methods, and extends beyond industrial products and technological processes.

Trademark protection has also shifted from physical stores to online platforms. In recent years, there have been changes that have made it harder to differentiate between invention and

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<sup>11</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/>

discovery, and between natural and artificial phenomena. We have <sup>2</sup>also witnessed a shift in how research findings are shared, moving away from traditional publishing towards patenting. Additionally, the openness of scientific knowledge has decreased in favor of proprietary technology.

### **Objective**

- 1) To understand the meaning of Intellectual Property Right.
- 2) To Analyses how many things come into IPR.
- 3) To understand the meaning of patent, trademark
- 4) To understand the rules and regulation added in the IPR.

### **III. Importance Of Intellectual Property**

Intellectual property laws are designed to promote the creation of diverse intellectual goods. These laws grant individuals and businesses property rights over their creations, typically for a limited duration. Proponents argue that by providing protection against unauthorized copying, these laws enable creators to derive greater economic benefits from their original ideas. As a result, creators are incentive to produce more intellectual goods. Intellectual property laws grant individuals the right to own and profit from their creations, whether artistic, scientific, or technological, for a limited time. These rights are not tied to the physical embodiment of the work, but rather to the underlying intellectual creation. Countries have implemented these laws to achieve two main objectives. Firstly, they aim to recognize the moral and economic rights of creators while also protecting access to their creations for the public. Additionally, these laws are designed to encourage creativity and the dissemination of its results, as well as to promote fair trading practices that contribute to economic and social development.<sup>3</sup>

### **IV. Literature Review**

CN Saha, S Bhattacharya in this case the court held that Intellectual property rights (IPR) have been defined as ideas, inventions, and creative expressions based on which there is a public

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<sup>3</sup> <https://docs.manupatra.in/newslines/articles/Upload/41C26FED-7AFE-40EA-8736-4E6C516917AE.pdf>

willingness to bestow the status of property. L Jajpura, B Singh, R Nayak NISCAIR-CSIR, India – 2017 in this case court held that the intellectual property rights (IPR) are intangible in nature and gives exclusive rights to inventor or creator for their valuable invention or creation. In present scenario of globalization, IPR is the focal point in global trade practices and livelihood across the world. These rights boost the innovative environment by giving recognition and economic benefits to creator or inventor whereas the lack of IPR awareness and its ineffective implementation may hamper the economic, technical and societal developments of nation.

R Tiwari, G Tiwari, AK Rai, B Srivastava Journal of natural science, biology, and medicine – 2011 in this case court held that Intellectual Property Rights set global minimum standards for the protection of intellectual property, substantially increasing and expanding intellectual property rights, and generated clear gains for the pharmaceutical industry and the developed world.

## **V. Research Methodology**

This study examines public opinion on intellectual property by analyzing data from microblogs. The research focuses on patents, trademarks, copyrights, and general intellectual property perceptions. Key findings highlight the themes and characteristics that the public is most concerned about regarding intellectual property. These insights can aid managers in gaining a better understanding of the practical challenges and public sentiments surrounding intellectual property policies in their respective countries or regions. The study aims to provide scientific recommendations for adjusting intellectual property systems, policies, and related approaches.

## **VI. Rights**

Intellectual property encompasses a range of rights, such as patents, copyrights, industrial design rights, trademarks, plant variety rights, trade dress, geographical indications, and trade secrets. Additional variations of exclusive rights, like mask work rights, supplementary protection certificates, and database rights, also exist in certain jurisdictions. The umbrella term "industrial property" refers to a broad group of intellectual property rights, including patents, trademarks, industrial designs, utility models, service marks, trade names, and geographical indications.

## **VII. Patents**

A patent is issued by the government to an inventor or their legal successor, giving them the right to exclude others from making, using, selling, offering for sale, and importing the invention for a limited period of time. In return, the inventor must publicly disclose the technology or solution to a particular problem. An invention must be new, non-obvious, and have industrial applicability. Patent owners are obligated to share valuable information about their inventions to enrich the body of knowledge and stimulate further innovation.

