

# An Overview of India's Draft IPR Policy

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**Abstract:** *Ours is a capital-scarce nation and so foreign capital plays a very important role of a catalyst in the industrial sector, thus, contributing to economic growth. But, recently, there is a new form of capital which has caught the attention of one and all and that is, human capital. There is lately a growing emphasis on invention and innovation, which is why 2011-2020 has been termed as the "Decade of Innovation". One way to boost and protect innovations is Intellectual Property Rights (IPRs). IPRs refer to rights which are conferred on individuals, companies or organizations pertaining to specific innovation or invention in products or processes for a certain period of time. On 22nd October 2014, the Department of Industrial Policy & Promotion (DIPP) set up a National IPR Think Tank (NITT) to draft an overarching IPR policy and advise the government on IPR related issues. The need of the hour is to improve the IPR regime both from the side of the legislation and also from the side of policy-implementation which would help in the creation of a better environment for improving the overall level of innovation in the country.*

**Keywords:** competitiveness, copyright, innovation, trademarks, TRIPS.

## 1. Introduction

Over the past three decades, a number of major developments and transformations have taken place in Indian markets. The choices available to Indian consumers have gone up drastically, be it the number of cars that people can choose from, variety of brands to wear, telecom networks, etc. But all this was made possible due to market-oriented policy reforms that India undertook in the early 1990s as a part of the structural adjustment programme. Geographical barriers to trade among nations are collapsing due to globalization, a system of multilateral trade and a new emerging economic order (SAHA, R.). We all know that ours is a capital-scarce nation and so foreign capital has become a very important catalyst in industrial sector, thus, contributing to economic growth. But, recently, there is a new form of capital which has caught the attention of one and all and that is, human capital. There is, lately, a growing emphasis on invention and innovation. In fact, 2011-2020 has been termed as the "Decade of Innovation" in India. In looking at the needs for India's next stage of growth, both industry and policymakers are focusing on strategies for fostering capacity for innovation (KAPOOR, A. & SHARMA, S.). Owing to increasing stress on innovation, Intellectual Property Rights (IPRs) have gained significant importance. In today's highly competitive global economy, IPRs are giving companies the cutting edge and increasing their competitiveness (FICCI). There is also a growing need for understanding the dynamics of innovation and to take requisite steps accordingly, which gives rise to the need for a robust and stable IPR regime in India. The very well-balanced IPR regime in India acts as an incentive for foreign players to protect their Intellectual Property in India (FICCI). India, along with several other developing countries, signed the TRIPS Agreement in 1994, and became obligated to amend its domestic IPR laws within ten years (DUTTA, A. & SHARMA, S.2008). In the long run, India will do well if it brings about a robust Intellectual Property (IP) system and protects the IP of its own companies which will also provide a stable framework for multinational companies wanting to enter India. Notwithstanding, there are some critical impediments, which have hampered prospects for broader acceptance of IPR norms, and if addressed may enable greater economic

cooperation between countries (KAPOOR, A. & SHARMA, S.).

A brief review of other countries' policies confirms the absence of a unified approach to IPR policy. There is no single IP Policy adopted by the United States of America. The European Union Intellectual Property Rights Strategy, 2011 aims to create a single market for IPRs across national boundaries by harmonizing various national IPRs regimes (CLPR). In Indian context, the development of the IPR POLICY should be based on broader principles of fairness and equity, balancing intellectual property protections with limitations and exceptions/user rights such as those that promote freedom of expression, research, education, etc (CIS).

## 2. The concept of Intellectual Property

Intellectual Property (IP) is an intangible creation of the human mind. For example, a book or article, a distinctive logo design for some product etc. Creation of IP is important from both cultural and economic angles since it pushes up national pride and, at the same time, being a tradable commodity raises the GDP (RIS 2015). Intellectual property rights (IPRs) can be defined as the rights given to people over the creation of their minds. They usually give the creator an exclusive right over the use of his/her creations for a certain period of time (ADUKIA, R.S.). IPRs refer to rights provided to individuals or organizations pertaining to specific innovation or invention in products or processes for a certain period of time. They exist in the form of patents, trademarks, Geographical Indicators (GIs), copyrights, etc (www.swaniti.in). These rights are largely territorial rights and are awarded by the State and are monopoly rights implying that no one can use these rights without the consent of the holder (SAHA, R.). Basically, 'IPR' is a generic term that describes various kinds of legal protections given to information that has some commercial value (CLPR). IPR intends to spur and incentivize creativity and innovation and facilitate access to knowledge in order to achieve social and economic welfare (www.swaniti.in). IPR plays a key role in almost every sector and has become a crucial factor for investment decisions by many companies.

India is now TRIPS-compliant which is an international agreement administered by the World Trade Organization (WTO), which sets down minimum standards for many forms of intellectual property regulations as applied to the nationals of other WTO Members. The Government of India has adopted a pro-active approach towards drawing a roadmap for IPR in the country and coming out with a policy to improve investment climate in the country as well as promoting innovation and improving national competitiveness ([www.swaniti.in](http://www.swaniti.in)).

