



## AN ANALYSIS ON INTELLECTUAL PROPERTY RIGHTS IN INDIA

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### Abstract

Intellectual property rights (IPR) are intangible in nature and provide an inventor or creator with exclusive rights to their valued innovation or production. IPR is a focus point in global trade practises and lifestyle around the globe in the current globalisation environment. These rights encourage innovation by providing recognition and financial advantages to creators or inventors, but a lack of IPR understanding and inadequate execution may stymie the nation's economic, technological, and sociological progress. As a result, every nation must prioritise the transmission of IPR information and its proper execution. The current study discusses numerous IPR concepts such as patents, trademarks, industrial designs, geographic indications, copyright, and so on, as well as its accompanying rules, regulations, and importance and significance in the Indian context. In addition, the current state of India's engagement in IPR-related activities throughout the world has been briefly examined.

**Keywords-** Intellectual property rights, WIPO, patents, trademarks, industrial designs, geographic indications, copyrights.

In the wake of globalisation, it is critical to stay ahead of the curve in terms of innovation and creativity in order to compete in the technological and commerce markets. India is well-known for its intellectual prowess in software engineering, missile technology, lunar or Jupiter missions, and other technical domains. In terms of registered patents, industrial designs, trademarks, and other IPR assets, India, on the other hand, lags behind. According to a recent survey by the US Chamber of Commerce, India ranked 29th out of 30 nations in the global IP index. It is a highly concerning situation for policymakers and the country as a whole. Any society's progress is inextricably linked to intellectual property rights and the policies that govern them.<sup>1</sup> Inventions died, there was a high danger of infringement, economic loss, and the end of an intellectual period in the country due to a lack of IPR understanding. As a result, there is an urgent need for IPR information to be disseminated in order to promote local ideas and technological breakthroughs.<sup>2</sup> In the preceding portion of this article, an attempt has been made to emphasise numerous intellectual property rights in relation to India, as well as their accompanying norms, regulations, and importance and function in society.

### Intellectual Property Rights and their Classification

The word "intellectual property" refers to the use of the human brain for creation and creativity. To innovate or produce anything new, many efforts in terms of personnel, time, energy, expertise, money, and so on are

<sup>1</sup> Jajpura L, Microfinance and Microentrepreneurship: A Paradigm Shift for Social Development (Edited by Dr. Surender Mor, Vista International Publication House, Delhi), First Edition, 2015, 263-271.

<sup>2</sup> Sinha B, Joshi H & Ghosh P K, Challenges in creation and management of knowledge capital in technical educational institutions, Journal of Intellectual Property Rights, 14 (2009) 340-345.



necessary. The final idea that led to the innovation or creation is an intangible property of the individual who put up the effort to make it happen. As a result, legal rights or monopoly rights are granted to the inventor or innovator by law in order for them to reap the economic rewards of their innovation or production.<sup>3</sup> Similar to physical property, intellectual property rights (IPR) are territorial rights that allow an owner to sell, purchase, or lease his Intellectual Property (IP).<sup>4</sup> To receive benefits, one must register IPR with a legal body in a presentable or tangible form. Each sort of IPR grants a unique set of rights to the innovator or creator in order to preserve and reap economic rewards, which in turn encourages talent and social advancements. Intellectual property rights are categorised as follows based on the sort of innovation and production of the human mind, as well as its applications: i) patents, ii) trademarks, iii) industrial designs, iv) semiconductor integrated circuit layout design, v) geographical source indicators, vi) copyright and associated rights (literary and artistic works, musical work, artistic works, photographic work, motion pictures, computer programmes and performing arts and broadcasting work).

## WIPO

The World Intellectual Property Organization (WIPO) was founded in Stockholm in 1967 to safeguard intellectual property rights across the world.<sup>5</sup> In 1974, it was designated as a United Nations agency. WIPO creates frameworks and regulates numerous IPR regulations across the world.

