

A STUDY ON INTELLECTUAL PROPERTY RIGHTS IN INDIA- AN IMPACT

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Abstract:

Growth, progress and development of a country are highly dependent on its ability to sustain in the competitive world and its capacity to create new ideas and invent new inventions. Hence encouraging and protecting intellectual property is gaining major focus in the world today. In the current scenario, IPRs are providing economies a cutting edge and making them highly competitive. The developing economies have always been a victim for exploitation by the developed economies, and India is one of them. Though India has developed a system to manage IPR practices there are few setbacks. This study mainly focuses on finding out the challenges of IP practices in India and its impact.

Key words:

Intellectual,

Property Rights,

Invention,

Patents.

Introduction

Intellectual property refers to the intellectual creation, invention, idea of an individual which has come to light and which can further be used for the profit of others. Intellectual property right is an exclusive right provided to an individual who has registered his invention or creation, for a certain period of time. This sovereign right gives the individual a power to decide on its re-creation, distribution, usage and sale of his creation. In other words, IPR not only protects the creation but provides the individual with the incentive as well. This incentive can be utilised further to develop the creation and use it for the societal benefit. As IPR rewards the individual, it has drawn focus of many intellectuals towards contributing in IP. Major types of

Intellectual Property include trademarks, copyrights, patents, geographical indications, trade secrets etc. The basic motive of providing IPR is to stimulate economic growth, reduce poverty, and improve the health status of the country. But the power vested in the hands of the creator has given him a monopoly status which can also be termed as intellectual protectionism or government granted monopoly.

Background:

Copy rights and trademarks have made their mark in 16th century. In early history, mention of patent and copy right was scarce. Usage of patent was first initiated by the British law in the year 1623. The history of patents begins with the royal grants given by Queen Elizabeth I for monopoly privileges. The Statute of Monopolies and the British

Statute of Anne are recognised as the origins of patent law and copyright, respectively. The Statute of Monopolies stated that the inventor had the exclusive right over the usage of his invention for 14 years of time. Another significant law was the Statute of Anne. In the year 1710 this law was established where inventor is provided with 14 year duration of protection and also an option of seeking renewal for another 14 years. Statute of Anne aimed mainly to protect the copyrights of the authors. Hence it provided authors with right for re-creation, distribution of their works. Further, the Paris Convention came into being in the year 1883. This International Agreement, granted protection to the innovations, in spite of the innovations being used in other parts of the world. In 1886, Berne Convention gathered the writers, artistic creators to gain protection at the international level. In the year 1891, trademarks of the companies gained protection after the Madrid Agreement. Thus protection of Intellectual property gained importance in the 18th century. BIRPI- the United International Bureaux for the protection of Intellectual Property was established in 1893. Further in 1970 BIRPI was transformed to become WIPO (World Intellectual Property Organisation). In the current scenario, though WIPO has entered into agreements and treaties and enforced laws to protect IPR, there are certain issues in terms of IP practices globally. For example, it is found that foreign counterparts have copied the products, product design and business plans of other businesses operating in other parts of the world. Foreign counterfeiters have easily stolen the product pictures, brochures

and logos from the website and registered the material as their own inventions in their country. With this context the study is carried out with the following objectives.

Objectives

1. To understand current scenario of IPR practices in India.
2. To know the challenges faced in implementing IPR in India.
3. To determine the impact of IPR practices in India.

Review of Literature

Prasad Vijaya Kumar (2000) in his study highlighted the process of enactment of the Copyrights Act in India, boom of software industry in India and conformity to TRIPS agreement for protection of the copyrights in India. As India is facing software piracy, he identified various socio- economic factors as the main cause for the piracy in India.

Pia Law (1999) analysed the consequences and the impacts of the TRIPS Agreement signed by India on the antibiotic sector of the Pharmaceutical industry. He analysed 7 antibiotics and claimed that higher prices for the antibiotics need not be attributed to strengthening the patent regime only but higher prices may be because of the market structure and elasticity in the user's demand.

Natalia E Tabachnaia – Tamirisa (1997) analysed the economies of IPR protection and its consequences of patent regime on Pharmaceutical industry in India post – GATT period. A strong IPR regime leads to increase in cost of acquiring product blueprints, discourages imitation, and

reduces variety, output and exports of pharmaceutical products, culminating in likely loss for the pharmaceutical industry in the short term. These issues need to be factored while framing a national science and technology policy with the focus on promoting innovative research, stimulating market competition and creating a favourable environment for foreign direct investment, besides providing suitable safeguards like cost-effective pharmaceutical products to vulnerable groups like poor users in the intermittent period.