Intellectual property, as pointed out by ADUKIA, R.S., shall include the right relating to:

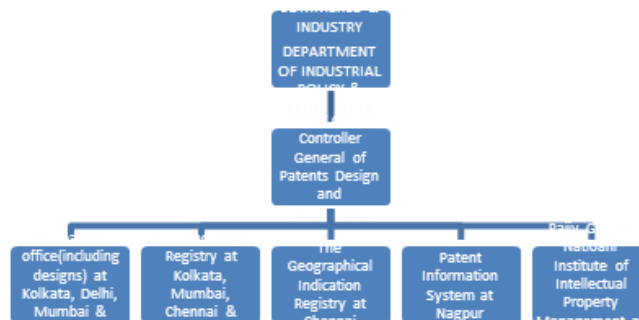
- 1) Literary, artistic and scientific works;
- 2) Performance of performing artists;
- 3) Inventions in all fields of human endeavour;
- 4) Scientific discoveries;
- 5) Industrial designs;
- 6) Trademarks, service marks and;
- 7) Protection against unfair competition.

India is ranked **29th** out of 30 countries in the International IP Index 2015, released by the Global Intellectual Property Center of the US Chamber of Commerce. This ranking measures the overall IP environment in a country. India ranks **76th** out of 143 countries on the Global Innovation Index 2014 published by Cornell University, INSEAD and World Intellectual Property Organization ([www.swaniti.in](http://www.swaniti.in)).

### 3. Government Policies Regarding IPRs

By embracing the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) of the General Agreement on Tariffs and Trade (GATT), later renamed the World Trade Organization in 1994, India's IP system and companies have been enabled to align themselves with global IP standards (KAPOOR, A. & SHARMA, S.). Considering the international trade and investment scenario, there is need for providing IPR laws as per the TRIPS standards which are the current global international norms on IPRs (RIS 2015). This marks a big step forward for it has helped the companies from abroad to have a level playing field against companies in India, competing against each other in a range of industries where patents are crucial to gain competitive advantage at the common platform (KAPOOR-SHARMA). Intellectual property in India is regulated by several laws, rules and regulations under the jurisdiction of different Ministries/ Departments. A number of authorities and offices administer the laws. The legal provisions need to be implemented harmoniously so as to avoid conflict, overlap or inconsistencies among them (NATIONAL IPR POLICY 2014) (see Figure 1).

#### 3.1 Coordination and Management of IPRs



**Figure 1:** Administration of IPRs (Source: KAPOOR, A. & SHARMA, S.)

#### 3.2 Types of Protected IP And Their Coverage by Indian Law

Kapoor and Sharma mark six major categories of innovations that are eligible for IP protections.

- 1) Patents: The Patents Act of 1970, Patent Rules of 2003 and Patent Amendment of 2005
- 2) Trademarks: the Trademark and Merchandise Marks Act of 1958 and the Trademark Act of 1999
- 3) Copyrights: The first copyright act came to India in 1914, which was modeled on the British Act of 1911 and then, Indian Copyright Act of 1957. Since then, the act has been amended five times (most recently in 2012).
- 4) Geographic indicators: Geographic Indications of Goods (Registration & Protection) Act 1999
- 5) Industrial Design: Indian law also safeguards IP protections for industrial designs based on the unique look or feel of an invention, such as its pattern, shape, or texture.
- 6) Agriculture: Protection of Plant Varieties and Farmers' Rights Act of 2001.

#### 3.3 Initiatives of Government of India Towards Protection of IPR as put forward by Adukia, R.S., are as Follow:-

- 1) To create awareness of copyright laws amongst the stakeholders, enforcement agencies, professional users like the scientific and academic communities and members of the public, the Government has brought out A Handbook of Copyright Law.
- 2) 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.
- 3) Special cells for copyright enforcement have so far been set up in various States and Union Territories.

- 4) The Government also conducts a number of seminars/workshops on copyright issues.
- 5) Various training programs on copyright laws have been conducted by the National Police Academy and National Academy of Customs, Excise and Narcotics for the police and customs officers.

