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### Jyoti Hegdekatte

Assistant Professor,  
Department of Commerce,  
Government First Grade  
College Kengeri, Bangalore,  
Karnataka, India

### Correspondence

Jyoti Hegdekatte  
Assistant Professor,  
Department of Commerce,  
Government First Grade  
College Kengeri, Bangalore,  
Karnataka, India

## Intellectual property rights in India: An overview

### Jyoti Hegdekatte

#### Abstract

The intellectual property in the scientific, technical and industrial is imperative more than ever. The invention, innovation, research, designs and testing goes into the high technology products and new medicines. The songs, films, music recordings, books, computer software and on-line services contain creativity. There are low-technology goods or commodities which contain a higher proportion of invention and design in their value. Intellectual Property Rights gives the right to prevent others from using their inventions, designs or other creations. The present study is a conceptual framework in this regard covering an Indian context.

**Keywords:** Intellectual property, rights, inventions

#### Introduction

Globalization and competition word wide awake the ideas from inventors and creators to withstand the competitions in the market. India is rich with knowledgeable and talented people in all the areas of life sciences and technology which drive India to enter in the field of Intellectual Property Rights (IPR). (Narasimhulu Eppe, 2019) <sup>[8]</sup>.

#### Intellectual Property

Intellectual property (IP) refers to the creations of the human mind like inventions, literary and artistic works, and symbols, names, images and designs used in commerce. Intellectual property is divided into two categories: Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs. Intellectual property rights protect the interests of creators by giving them property rights over their creations.

The old capitalism was a capitalism of goods, factories and labour. But now factories and labour, even skilled labours are in abundant supply. The new capitalism is at its core about the control of information and knowledge. It is for this reason that issues concerning the design of intellectual property rights have become so important and pressing. Over the past two decades, there have been major changes at the municipal and international level, which necessitated a novel and pragmatic approach for a broader understanding of intellectual property protection. In 1994, the agreement establishing the World Trade Organization (WTO) was adopted and as a part of it an agreement on the Trade Related Aspects of the Intellectual Property Rights (TRIPS) also comes into force. The TRIPS agreement laid down the uniform standards on the grant and enforcement of the Intellectual Property Rights (IPRs) (Dr. Piyush Kumar Trivedi, 2019) <sup>[2]</sup>.

Intellectual property rights originally entered the uruguay Round Negotiations on the grounds that weak and variable standards distort international trade flows and interfere with global economic efficiency. If that were true, IPRs could be labeled "trade-related" and included in the WTO. However, because it is impossible simply to discipline the associated trade distortion, an agreement to modify IPRs regimes themselves was required. These notions gave the ultimate TRIPs agreement both its name and its extensive structure.

IPR is monitored by world Intellectual Property Organization (WIPO). According to WIPO, IPR includes rights related to following (as per Art. 2(viii) as on 14th July 1967).

- Abstract, masterful and logical works
- Developments in all fields of human behavior

- Exhibitions of performing craftsmen, phonograms and broadcasts
- Logical discoveries
- Modern designs
- Trademarks, administration imprints, and business names and designations

**The Concept of Intellectual Property**

The concept of intellectual property is not new as Renaissance northern Italy is thought to be the cradle of the Intellectual Property system. A Venetian Law of 1474 made the first systematic attempt to protect inventions by a form of patent, which granted an exclusive right to an individual for the first time. In the same century, the invention of movable type and the printing press by Johannes Gutenberg around 1450, contributed to the origin of the first copyright system in the world. Towards the end of 19th century, new inventive ways of manufacture helped trigger large-scale industrialization accompanied by rapid growth of cities, expansion of railway networks, the investment of capital and a growing transoceanic trade. New ideals of industrialism, the emergence of stronger centralized governments, and nationalism led many countries to establish their modern Intellectual Property laws.

At this point of time, the International Intellectual Property system also started to take shape with the setting up of the Paris Convention for the Protection of Industrial Property in 1883 and the Berne Convention for the Protection of Literary and Artistic Works in 1886. The premise underlying Intellectual Property throughout its history has been that the recognition and rewards associated with ownership of inventions and creative works stimulate further inventive and creative activity that, in turn, stimulates economic growth. Over a period of time and particularly in contemporary corporate paradigm, ideas and knowledge have become increasingly important parts of trade.