Manjula Maudgal Luthria (1996) from Georgetown University, USA, evaluated patent values across different sectors in India and observed that patent values are much lower in India compared to developed nations, foreign patents have more value than domestic patents, and the rate of loss in value is higher in India than in developed countries. Among different sectors, chemical, metallurgical and medical equipment patents garner highest values whereas patents in agriculture and domestic articles stand lowest in the value scale.

Tancer(Tancer, R.(1999) stated about India's conformity to the TRIPS agreement, which has led India to provide patent protection to the Pharmaceutical industry by 2005. He also pointed out that IP environment in a country draws the free flow of foreign investment, especially in sectors extensively depending on IP protection.

Bird et al (2009) Intellectual Property (IP) is one of the strategic tools for any organization. Organizations need to have a

general understanding of the IP issues facing their business and their industry, but also need to have adequate expertise in dealing with those issues internally as well as effectively.

Satarkar (2003), IPR holds importance in almost all walks of life, whether it is in agriculture, biotechnology, library and information science, with the new inventions in science and technology, there is a swift growth in the production of the equipment useful for duplicating or copying. This has resulted in malpractice, which affect the copyright cover not only printed matter, but the patents, trademarks, trade secrets and industrial designs.

Koul (1992) states that Mankind has seen enormous progress, because of intervention of science and technology. He continues to state that major assets of a country are its intellectual capital and the technological innovations which reap high return to the country.

Srivastava (2001) discussed the legal aspects of Intellectual Property Rights and information technology products. It is shown that the fastest growing electronic medium causes an increased change of infringement of copyright. The inadequacy of existing Indian Copyright Amendment Act also discussed. Library professionals are concerned with copyrights as they work closely related to acquisition, storage and retrieval of information. The author discusses the copyright issues in depth in his book.

Research Methodology

The study is based on the secondary source of information. Data is collected from books, Journals, websites

Research Design: The Research design is conceptual in nature. Discussion and findings are drawn through study of literature.

Research Area: Area of the study is related to India. The topics discussed are only concerned with Indian context.

Intellectual property rights in India

Indian Patent Act was introduced in 1865, which was modified and revised and was called "The Indian Patents and Designs Act, 1911". The first application for patent in India was done by George Alfred DePenning in the year 1856 and was granted patent for his Invention - "An Efficient Punkah Pulling Machine". After Independence, a bill on Patent rights was enacted and called as "The Indian Patents and Designs Act, 1911. At the initial stage, these were the various Acts regulating IPR in India.

1. Copyrights – Copyrights Act, 1957.
2. Trademarks – Trade and Merchandise Marks Act, 1958.
3. Patents – Patents Act, 1970.
4. Designs – Designs Act, 1911.

After establishment of WTO and India being signatory to the agreement on TRIPS, many new legislations were enacted in India for

the protection of IPR internationally which were followed by various amendments

1. Designs Act ,1911 – Designs Act,2000.
2. Trademarks Act, 1958- Trade Mark Act 1911.
3. Copyright Act,1957- Copyright (Amendment) Act ,2012.
4. Patent Act, 1970 – Patent Act, 2005.
5. Plant varieties - Protection of Plant Varieties and Farmers' Rights Act, 2001.
6. Geographical indications - Geographical Indications of Goods (Registration and Protection) Act, 1999.

There has been constant growth in promotion of IPR after the TRIPS agreement in India. In the USTR's Special 301 report, India was listed on the Priority Watch List for 2018 though several initiatives are initiated by the Government the pace of development has not matched the requirement for promotion and innovation in the country. India has taken up measures to settle the IP issues that are hindering the progress of the country.

Initiatives of Government of India towards protection of IPR

1. In order to bring awareness and educate the stakeholders of IP, the Government of India had issued a Handbook of Copyright law.
2. Several training programmes on Copyright laws for the police and custom officers are conducted by

Hyderabad and National Academy of Customs, National Police Academy.

3. In order to strengthen the IPR regime measures have been initiated by the Department of Education, Ministry of Human resource Development, Government of India which includes CEAC- Copyright Enforcement Advisory Council.
4. Due to lack of knowledge and awareness among the people, people miss out on the benefits hence the Government has taken initiatives to conduct seminars/ workshops on IP issues.

Challenges of IPR in India

India is facing many challenges in managing Intellectual Property rights.