A patent is a special right given by a country to the owner of an invention. It allows the owner to create, use, produce, and sell the invention, as long as certain conditions outlined in the law are met. Having exclusive rights means that no one else can use or sell the invention without permission from the patent holder. However, this right only lasts for a limited period of time. It's important to note that other laws in the country that granted the patent may also impact its use or commercialization.<sup>4</sup>

### **VIII. Concept of Patents**

The human mind's creative work is protected in several ways to encourage creative activity. Various forms of protection have emerged, including those that are particularly important in industrial development, such as patents. In short, a patent is a grant of a monopoly that lets the inventor control the products produced and their price within the limits set by demand. Patents serve as a stimulus to investment in industrial innovation, as they ensure economic and commercial justifications. Innovative technologies help maintain and increase a nation's stock of valuable and tradable industrial assets.

### **IX. Patents Act, 1970**

The Patents Act of 1970 was in effect for 24 years until December 1994, during which time it remained unchanged. This legislation was instrumental in India's industrial development. India amended the Patents Act, 1970 multiple times (1995, 1999, 2002, and 2005) to comply with its obligations under the TRIPS agreement, part of the establishment of the World Trade Organization. These amendments were made to align with international practices, integrate the intellectual property system, and protect national and public interests while meeting India's TRIPS obligations. The aim was to create a modern, harmonized, and user-friendly legislation

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<sup>4</sup>[https://www.researchgate.net/publication/349074402\\_Importance\\_of\\_Intellectual\\_Property\\_Rights\\_in\\_Indian\\_Situation](https://www.researchgate.net/publication/349074402_Importance_of_Intellectual_Property_Rights_in_Indian_Situation)

In 2002, India amended its Patents Act to increase the patent term to 20 years for all technology, reverse the burden of proof, and allow for compulsory licenses. This act came into force on May 20, 2003, with the new Patent Rules of 2003 replacing the earlier Patents Rules of 1972. The Patents Act was amended again in 2005 through an ordinance that went into effect on January 1 of that year. It allowed for product patents in all areas of technology, including chemicals, food, drugs, and agrochemicals. This ordinance was later replaced by the Patents (Amendment) Act of 2005, which remains in effect today, starting from January 1, 2005. The rules under the Patent Act were amended in May 2003 and again in 2005 by the Patents (Amendment) Rules as the Patent Amendment Act, 2005 came into force and became operative.<sup>5</sup>

### **X. Duration Of Patents**

Section 53 of the Patents Act states that patents granted after the Patents (Amendment) Act of 2002 will last for 20 years from the date the patent application was filed. Patents that have not expired or ceased to be effective at the start of this act will also have a 20-year term. The explanation to Section 53(1) specifies that international applications filed under the PCT and designating India will have a 20-year term from the international filing date given under the Patent Cooperation Treaty. 82,000 patent filings in the last financial year, India has bettered its year-on-year growth record by over 13 percent. This includes 58 percent of filings done by domestic firms

### **XI. Trademarks**

A trademark is an identifiable sign or expression that sets apart a particular trader's products or services from those offered by other traders. This can include a specific design or symbol. A trademark, also known as a brand name, is a visual symbol that differentiates goods or services from others in the market. It can be a word, a signature, a device, a label, numerals, or a combination of colors. Its purpose is to identify the source of the goods or services and distinguish them from similar ones. Trademarks have existed since ancient times, when craftsmen used their signatures or marks on their products. This practice has evolved into the current system of trademark registration and protection. Trademarks help consumers by

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<sup>5</sup>[https://www.researchgate.net/publication/368357773\\_A\\_Review\\_on\\_the\\_Indian\\_Patent\\_System\\_and\\_Its\\_Implication\\_on\\_the\\_Pharmaceutical\\_Industry/link/](https://www.researchgate.net/publication/368357773_A_Review_on_the_Indian_Patent_System_and_Its_Implication_on_the_Pharmaceutical_Industry/link/)

allowing them to identify and purchase products or services that meet their needs in terms of nature and quality.

A trademark protects the owner's exclusive right to use the mark or allow others to use it for payment. The duration of protection varies, but trademarks can be renewed indefinitely by paying additional fees. Courts enforce trademark protection and have the authority to block trademark infringement in most systems. Trademarks promote innovation and entrepreneurship by recognizing and rewarding owners with financial gain. They also prevent unfair competition from counterfeiters, who use similar signs to market different or inferior products. Trademark protection provides a fair environment for skilled entrepreneurs to produce and market goods and services, contributing to international trade<sup>6</sup>.