Most of the value of high technology products and new medicines lies in the amount of invention, innovation, research, design and testing involved. Films, music recordings, books, computer software and on-line services

are bought and sold because of the information and creativity they contain, not usually because of the plastic, metal or paper used to make them. Many products that used to be traded as low-technology goods or commodities now contain a higher proportion of invention and design in their value, for example, brand-named clothing or new varieties of plants. Therefore, creators are given the right to prevent others from using their inventions, designs or other creations. These rights are known as intellectual property rights.

The Convention establishing the World Intellectual Property Organization (1967) gives the following list of the subject matter protected by intellectual property rights:

- Literary, artistic and scientific works;
- Performances of performing artists, phonograms, and broadcasts;
- Inventions in all fields of human endeavor;
- Scientific discoveries;
- Industrial designs;
- Trademarks, service marks, and commercial names and designations;
- Protection against unfair competition; and
- “all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.”

**Description of Intellectual Property Rights**

Intellectual property (IP) is a term referring to a brand, invention, design or other kind of creation, which a person or business has legal rights over. Almost all businesses own some form of IP, which could be a business asset.

Common types of IP include:

- **Copyright:** this protects written or published works such as books, songs, films, web content and artistic works;
- **Patents:** this protects commercial inventions, for example, a new business product or process;
- **Designs:** this protects designs, such as drawings or computer models;
- **Trade marks:** this protects signs, symbols, logos, words or sounds that distinguish your products and services from those of your competitors.

**Table 1:** Intellectual property rights in manufacturing activities

| Types of intellectual property right | Main fields   |
|--------------------------------------|---|
| Patents                              | Chemicals, drugs, plastics, engines, turbines, electronics, industrial control and scientific equipment |
| Utility models                       | Mechanical industry   |
| Industrial designs                   | Clothing, automobiles, electronics, furniture, etc  |
| Trade secrets                        | Chemistry, biotechnology, food and other processing industries  |
| Copyright                            | Printing  |
| Trademarks                           | All industries  |
| Integrated circuits                  | Microelectronics  |

**Source:** Correa CM (2010). Designing Intellectual Property Policies in Developing Countries. Penang, Third World Network

**Categories of Intellectual Property**

IP is divided into two categories for ease of understanding:

1. Industrial Property
2. Copyright

Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs.

Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs

Intellectual property shall include the right relating to:

- 1) Literary, artistic and scientific works;
- 2) Performance of performing artists;
- 3) Inventions in all fields of human endeavor;
- 4) Scientific discoveries;
- 5) Industrial designs;

- 6) Trademarks, service marks and etc;
- 7) Protection against unfair competition.

### Rights Protected Under Intellectual Property

The different types of Intellectual Property Rights are:

- 1) Patents
- 2) Copyrights
- 3) Trademarks
- 4) Industrial designs
- 5) Protection of Integrated Circuits layout design
- 6) Geographical indications of goods
- 7) Biological diversity
- 8) Plant varieties and farmers rights
- 9) Undisclosed information

### The Big Fight

Intellectual property rights are the subject matter of many a fierce debate where the proponents of either side profess their case ardently. We shall begin this debate by defining the basic lines of reasoning briefly and then by conducting an in-depth analysis on them.

| Arguments in Favour   | Arguments Against                      |
|-----------------------|--|
| Incentive to innovate | Poses serious roadblocks to innovation |
| Moral desert theory   | Leggett's objection                    |
| Personality theory    | Palmer's criticism                     |
| Utilitarian theory    | Weak argument                          |
| Incentive to produce  | Creates artificial scarcity            |

As we can see that the arguments for and against intellectual property rights are complementary to each other, we shall tackle them simultaneously. The first argument for intellectual property rights is that it provides an incentive to innovate, as intellectual property rights increase the expected returns from an innovation by increasing profitability. Hence more resources will be devoted to the particular line of work. But on the other hand, patents and copyrights may occasionally retard innovation. In order to improve on an existing product that is patented, a person would have to seek the patentee's permission. For instance, a good deal of great art would not have been created under a strict copyright regime. Shakespeare took the works of others and created greater works. Under today's copyright regime his legal bills would have been staggering!

### Intellectual Property Rights and Human Rights at A Glance

Intellectual Property Rights as the name suggests are the rights given to an inventor or the creator as a reward:

1. For creating or inventing something new as a result of his own intellect and importantly
2. To benefit the society out of that invention.

The Human Rights are the rights which are given to the human being not as a matter of chance or choice but as a matter of his being a human. They are the rights ensuring the basic survival of the human beings (Dr. Piyush Kumar Trivedi, 2019) <sup>[2]</sup>.