<sup>3</sup> Narayanan S, Intellectual property rights economy vs. science and technology, International Journal of Intellectual Property Rights, 1(1) (2010) 6-10.

<sup>4</sup> Cuts International Jaipur, Intellectual property rights, biodiversity and traditional knowledge, Monographs

WIPO's fundamental goal is to promote economic, social, and cultural growth while preserving biodiversity and traditional knowledge through a balanced and effective international IP system. In addition, it is responsible for harmonising inequalities across countries, particularly between established and developing countries, by changing international regulations so that each of them has an equal chance in the rising globe.

## Patent

A patent is an intellectual property right awarded by a government office to an inventor for a unique technological innovation. The term "innovation" refers to any challenge that may be solved in the development of a product or a method. Patents are the most precious of the several categories of IPR, and rightfully so.

Any innovation must meet the following conditions to be patentable:

1. Practicality: the invention must be industrially applicable or used for a practical purpose.
2. Novelty: the invention must be a novel technology that has not been published or made accessible in the country's or the world's previous art prior to the date of patent filing.
3. Non-obviousness: An invention that may be carried out by any average skilled person is not patentable. As a result, in order to be

on Globalisation and Indian-Myths and Realities, 13 (2007) 20-22.

<sup>5</sup> IPO Intellectual property handbook, WIPO Publication no. 489 (E) ISBN 978-92-805-1291-5, WIPO 2004 Second Edition Reprinted 2008.



patentable, the innovation must not be apparent.

The following are not patentable under Section 3 of the Patent Act of 1970:

- Irrational innovation • Irrational invention • Irrational invention
- Inventions that are harmful to human, animal, plant, and environmental health, as well as to public order and morals.
- Any living entity discovered in nature; any non-living item discovered in nature; formulation of any abstract idea; discovery of any scientific premise
- Substance or chemical generated by simple mixing resulting in property aggregation; simple arrangement or rearranging of known devices
- An invention connected to atomic energy and India's security.

On the one hand, the inventor is awarded exclusive rights that provide recognition and financial rewards, but on the other hand, the inventor is required to reveal all necessary information in a descriptive manner to the patent office when filing a patent application. Anyone may view the material in a patent filing, and it undoubtedly inspires other academics to continue to create in the relevant sector. The patent registration procedure in India is governed by the Controller General of Patents, Designs, and Trademarks. This office is part of the Ministry of Commerce and Industry's Department of Industrial Policy and Promotion. The steps for submitting a patent are as follows:

Step 1: Application for a patent or a priority application At Chennai, Mumbai, New Delhi, and Kolkata, there are four patent offices

(Head office). The applicant must submit a patent application in the proper format, including all important information about the invention, such as a description, claims, drawings, and abstracts, among other things. When the disclosed invention is merely in the conceptual stage, the applicant has the option of filing a provisional specification to establish priority. Following that, the applicant must submit a complete specification in the required format within 12 months.

Step 2: Application Publication After an 18-month period, the patent application is published in the office journal. By paying an extra cost, the applicant can submit a request for early publication.

Step 3: Anti-patent opposition If there is a pre-grant patent objection, it must be lodged within three months of the patent being published. If a patent filing applicant has submitted a request for patent examination, the controller of the patent office will consider this form of opposition representation. There are additional provisions for patent objection after the issuance of the patent.

Step 4: Request for Inspection Within 48 months of submitting a patent application, the applicant must submit a second application for patent examination together with the required expenses.

Step 5: If there are any raised objections, they will be examined and clarified. The patent examiner evaluates all aspects of patentability, including novelty, creativity, non-obviousness, and industrial applicability, and issues the applicant with a First Examiner Report (FER). If there are any objections in the examination report, the applicant must respond within one year.