1. Slow patent office: Slow patent office is an age old issue, because patent office used to take more than 20 years to grant a patent. This issue is being tackled by the Government and today the patent office has become much faster. Enormous efforts have been put in, especially since early 2016. There have been instances where patent applications have been granted within a month from the date of filing. This is unprecedented speed and can even be considered faster than the patent offices of the developed countries.
2. IPR Enforcement: As India is a developing country, with

the lack of awareness on IP laws, enforcement of the IP laws is poor especially in related departments of the government, such as police, customs, etc. However, this has drastically changed, the police force is being actively trained about IPR, and the customs department has an intact IPR registration system to prevent import of counterfeit or knockoff products.

3. Litigation: It is a known fact that Indian court system prolongs the settlement of cases for decades; however this issue is poised to change after the establishment of commercial courts and fast tracking of IP matters.
4. Capacity Building: The intellectual property office is expanding its workforce and upgrading its IT infrastructure, the number of patent agents are increasing ,new courses such as integrated B.Tech + LLB is being introduced in Universities, the government is introducing new policies in favour of IP owners such as SIPP scheme, tax breaks on IP licensing earnings, etc.,. In addition to that, there is also a booming LPO business that has far greater number of professionals (10,000+) who

are already experts in the field of IP and are likely to make the transition to Indian IP when sufficient capacity is built.

5. Counterfeit goods: According to FBI, Interpol, World Customs Organization and International Chamber of Commerce estimates, nearly 7-8% of world trade every year is in counterfeit goods. That is the equivalent of as much as \$512 billion in global lost sales.

Positive Impacts of IPR

Though India is a country blessed with abundance of resources, being a developed country is still a dream to India and one of the major causes is Unemployment. By rewarding the creator for his/her creation, IPR promotes Entrepreneurship opportunities and fair trading in the country, making Indians independent and self-sustaining leading to economic and social development of the nation. Not only that IPR encourages and safeguards intellectual and artistic creation and also promotes investment in research and development efforts which are very essential for the growth of an economy. As a part of the process, filing patent leads to disclosure of information, this information can be further utilised to replicate the invention and produce better quality products in the future. Through effective usage of IPR, the

society is assured of delivery of original and genuine products. IPR also becomes a tool for the corporates to protect their investments in the innovations. IPR provides a platform for the International companies to invest in domestic companies. Any individual, company or an economy can grow only when there is Innovation or flow of new ideas. As IPRs instil creative efforts that facilitate a vital cross fertilization of ideas and it helps the nation to be innovative. Through innovation new jobs can be created, social dilemmas can be reduced, diseases can be healed, higher incomes can be drawn. In other words sustenance and progress of the economy is guaranteed.

Negative Impacts of IPR

IPR has encouraged monopolies; many take overs have been motivated by access to an IPR. IPR has diversely affected biological diversity and ecological balance. Livelihood of the poor in developing countries is adversely affected. The objective of IPRs is to protect the public interest but, in reality, the public interest is at stake. For Instance, few countries were allowed to charge higher than the marginal cost of the production in the name of R &D, which led to the increase in the cost of medicines making the drug unaffordable to the poor sections of the society. IPR gives the right to the owner for the usage and sale of the property. In

order to serve the basic aim of IPRs, IP laws must focus on the requirement of the underprivileged in the developing countries. Thus, IPRs are considered merely intellectual protectionism or government-granted monopoly through which the societal benefit is hindered. It is a major challenge in India to balance the interests of the innovators and the interests of the society at large. For Example : An individual having a patent in his/her name is granted 20 years of right over the product and its usage , which means that only after a particular product completes 20 years it is allowed for public use . In other words Pharmaceutical Industries can manufacture those drugs whose patent is expired. This is because , for 20 years law guards

private rights and then they make sure that innovation is provided the societal benefit, in order to strike a balance.

Discussion and Results:

According to the Economic times report patents granted by India has increased to a phenomenal extent in the year 2017. Pharmaceuticals have accounted for 15.7 per cent of the Indian domestic applications for patents last year. WIPO's Indicators 2018 report stated that there is a considerable increase in the patents granted by India i.e., 8,248 in 2016 to 12,387 in 2017.