The Trade Marks Act of 1940 was the first trademark law in India. It was replaced by the Trade & Merchandise Marks Act of 1958, which consolidated provisions from the Trade Marks Act of 1940, the Indian Merchandise Marks Act of 1889, and the Indian Penal Code. The Trade & Merchandise Marks Act of 1958 came into force on November 25, 1959. Minor amendments were made by the Repealing & Amending Act of 1960 and the Patents Act of 1970. Therefore, the legal protection of trademarks in India has a history of over a century.

The Trade Marks Bill of 1993 was introduced in the Lok Sabha on May 19, 1993. It was passed by the Lok Sabha as recommended by the Standing Committee. However, it failed to pass the Rajya Sabha and lapsed when the Lok Sabha was dissolved. A new Bill called the Trade Marks Bill of 1999 was introduced in the Rajya Sabha and eventually passed by both Houses of Parliament. It received the President's approval on December 30, 1999, becoming the Trade Marks Act of 1999. The Act was enacted to amend and consolidate the law on trademarks, providing improved registration and protection for goods and services, and preventing the use of fraudulent marks. It repealed the previous Trade & Merchandise Marks Act of 1958.

## **XII. Trade Mark Act, 1999**

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<sup>6</sup> <https://ipindia.gov.in/>



The Trade Marks Act of 1999, which governs trade marks in India, is consistent with two major international treaties – the Paris Convention for Protection of Industrial Property and the TRIPS Agreement. India has signed both of these treaties. The law of trademarks in India has been modernized with the implementation of the Trademarks Act of 1999. Trademarks are special symbols used to differentiate goods sold by one trader from those of another. Trademark protection has been in place for over four decades under the Trade and Merchandise Mark (TMM) Act of 1958. India's accession to the WTO and the Paris Convention further strengthened the protection of intellectual property rights. The modernization of the Trade and Merchandise Marks Act aimed to align with current trading practices, encourage investment and technology transfer, simplify trademark management, and uphold important judicial decisions. This led to the introduction of the Trademarks Bill in 1994

The Trademarks Bill of 1994 indicated the changes that the Indian government considered but was not passed. A thorough assessment of the existing laws in response to developments in trading and global trade led to the passage of the Trade Marks Act, 1999, replacing the Trade and Merchandise Mark Act of 1958. The purpose of trade mark law, as explained by the Supreme Court in *Dau Dayal v. State of Uttar Pradesh* (AIR 1959 SC 433), is to safeguard the rights of manufacturers and sellers who use distinctive trademarks. It aims to prevent others from fraudulently passing off their goods using counterfeit trademarks that resemble those of the original manufacturers.<sup>7</sup>

### **XIII. Important Definitions in The Trade Marks Act, 1999**

A trademark refers to a word, phrase, symbol, or design used in trade to identify and differentiate the goods or services of one company from others. It can be represented graphically, and includes elements such as the shape of goods, packaging, and combinations of colors. The definition of "trademark" under Section 2(1)(zb) encompasses both goods and services, and emphasizes the mark's ability to distinguish one person's goods or services from others.

Over the past fifteen years, intellectual property rights have become increasingly important in driving the global economy. Many countries have strengthened their laws in this area, and the Agreement on TRIPS in the World Trade Organization has further elevated the protection and

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<sup>7</sup> <https://ipindia.gov.in/trade-marks.htm>

enforcement of IPRs. Stronger IPR protection is believed to encourage innovation and enhance technology transfer.<sup>8</sup>

#### **XIV. Conclusion**

In a knowledge-based economy, intellectual property rights play a crucial role in supporting sustainable development. They are essential for participating in fair exchange at both local and global levels. By promoting awareness and application of intellectual property rights, we can foster a creative environment. Including intellectual property rights in basic education and empowering innovators and developers is vital. India possesses abundant resources, including raw materials, cost-effective labor, and a dedicated creative workforce. By embracing intellectual property rights, India and other developing nations can tap into their equitable share of global trade.



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