Step 6: Patent is granted After overcoming the objections submitted during the examination procedure, the patent is awarded to the applicant by the Controller. The applicant must pay a renewal fee to retain the patent in effect, according to the Patent Amendment Act of 2002. The DIP&P website has all of the information you need about Indian patents. Since 2007, the patent can also be submitted electronically. After obtaining the rights, the owner can either exploit them via industrial production or sell, distribute, or licence them as he sees fit. Patent rights are awarded for a period of 20 years. When a patent expires, the innovation becomes part of the public domain, and anybody can use it.

### Compulsory Licences

The Patent Act grants inventors a monopoly on financial advantages from their inventions, but in the event of a national emergency, the government can issue compulsory licences to third parties for noncommercial public use under Section 92 of the Patent Act of 1970. Aside from that, when an authorised patent owner refuses or is unable to produce a patentable product or service, such as drugs, food, medical equipment, vaccination, life-saving equipment, and so on, the government is fully authorised to allow someone else to produce the patentable product by issuing a compulsory licence. In this scenario, the government is obligated to pay the patent owner justified economic advantages.

### Patent Cooperation Treaty (PCT)

Patents are territorial rights, hence applicants must submit patent applications to the patent

offices of each country separately. This approach necessitates a significant amount of money, time, and effort. In the same vein, the Patent Cooperation Treaty (PCT) was signed in 1970 and allows for the filing of a single worldwide patent application rather than many national or regional patent applications. Although patents are granted by national or regional patent administrations in individual PCT member countries, applicants get a priority date of first filing that is valid in all 145 PCT member countries with this one patent application.

### Industrial Design

Industrial design is the creative process of giving mass-produced objects or articles a decorative or aesthetic appeal. Two-dimensional or three-dimensional shapes can be used to express the design. The United Kingdom's Design Act of 1949 defines design as a characteristic of shape, arrangement, pattern, or decoration. Industrial design encompasses the shape, surface, pattern, lines, colour, and other appearance-related elements of industrial items such as watches, cars, mobile phones, laptop computers, various household appliances, buildings, textile patterns, and handicraft products. Apart from technical excellence and other factors, the aesthetic worth of a thing, or how it appeals, is the most important consideration in marketing.<sup>6</sup>

An industrial design must be fresh or unique, and nonfunctional, in order to be protected under most national laws. As a result, industrial design is mainly concerned with aesthetic elements, and the design registration does not protect any

<sup>6</sup> Negi A & Thakuria B J, Principles governing damages in trademark infringement, Journal of Intellectual Property Rights, 15 (2010) 374-379



technological features or aspects of the object to which it is applied. Although, if the technological characteristics are innovative, they may be protected by a patent. <sup>8</sup> In addition to this, design that is literary or creative in nature, such as a cartoon, label, pamphlet, map, dressmaking pattern, and so on, is covered by copyrights rather than industrial design.

Industrial design rights can last anywhere from 10 to 25 years depending on the jurisdiction. Industrial designs in India are protected for ten years under the Design Act of 2000. This period can be extended for an additional five years..

By encouraging more visually acceptable goods for society, industrial design stimulates innovation and skill development among individuals and the manufacturing industry. The form and shape of a product not only creates an attractive look, but it is also indirectly related with ergonomics and plays a vital part in the comfort of customers in the case of machines, furniture, automobiles, and so on.

Industrial design is also handled by the patent offices in Chennai, Mumbai, New Delhi, and Kolkata. As a legislative requirement of all related information of registered industrial designs, the patent office in Kolkata maintains a design registry.