### 3.4 Draft National IPR Policy 2014

The draft IPR POLICY provides a valuable roadmap for realizing the potential of India's creativity and recognizes the central role intellectual property plays in this regard (IPO). It envisages IP as an integral part of India's overall development policy and will integrate and create synergies with IP related aspects of various sector specific policies. On 22nd October 2014, the Department of Industrial Policy & Promotion (DIPP) set up a National IPR Think Tank (NITT) to draft an overarching IPR policy and advise the government on IPR related issues. Further, the Think Tank has the following eight additional terms of reference (MANI, S.):

- to identify areas in the IPRs where study needs to be conducted and to furnish recommendations in this regard to the Ministry,
- to provide views on the possible implications of demands placed by the negotiating partners,
- to keep the government regularly informed about the developments taking place in IPR cases which have an impact upon India's IPR policy,
- to advise the Government on best practices to be followed in Trademark Offices, Patent Offices and other Government Offices dealing with IPR in order to create an efficient and transparent system of functioning in the said offices
- to prepare periodic reports on best practice followed in foreign countries,
- to highlight anomalies in the present IPR legislations and to advise possible solutions to the Ministry
- to give suggestions on the steps that may be taken for improving infrastructure in IP offices and Tribunals,
- to examine the current issues raised by industry associations and those that may have appeared in media and to give suggestions to the Ministry on such issues (DIPP 2014).

### 2.5 Objectives

The NATIONAL IPR POLICY 2014 aims to provide a roadmap for holistic, effective and balanced development of the IP system in India. Accordingly, following seven major objectives have been laid:-

- 1) IP Awareness and Promotion: To create public awareness about the economic, social and cultural benefits of IP among all sections of society for accelerating development, promoting entrepreneurship, enhancing employment and increasing competitiveness.
- 2) Creation of IP: To stimulate the creation and growth of intellectual property through measures that encourage IP generation.

- 3) Legal and Legislative Framework: To have strong and effective laws with regard to IP rights that are consistent with national priorities and international obligations and which balance the interests of rights owners with public interest.
- 4) IP Administration and Management: To modernize and strengthen IP administration for efficient, expeditious and cost effective grant and management of IP rights and user oriented services.
- 5) Commercialization of IP: To augment commercialization of IP rights; valuation, licensing and technology transfer.
- 6) Enforcement and Adjudication: To strengthen the enforcement and adjudicatory mechanisms for combating IP violations, piracy and counterfeiting; to facilitate effective and speedy adjudication of IP disputes; to promote awareness and respect for IP rights among all sections of society.
- 7) Human Capital Development: To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IP.

### 4. Impediments to Future Growth of IPR Regime

The critical concerns as raised by CLPR, FICCI, KAPOOR, A. & SHARMA, S. *et al* to which the Draft Policy pays inadequate attention:

- a. The Think Tank must undertake a careful review of executed bilateral investment treaties, free trade agreements as well as ongoing negotiations on new treaties to ensure that they don't include obligations contrary to India's stance against TRIPS.
  - b. There must be a closer review as to who registers and who benefits from GI registrations to ensure that the state/state authorities do not claim ownership over the Geographical Indications in the name of traditional communities.
  - c. The Biological Diversity Act was enacted in 2002; however, there has been a serious effort at the implementation of the Act only in the last 3 years. Successful implementation of the Act requires a comprehensive legislative review to smooth out various drafting inconsistencies and errors (CLPR).
  - d. Sensitizing the enforcement officials and the Judiciary to take up IP matters, at par with other economic offences, by bringing them under their policy radar.
  - e. Growing piracy, particularly over the Internet with respect to various IP rights and copyright law.
  - f. The challenges also lie in having an IP fund, which can be utilized for further developing the IP culture in the country.
  - g. A large backlog of cases pertaining to IPR that has resulted in a delayed process of redressing grievances.
  - h. No special court for IPR.
  - i. Lack of protection for trade secrets.
  - j. Sociocultural and other historical factors.
  - k. Access to medicines for poor people.
- Addressing these issues will require a policy direction that will enable India's IPR regime to follow global standards while at the same time realizing the innovation potential of various Indian states (KAPOOR, A. & SHARMA, S.). The focus should be on how to tackle these concerns carefully so

as to ensure that the improvised IPR regime actually benefits the country and brings about such a transformation across the nation which will help in increasing the overall level of innovation and economic growth.

## 5. Conclusion

The Government of India has drafted a new National IPR (Intellectual Property Right) Policy. This is for the first time that the Government has undertaken such a task (RIS 2015). However, just the formulation of policies and laws is not important, what matters the most is the strict enforcement of the same. The IPR Task Force's work to articulate an Indian IPR Policy is a significant and positive step toward fostering predictability, clarity, and transparency across India's IPR regime. An all-encompassing IP Policy will promote a holistic and conducive ecosystem to catalyze the full potential of intellectual property for India's economic growth and socio-cultural development (NATIONAL IPR POLICY 2014). A well-reasoned IPR POLICY will benefit India's domestic and international interests as well as the international community wishing to interact with India (IPO). The need of the hour is to improve the IPR regime both from the side of the legislation and also from the side of policy-implementation which would help in the creation of a better environment for improving the overall level of innovation in the country. In order to have effective implementation, the states will have to play a pro-active role leading to higher levels of competitiveness in India. There is an emergent need for enterprises 2015 and professionals to systematically consider the steps required for protecting, managing and enforcing intellectual property rights, so as to get the best possible commercial results from its ownership (ADUKIA, R.S.).

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## Author Profile



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