### Review of Literature

Narasimhulu Eppe (2019) <sup>[8]</sup> contends that the intangible intellectual property rights (IPR) give exclusive rights to the creator for their creation. To withstand the competition in the market globally these rights boost the innovative

thinking and research which give recognition and economic benefits to the creator. The lack of knowledge about IPR is the main hitch with developing countries like India. Lacking off IPR knowledge, foreigners steel our resources and ideas and giving provision for bio piracy. This article gives the basic information about various types of IPRs viz., patents, trademarks, and geographical indications, industrial designs, copyrights, trade secrets, layout designs, protection of new plant varieties, etc., with basic information about the need and method of getting the same. (Narasimhulu Eppe, 2019) <sup>[8]</sup>.

Adukia opines that the intellectual property is an intangible creation of the human mind, usually expressed or translated into a tangible form that is assigned certain rights of property. Examples of intellectual property include an author's copyright on a book or article, a distinctive logo design representing a soft drink company and its products, unique design elements of a web site, or a patent on the process to manufacture chewing gum. (Adukia)

Manual (2017) <sup>[7]</sup> propagates that the importance of intellectual property in India is well established at all levels statutory, administrative and judicial. India ratified the agreement establishing the world trade organisation (WTO). This agreement, inter-alia, contains an agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) which came into force from 1<sup>st</sup> January 1995. It lays down minimum standards for protection and enforcement of intellectual property rights in member countries which are required to promote effective and adequate protection of intellectual property rights with a view to reducing distortions of and impediments to international trade. The obligations under the TRIPS agreement relate to provision of minimum standard of protection within the member countries legal systems and practices. (Manual, 2017) <sup>[7]</sup>.

James A. Lewis (2008) <sup>[3]</sup> propounds that the goal of the TRIPS agreement was to strengthen IPR to lead to more innovation and more international technology transfer through FDI and licensing. Firms have different use. Firms that make products that are difficult to pirate favor licensing, whereas firms that face a greater risk of piracy tend to choose FDI, through which they can take steps that face a greater risk of IP loss. As IPR regimes strengthen in developing and transition economies, firms are more likely to invest in such countries and are more likely to license technology. When a developing country strengthens IPR, it should experience enable firms. Both effects can be economically beneficial to the country. (James A. Lewis, 2008) <sup>[3]</sup>.

Vihar (2019) <sup>[11]</sup> observes that there are many other forms of intangible properties which are known with the term 'intellectual property' that have been recognized by the law and thus granted protection against any kind of infringement by a person other than its rightful owner or a person authorized by such rightful owner. Under the Intellectual Property Law, the owners of such intangible property have been granted and conferred with certain exclusive rights over their respective intangible assets/works, these include, musical, literary and artistic works; discoveries and inventions; and words, phrases, symbols, and designs, etc. Patent, Trademark, Copyright, and Designs rights are the broad four main categories of intellectual properties, though the domain of such assets is expanding with the passage of time. (Vihar, 2019) <sup>[11]</sup>.

Lahra Liberti (2010) <sup>[4]</sup> observes that from 2000, RTAs

signed by the US, the European Union and Japan have incorporated IPRs provisions which contain more detailed or even additional obligations in respect of the WTO-TRIPS Agreement. The IP chapter of post-TRIPS FTAs signed with the US contains substantial intellectual property provisions that exceed TRIPS minimum standards (frequently referred to as TRIPS-Plus obligations). These provisions do not always provide for the full range of flexibilities offered by the TRIPS Agreement with regard to compulsory licences, revocation of patents or the option to exclude the patentability of plant and animal varieties. These provisions are often combined with extended copyright and trademark protection period, extended patent protection term for unreasonable curtailment of the patent term as a result of the marketing approval process, data exclusivity, new use protection, and obligations to ratify international treaties on IPR protection. (Lahra Liberti, 2010)<sup>[4]</sup>.

Legal (2015)<sup>[6]</sup> analyzes and deals with the IP law regime in India and the protections provided thereunder. With the advent of the knowledge and information technology era, intellectual capital has gained substantial importance. Consequently, Intellectual Property (“IP”) and rights attached thereto have become precious commodities and are being fiercely protected. In recent years, especially during the last decade, the world has witnessed an increasing number of cross-border transactions. Companies are carrying on business in several countries and selling their goods and services to entities in multiple locations across the world. Since intellectual property rights (“IPRs”) are country-specific, it is imperative, in a global economy, to ascertain and analyze the nature of protection afforded to IPRs in each jurisdiction. (Legal, 2015)<sup>[6]</sup>.