### Trademark

In the ancient world, trademarks were already in use. Around 3000 years ago, Indian craftsmen used to carve their mark on their

jewellery or creative creations. The trademark has become a major feature in the current world of international trade as a result of industrialization. A trade mark is a distinguishing symbol or trademark that indicates that a certain item is manufactured or delivered by a specific person, industry, or business. Service marks, like trademarks, help to identify service providers from their rivals. A corporation may have several forms of trademarks for its varied goods, but trade names are used to identify itself from other companies or enterprises.<sup>7</sup>

Trademarks or trade names assist businesses in gaining consumer awareness, reputation, and trust. When it is impossible to evaluate a product or service immediately to establish its quality, most buyers rely on trademarks.<sup>8</sup> A certain portion of clients is particularly concerned about the brand and will pay a premium for the brand's prestige, even if the quality is identical, in order to stand out from the crowd.<sup>9</sup>

To differentiate one business or service from another, a trademark/service mark consists of words (name, surname, geographical name, slogan, etc.), letters and numerals, drawing, logo, symbol, phrase, picture, design, or a combination of these components. Aside from these, there are a few 'non-traditional' trademarks to consider:

The fragrance of fresh cut grass for tennis balls, the odour of beer for dart flights, and the scent of flowers for tyres have all been registered in the United Kingdom.

<sup>7</sup> WIPO Manual: What is Intellectual Property? [http://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo\\_public\\_450.pdf](http://www.wipo.int/edocs/pubdocs/en/intproperty/450/wipo_public_450.pdf).

<sup>8</sup> Melissa R , Something old, something new, something borrowed, something blue: A new tradition

in non-traditional mark registrations, *Cardozo Law Review*, 27 (2005) 457

<sup>9</sup> *Vennootschap onder Firma Senta Aromatic Marketing's application*, Case R ETMR, 429 (1999)



In the United States, a fresh floral aroma evocative of Plumeria blooms was trademarked for sewing thread and embroidery yarn..<sup>10</sup>

**Sound Markers or Audible Signs:** Sound Marks are distinct sound marks in the form of a musical note that may be detected. In 1950, the musical notes were successfully registered as a trademark for NBC's radio broadcasting services. MGM has a registered sound trademark for the lion's roar.

**Coloured marks:** This category comprises words and gadgets that have a colour combination or a specific colour. In some situations, non-traditional trademarks such as flavour and forms (three-dimensional signals such as the three-pointed Mercedes star) can also be registered.

### **Important Criteria of Trademark Registration**

The three primary prerequisites for registering a trademark, according to the UK Trademarks Act, 1994, are as follows<sup>11</sup>:

- a) The trademark should be a sign or something else that may communicate information.
- b) The sign should be able to differentiate one company's products or services from those of another. This is unmistakably a condition of trademark uniqueness.
- c) The trademark can be represented graphically in the trademark registration, allowing for accurate identification.

<sup>10</sup> Leo T P C, Trademark Law: is Europe moving towards an unduly wide approach for anyone to follow the example, Journal of Intellectual Property Rights, 10 (2) (2005) 128- 131.

### **Broadly Followed Rules of Trademark Registration<sup>11</sup>**

- Apple cannot record the term "apple" or an apple device since it is not identifiable in this circumstance. In the case of computers, however, it is recognised as being very unique. For cigarettes, the Camel trademark is also registered. A trademark for a chair, table, or other comparable item cannot be registered using a general phrase like "furniture."
- When using letters or numerals, registration is only allowed in some countries if at least a few numbers of letters and/or numerals are mixed, or if the combination of letters is pronounceable. In certain nations, common surnames are not recognised because they are not unique.
- In addition to this, any deceptive sign or trademark that is misleading or breaches public order or morals is ineligible for registration.
- Trademarks cannot be registered for signs that are reserved for the government, a public institution, an organisation, or an international entity.

### **Indian Trademarks Act**

Any unique mark capable of distinguishing products and services of one venture from those of another and capable of being graphically depicted can be trademarks, according to the Indian trademarks legislation.

There is no need to limit the validity of trademarks because they do not give

<sup>11</sup> Mishra N, Registration of non-traditional trademarks, Journal of Intellectual Property Rights, 13 (2008) 43-50.



exclusive rights that can be used. However, without a temporal restriction, trademark validity would result in an excessive quantity of registered trademarks with no use. The original period of trademark registration in India is ten years, after which it must be renewed on a regular basis. Trademark registration may be applied for at the Trade Mark Registry Offices in Mumbai (head office), Delhi, Kolkata, Ahmadabad, and Chennai.