	Registered	Domestic	Foreigners
Designs	10,188	6,622	3,566
Trademarks	3, 39,692	2, 87,139	52,553
Patents	46,582	14,961	31,621

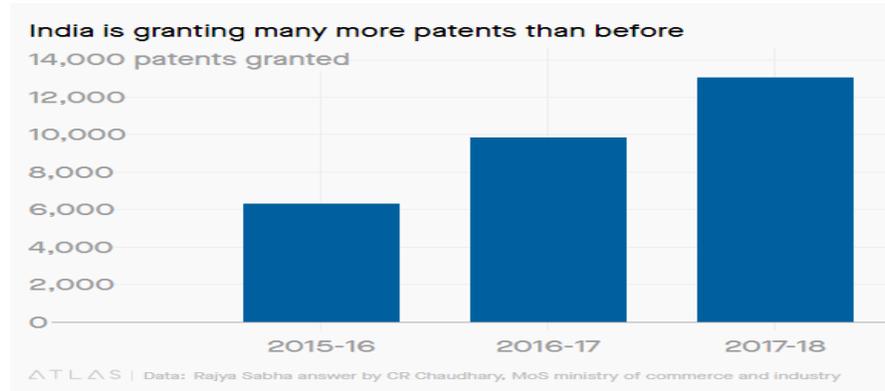
Comparative trends of IPR's granted and registered

Year	2012-13	2013-14	2014-15	2015-16	2016-17
Patents	4,126 (9,027)	4,227 (11,411)	5,978 (14,316)	6,326 (20,429)	9,847 (30,271)
Designs	7,252 (7,300)	7,178 (7,226)	7,147 (7,218)	7,904 (8,023)	8,276 (8,332)
Trade Marks	44,361 (69,736)	67,876 (1,04,756)	41,583 (83,652)	65,045 (1,16,167)	25,0,070 (2,90,444)
Geographical Indication	21	22	20	26	34

Interpretation:

There is constant increase in the IPR’s registered and granted. The reason for the rise in Registration can be attributed

to the initiatives taken by the Government in promoting entrepreneurship opportunities through Start up India and Make in India Initiatives.



Interpretation:

One of the major challenges of effective IPR in India was slow patent office, pending applications, lack of human resources but in the current scenario there has been a lot of improvement in

the same, steps has been initiated where average time to address patent application is reduced and applications are dealt with on case by case basis. There has been an increase in recruitment of IPR officials and experts.

Trend of Patent applications

Year	2012-13	2013-14	2014-15	2015-16	2016-17
Filed	43,674	42,951	42,763	46,904	45,444
Examined	12,268	18,615	22,631	16,851	28,967
Granted	4,126	4,227	5,978	6,326	9,847
Disposal	9,027	11,411	14,316	21,987	30,271

Interpretation:

Introduction of National IP policy in India has simplified the IP procedures and policies. For Instance, application can be transferred to other branches, electronically. Hearings are permitted through video conferencing. IP website has been updated and system is user friendly with more interaction, information sharing and transparent methods being adopted.

Findings and Recommendations

1. The study identifies that IP governance in India is a major concern. It is essential to sensitise the enforcement officials and the members of the judiciary to engage in IP matters at par with economic offenses. Government should take initiatives to Train the Personnel to manage IPR effectively.
2. This study identifies that the policy makers in India should adopt an overall perspective while framing the laws, which includes inviting a consortium of group of stakeholders including experts in various fields should be asked for their opinions and suggestions.
3. India is lacking resources and technology in R & D in various aspects in regards to IPR because of which India is unable to compete with the global economy. In order to encourage research, Government should reward and recognise the research activities among the youth

of this nation and also creation of IP fund for the enhancement of IP culture in India.

4. Lack of Awareness about the IPR laws: This can be improved by providing awareness on IP laws to the younger generation by including it in the Education system. IPR Awareness workshops and programmes should be initiated in order to make the common man aware of the benefits of IPR to the society also provision to be in order to access and use Patent information databases.
5. The process of filing patents in India has consistently improved .It is evident because patent applications increased 10% when compared to last year and this positive growth can be credited to the benefits been assured by the Government's start up India initiative.
6. IP regime has also encouraged Indians to move towards Entrepreneurship and thus encourage Start up India and Make in India concepts.
7. Patent filings in India have improved over the years. This is because of ease of filing patent application process and reducing the price of patent application.
8. Small businesses are at a disadvantage as they lack Human resource at overseas operations, being unaware of the theft of their IP globally and lack access to resources such as specialised legal counsel.

9. Further research can be made in the policy implications of TRIPS Agreement on India which it would be definitely be a value adds to the researchers, experts, lawyers, lawmakers and bureaucrats in the formation of future patent policy.

Conclusion:

India has taken several measures to promote IPR in India and there is a positive change in the trend but in a highly competitive global economy, the need for protection of IPR and efficient usage of the resources is important and hence India has to strive for various modifications and changes to the existing Intellectual Property Laws and enforcement of the same, and progress towards new IPR regime so as to prepare itself for the global trade competition.

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