Lalit Jajpura (2017)<sup>[5]</sup> contends 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 globalisation, 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. Hence dissemination of IPR knowledge and its appropriate implementation is utmost requirement for any nation (Lalit Jajpura, 2017)<sup>[5]</sup>.

### **Initiatives of Government of India towards Protection of IPR**

1. The Government has brought out A Handbook of Copyright Law to create awareness of copyright laws amongst the stakeholders, enforcement agencies, professional users like the scientific and academic communities and members of the public.
2. National Police Academy, Hyderabad and National Academy of Customs, Excise and Narcotics conducted several training programs on copyright laws for the police and customs officers.
3. The Department of Education, Ministry of Human Resource Development, Government of India has initiated several measures in the past for strengthening the enforcement of copyrights that include constitution of a Copyright Enforcement Advisory Council (CEAC), creation of separate cells in state police headquarters, encouraging setting up of collective administration

societies and organization of seminars and workshops to create greater awareness of copyright laws among the enforcement personnel and the general public.

4. Special cells for copyright enforcement have so far been set up in 23 States and Union Territories, i.e. Andhra Pradesh, Assam, Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Meghalaya, Orissa, Pondicherry, Punjab, Sikkim, Tamil Nadu, Tripura and West Bengal.
5. The Government also initiates a number of seminars/workshops on copyright issues. The participants in these seminars include enforcement personnel as well as representatives of industry organizations. (Adukia).

### **Development of Intellectual Property Law in India**

Intellectual Property Right (IPR) in India was imported from the west. The Indian Trade and Merchandise Marks Act 1884, was the first Indian Law regarding IPR. The first Indian Patent Law was enacted in 1856 followed by a series of Acts being passed. They are Indian Patents and Designs Act in 1911 and Indian Copyright Act in 1914. Indian Trade and Merchandise Marks Act and Indian Copyright Act have been replaced by Trade and Merchandise Marks Act 1958 and Copyright Act 1957 respectively<sup>3</sup>. In 1948, the Indian Government appointed the first committee to review the prevailing Patents and Designs legislation. In 1957, Government appointed Justice Rajagobala Ayyangar Committee (RAC) to revise the Patent Law. Rajagobala Ayyangar Committee submitted its report on 1959, the report tried to balance the constitutional guarantee of economic and social justice enshrined in the preamble of the constitution. This report provided the process for Patenting of drugs. This report outlined the policy behind the Indian Patent system.

The theory upon which the patent system is based on, i.e., an opportunity of acquiring exclusive rights in an invention, stimulates technical process in four ways.

1. Encourages research and invention.
2. Induces an inventor to disclose his discoveries.
3. Offers award for the expenses of developing inventions.
4. Provides an inducement to invest capital in new lines of production which might not appear profitable.

Based on the Rajagobala Ayyangar Committee report, a Bill was introduced in the year 1965 and the bill was passed in the Lok Sabha but it lapsed in the Rajya Sabha and once again lapsed in Lok Sabha in the year 1966 due to dissolution of Lok Sabha. But it was reintroduced in 1967 and passed in 1970; the draft rules were incorporated in Patent Act and passed in the year 1971. (S. Lakshmana Prabu, 2012)<sup>[10]</sup>.

### **Intellectual Property Regime – Indian Scenario**

A knowledge-based product requires protection so that the investments made by companies in Research and Development may be justified. It has been seen that developing countries, including India, provide a very weak intellectual property protection. India acknowledged in principle the case for strict IPR protection, but in India, this could be done only in phases suited by its own ground reality. The reality - absence of international IPR protection

for some decades had spawned employment for millions, so an overnight clampdown on IPR violators would foment social unrest. This has made the scene grim for companies investing / willing to invest in research and development efforts. India has lagged behind in formulating relevant laws, making it difficult to protect the country's biodiversity. We have a wealth of traditional knowledge and product's lying in the public domain that needs to be adequately protected. The Basmati controversy clearly underlines the need to have stringent IP laws. Had the Geographical Indication Law been there, Ricetec could not have branded its rice 'basmati rice lines and grains', as the law would have protected basmati on the basis of geographical indication, like France and Scotland did for Champagne and Scotch many years ago.