### **Infringement of Trademark**

When someone else uses a trademark that is identical to or similar to a registered trademark for the same or comparable products or services, it is called infringement. In the event of an infringement, a fraudulent product is passed off to the buyer under the guise of a legitimate product, and the phrase "passing off" is used to describe such acts. The "passing off" goods is extremely harmful to commerce since it deprives real manufacturers of market share while also defrauding customers who receive a substandard product. After getting a substandard product and being unaware of the "passing off," a consumer may pick a different trade mark in the future under the erroneous idea that the manufacturer is producing inferior goods. In the commerce, an imitation product is often referred to as a counterfeited product.

### **Collective and Certificate Marks**

In certain countries, collective markings and certificate marks are used to signify that a company's product meets specified requirements. In the case of textile chemical processing (dyeing and printing), for example, a group of enterprises who only employ herbal or environmentally friendly chemicals might come up with certain

collective marks in addition to their individual trademarks. The ISO, hallmark, wool mark, and other collective/certificate marks are only a few examples. As a result, certificate markings protect customers' interests by assisting them in selecting a high-quality product among a plethora of inferior options.

### **Layout Design of Semiconductor Integrated Circuit**

In today's world, life would be unthinkable without electronic devices such as cell phones, smart phones, laptops, computers, watches, cameras, safety or health-care equipment, household appliances, and so on. Due to integrated circuits, all appliances are now extremely tiny. Apart from that, the majority of instruments have a microprocessor-based control or operating system that is made up of integrated circuits or layout designs. These circuit designs are the work of the human intellect, the result of massive investments and efforts by highly skilled people. Copying these designs by a third party, on the other hand, is a fatal defeat for electronic research organisations and enterprises.

‘Layout-design refers to a three-dimensional arrangement of components in which at least one element is active and/or some of all elements have interconnections as an integrated circuit, or a three-dimensional arrangement designed for an integrated circuit intended for industrial production.

In 1989, the Intellectual Property of Integrated Circuits (IPIC) Treaty was signed in Washington, DC, and it is available to all WIPO members. According to the treaty, layout design is protected for ten years from the date of filing an application, although member countries may grant protection for



up to fifteen years from the date of conception.

The Semiconductor Integrated Circuits Layout Design (SICLD) Act, 2000 was passed in India to safeguard electronic industry standards in accordance with the TRIPS agreement. The statute was put into effect by the Ministry of Information Technology's Department of Information Technology. According to the Indian SICLD Act, 2000, any unique and intrinsically distinctive layout design can be registered for a period of ten years.

### Trade Secrets

Any non-innovative (non-patentable) innovation or information that is valuable for company and generates economic advantages can be preserved as a trade secret. In addition, when patent, copyright, or industrial design registrations are pending or in progress, unique or creative information is protected as a trade secret.<sup>12</sup>

Any technological information or process, such as a recipe, idea, device, software, blue prints, pattern, formula, maps, architectural plans and manuals, or any commercial information or business strategy, or any trade secret in the form of any data compilation or data bases, marketing plans, financial information, personal records, and so on, can be kept as a trade secret.<sup>13</sup>

This privilege has a lot of potential for turning hidden information into money. As a result, the vast majority of businesses protect their technology through trade secrets rather

than patents. Trade secrets encourage incremental progress in technology that does not fulfil the non-obviousness requirements of patent law and copyrights.

Years of experience, investigation, and expertise are required to develop a trade secret. Coca-formula Cola's is an excellent example of a trade secret for its recipe. Trade secrets are governed by particular laws in some countries, such as Japan's Unfair Competition Prevention Act and the United States' Uniform Trade Secrets Act. Trade secrets are recognised as "undisclosed knowledge" in the TRIPS Agreement, although the process and procedures are not specified. Under common law, contract law, and so on.

### Geographical Indications

It is not a new phenomena to use geographical or locality origin to identify items for commerce purposes. "The term Geographical Indication (GI) was chosen by WIPO to include all existing means of protection of such names and symbols, regardless of whether they indicate that qualities of a given product are due to its geographical origin (such as appellations of origin), or they simply indicate place of origin of a product," says WIPO (such as indication of source).s

Champagne, Havana, Darjeeling tea, Arabian horses, Alphonso Mango, Nagpur orange, Basmati, and other well-known names for products of special quality and certified as GI include Champagne, Havana, Darjeeling tea,

<sup>12</sup> United States Trade Secret Law (2009) website: [http://www.mccormacklegal.com/pdf/US\\_TradeSecretLaw.pdf](http://www.mccormacklegal.com/pdf/US_TradeSecretLaw.pdf).

<sup>13</sup> Nomani M Z M & Rahman F, Intellectual of trade secret and innovation laws in India. Journal of Intellectual Property Rights, 16 (2011) 341-350

<sup>14</sup> Deepak J S, Protection of traditional handicrafts under Indian intellectual property laws, Journal of Intellectual Property Rights, 13 (2008) 197-207.



Arabian horses, Alphonso Mango, Nagpur orange, Basmati, and others. Similarly, in the fields of handicrafts, textiles, and so on, product attributes are linked to human aspects and their abilities.<sup>15</sup> The reputation of items is established and maintained by masters or developers of that talent who are native to a certain location or locale with the optimum climate conditions. The talent is passed down down the generations with great caution and compromise by a certain tribe or location. Dhaka muslin, Venetian glass, China silk, Mysore silk, Chanderi sari, Kanchipuram silk saree, Kullu shawls, Solapur chaddar, Solapur Terry Towel, Kashmiri handicrafts, and other well-known examples of Geographical indications for state-of-the-art craftsmanship include Dhaka muslin, Venetian glass, China silk, Mysore silk, Chans.

In India, the Geographical Indication of Goods (Registration and Protection) Act 1999 and the Geographical Indication of Goods (Registration and Protection) Rules 2001 can be used to register such items. The Registrar of GI, the Controller General of Patents, Design and Trade Marks, is in charge of enforcing the GI Act. The government of India has developed a "Geographical Indication registration" in Chennai, where right holders from all Indian jurisdictions can register their GI. Protection under the GI is provided for ten years under these provisions, with the option to renew for another ten years at any time.

Copyrights and Related Rights are a group of rights that include a wide range of Copyrights safeguard the expression of an author's,

artist's, or other creator's concept in relation to mass communication. It only protects the way a concept is expressed, not the idea itself. Any country's or society's development is dependent on its citizens' inventiveness.

### Right of Reproduction and Related Rights

"Related rights," or rights related to copy rights, are a closely related category that include rights that are analogous to copyright rights. Performer's rights (such as actors and musicians) in their performance; makers of phonograms (such as compact discs of films or sound or compositions) in their recording and dissemination in radio and television shows are all covered by related rights.

The WIPO Performance and Phonograms Treaty (WPPT), which was approved in December 1996 and entered into force on May 20, 2002, states that a performer of an expression of folklore is included in the definition of performer for the purposes of the treaty.

Because copyright is granted immediately upon completion of a work by virtue of its creation, it is not necessary to register copyright. Copyright registration, on the other hand, proves that copyright exists in the work and that the inventor is the true owner.<sup>16</sup>

### Copyright for Computer Software

In the case of computer software, the Indian Copyright Act, 1957 was revised in 1994 and took effect on May 10, 1995. Making copies and distributing software without permission or authorization is a criminal offence under this laws. Despite the fact that this legislation grants authorised users the ability to produce

<sup>15</sup> Mir F A & Ain F, Legal protection of geographical indication in Jammu and Kashmir-a case study of Kashmiri Handicrafts, Journal of Intellectual Property Rights, 15 (2010) 220-227.