**Administration of Major IPRS in India**

India is a contracting party to the following international conventions and treaties as regards Intellectual Property Rights: the Agreement on Trade-Related Aspects of Intellectual Property Rights, the Paris Convention for the protection of Industrial Property, the Patent Cooperation Treaty, the Berne Convention for the protection of Literary and Artistic works, the Universal Copyright Convention, the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, Nairobi treaty, etc.

The major intellectual property rights and the Ministries, Departments responsible for administering the legislations concerning these rights are as per the table give below:

| Nature of IPRs   | Concerned Ministry/Department/ Organisation   |
|--|---|
| Patents, Designs, Trade Marks & Geographical Indications | Ministry of Commerce and Industry,<br>Department of Industrial Policy & Promotion<br>The Office of the Controller General of Patents, Designs and Trade Marks |
| Copyright and related rights                             | Ministry of Human Resource Development,<br>Department of Higher Education<br>Office of the Registrar of Copyrights  |
| Semiconductor, Integrated Circuit Layout Design Rights   | Ministry of Communications and Information Technology<br>Department of Information Technology<br>SICLD Registry   |
| Protection of Plant Varieties and Farmers' Rights        | Ministry of Agriculture, Department of Agriculture and Cooperation<br>Protection of Plant Varieties and Farmers' Rights Authority                             |

Source: Rambabu, V. (2007) <sup>[9]</sup>. Modernization Of Intellectual Property Offices In India Ideas From The Experience Of The Japan Patent Office. 1-69.

**Legislative Framework**

Recognizing the importance of intellectual properties for scientific, technical and industrial development and as a strategic response to globalization and liberalization of Indian economy, Government of India has revised intellectual property related legislations concerning patents, trademarks, geographical indications and industrial designs. These legislations are in conformity with India's international obligations. For streamlining and rationalizing of certain procedural aspects regarding acquiring of patent rights, Patent Rules have also been amended.

The legislations governing the Industrial Property Rights

are:

The Patents Act, 1970 as amended by the Patents (Amendment) Act, 2005

The Trade Marks Act, 1999

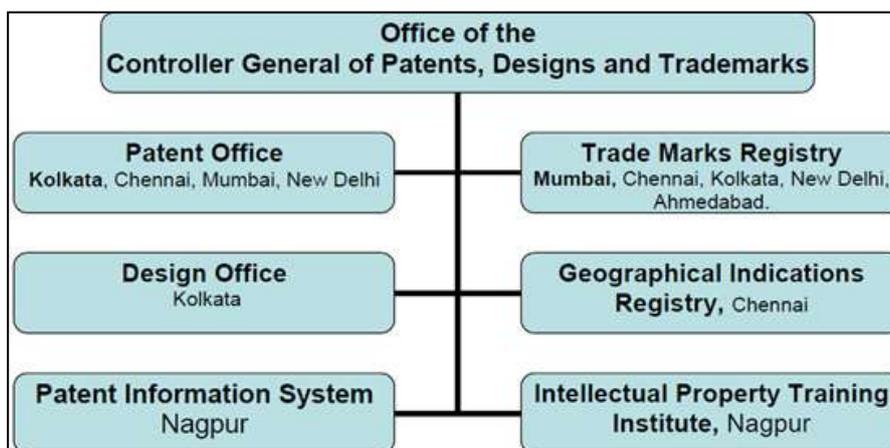
The Geographical Indications of Goods (Registration and Protection) Act, 1999

The Designs Act, 2000

(Rambabu, 2007) <sup>[9]</sup>.

**Organizational Framework of IP Offices**

The organisation of the IP offices and the locations are as per the figure given below2:



Source: Rambabu, V. (2007) <sup>[9]</sup>. Modernisation of Intellectual Property Offices in India Ideas from the Experience of the Japan Patent Office. 1-69.

**Conclusion**

As globalization deepens further, it also increasingly encompasses the sharing, utilization and enjoyment of IP products like inventions, designs, books, etc. India is fast

developing into a technology producing country, particularly in biotechnology, information technology and pharmaceuticals sector. Therefore, development of stringent and staunch IPR system is an urgent need. Keeping in view,

this emergency the Indian corporates' are responding positively to TRIPS by gearing itself to increasing the R&D outlays. And as far as the government and legislation is concerned, the following work has been done in this direction, in order to provide a strong Intellectual Property protection system.

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