<sup>16</sup> Intellectual Property Rights, a Manual, BITS Pilani (2007).  
[Online].[http://www.bitspilani.ac.in/uploads/Patent\\_ManualOct\\_25th\\_07.pdf](http://www.bitspilani.ac.in/uploads/Patent_ManualOct_25th_07.pdf)



at least backup copies of the software or other computer programmes. The Indian Copyright Act of 1957 governs the registration of copyright. The Copyright (Amendment) Statute, 2012, was passed in 2012, amending the act. As a general rule, an author has copy rights immediately after completing a work without any formalities, although work can be registered as prima facie evidence in the Copyright Office of the Department of Education's Register of Copyrights.

### Copyright Duration

In India, copyrights for literary, theatrical, musical, and artistic works last for 60 years after the creator's death. The copyright period for photographs, films, and sound recordings is 60 years from the beginning of the calendar year following the year in which they are published or issued. Aside from this, the author also has moral rights to his or her creations.

### Copyright Infringement

Copyright infringement is defined as manufacturing, selling, or profiting from a copyrighted work without the consent of the copyright owner. It is a criminal offence, and the statute stipulates that the minimum penalty for violation is six months in jail and a fine of Rs 50,000/-. **Plagiarism**

Plagiarism is defined as taking someone else's work without their permission and claiming it as one's own. Although, information that are considered common knowledge are not protected by copyright laws and can thus be utilised by anybody. According to copyright, fair reasonable use of another work is permitted by paraphrasing the text or using quote marks with due acknowledgment to the original author.

### IPR in Context to Traditional Knowledge and Biodiversity

Traditional knowledge (TK) refers to indigenous and local groups' innovations and practises that incorporate traditional life patterns; wisdom accumulated through many generations of comprehensive traditional scientific exploitation of lands, natural resources, and the environment. The usage of turmeric, neem, tulsi, and other plants in daily life as part of a ritual is a well-known example of Indian traditional knowledge.

The University of Mississippi was granted a US patent for the use of turmeric in wound healing; R. Grace and Company was granted a European patent for the discovery of fungicidal effects of neem oil; and Syngenta, the agro-biotech giant, attempted to take rights to thousands of rice varieties that already existed in India. These are only a few cases of biopiracy where rights were later revoked in favour of the true owner of Traditional Knowledge. Because TK rights such as farming practises, medicinal uses of plants or herbs, and plant varieties, as well as their genetic resources, are not covered or fit under conventional IPR systems, they are covered under the Sui generic meaning unique systems of land law or area.

The World Intellectual Property Organization's (WIPO) Convention on Biological Diversity (CBD) was established in 1992 with the primary purpose of biodiversity protection, sustainable use of its components, and fair distribution of the benefits resulting from the use of traditional genetic resources. India, as a signatory to the treaty, enacted laws in parliament to



safeguard traditional knowledge and farmer rights<sup>17</sup>:

### **The Protection of Plant Variety and Farmers' Right Act 2001 (PPVFR Act)**

Farmers' individual and communal duties, as well as their interests in variety enhancement and conservation, are recognised by this legislation. This one-of-a-kind law combines IPR awareness with public interest measures, resulting in a more balanced relationship between farmers and major seed manufacturers or genetically advanced research laboratories and marketing firms.

### **The Biological Diversity Act 2002**

Millions of races, local variations of species, and sub-species make up biodiversity, which is mainly recognised as genetic, species, and ecological. According to estimates, there are 1.75 million species identified in the world's biodiversity. According to the Convention on Biological Diversity (CBD), a member nation shall enable access to its genetic resources by third parties on mutually agreed terms, although access needs the country supplying the resources' prior information consent (PIC). It also includes a provision for an equitable distribution of any profits from the commercialization of traditional knowledge to local people who are subject to domestic law.

India is ranked second in the world for agriculture output, and roughly 60% of India's population relies on this sector for rural development.<sup>18</sup> Thus, the Biological Diversity Act of 2002 safeguards the rights of India's vast population, particularly farmers,

as well as their resources and raw materials like as seeds, fertilisers, pesticides, and other agricultural inputs. It has a favourable influence on agriculture productivity, farmers' livelihoods, and the long-term utilisation and equal distribution of benefits. In 2003, the federal government formed the National Biodiversity Authority (NBA) to ensure that the Biological Diversity Act of 2002 is properly implemented.

### **The Patent Amendment Act, 2005**

According to the Act (Section 3), "a mere new application for a known material" and "an invention that is, in effect, traditional knowledge" or "an aggregation or duplication of known attributes of historically known components or components" are not inventions. Misappropriation of TK and its uses available in the public domain in India is prevented by these provisions in the Acts.

### **IPR Status of India**

In 2007, the World Bank conducted a study of 140 nations throughout the world to determine their Knowledge Economy Index (KEI) based on their knowledge-based initiative, regulatory framework, economic incentive and institutional regime, and information and communication technologies (ICT) infrastructure. Due to a lack of the aforementioned factors, India was rated 101st. Similarly, based on overall (resident and foreign) IP filing activity by origin in 2014, India placed 14th, 9th, and 13th in patents, marks, and designs, respectively. The total number of applications filed by origin determines the rankings. In compared to India, only a few

<sup>17</sup> Bala R S, Effectiveness of Indian sui generis law on plant variety protection and its potential to attract private investment in crop improvement, *Journal of Intellectual Property Rights* 9 (2004) 533-548.w

<sup>18</sup> Kochhar S, How effective is sui generic plant variety protection in India: Some initial feedback, *Journal of Intellectual Property Rights*, 15 (2010) 273-284.



top nations participated in IPR filing activity globally in 2014. India's global involvement in IPR filing activity is just 1.6 percent, 3.14 percent, and 0.82 percent, respectively, for patents, trademarks, and industrial designs. The fundamental cause for India's IPR participation deficit is a lack of understanding among young, academics, researchers, industrialists, and merchants regarding IPR and its advantages. Even Micro, Small, and Medium Enterprises (MSME), which account for approximately 95% of all units, 40% of total value addition, nearly 80% of total manufacturing employment, and 35% of total exports, lack an IPR advantage.<sup>19</sup> Due to the aforementioned causes, no Indian multinational firm was among the top 100 patent applicants globally from 2003 to 2012. A robust IP portfolio makes excellent economic sense by obtaining loans, improving market image, and attracting favourable partnerships and investments. 56 Indian industries can thrive if they prepare themselves according to local as well as global IPR demands.<sup>20</sup> As a result, developing adequate standards to rationalise IP strategy is critical. India has the capacity and capabilities to become a worldwide leader if an effective IPR strategy is implemented to increase India's share of global commerce.

### Conclusion

Intellectual property rights are critical for progressive social development in a knowledge-based economy. IPR is an essential requirement for participating in local and worldwide competitive commerce,

as it is difficult to create an inventive environment without disseminating and implementing IPR information. It is critical for policymakers to include intellectual property rights into the fundamental educational system and to encourage inventors and creators to register their inventions. In terms of abundant raw materials, low-cost labour, and imaginative and creative devoted workforce, India has it all. Without a doubt, India and other developing nations will explore Intellectual Property Rights in order to increase their fair part of global commerce.

<sup>19</sup> Maheshwari V & Bhatnagar P, Small scale industries and IP management: need to recognize intellectual asset, Journal of Intellectual Property Rights, 13 (2008) 139-144.

<sup>20</sup> Verma S K, Financing of intellectual property: Developing countries' context, Journal of Intellectual Property Rights, 11 (2006) 22-32.