

INTELLECTUAL PROPERTY RIGHTS

Context:

India continues to remain in the United States (US) 'Priority Watch List' for alleged violations of intellectual property rights (IPR).

What is Intellectual Property?

- Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.
- IP is protected in law by, for example, patents, copyright and trademarks, which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.

Need for IPRs

There are several compelling reasons.

- First, the progress and well-being of humanity rest on its capacity to create and invent new works in the areas of technology and culture.
- Second, the legal protection of new creations encourages the commitment of additional resources for further innovation.
- Third, the promotion and protection of intellectual property spurs economic growth, creates new jobs and industries, and enhances the quality and enjoyment of life.
- An efficient and equitable intellectual property system can help all countries to realize intellectual property's potential as a catalyst for economic development and social and cultural well-being.
- The intellectual property system helps strike a balance between the interests of innovators and the public interest, providing an environment in which creativity and invention can flourish, for the benefit of all.

Copyright

Copyright is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings.

Patent

A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application.

Trademarks

A trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Trademarks date back to ancient times when artisans used to put their signature or "mark" on their products.

Geographical Indication

A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place.

Legislative Structure to protect IPRs in India

- IPR-related issues in India like patents, trademarks, copyrights, designs and geographical indications are governed by the Patents Act 1970 and Patent Rules 2003, Trademarks Act 1999 and the Trademarks Rules 2002, Indian Copyrights Act, 1957, Design Act 2000 and Rules 2001, and The Geographical Indications of Goods (Registration & Protection) Act, 1999 and The Geographical Indications of Goods (Registration & Protection) Rules 2002, respectively.
- IPR plays a key role in almost every sector and has become a crucial factor for investment decisions by many companies. All the above Acts and regulations are at par with international standards. India is now TRIPS-compliant.
- TRIPS is an international agreement administered by the World Trade Organization (WTO), which sets down minimum standards for many forms of intellectual property (IP) regulation as applied to nationals of other WTO Members.
- The very well-balanced IPR regime in India acts as an incentive for foreign players to protect their Intellectual Property in India. This can be established by the very fact that approximately 80% of patent filings in India are from the MNCs.

Benefits of IPR

- It encourages and safeguards intellectual and artistic creation.
- It encourages investment in research and development efforts.
- It provides the consumers with the result of creation and invention.
- It enables the dissemination of new ideas and technologies quickly and widely.

Problems from IPR

- IPR has encouraged monopolies; many take over's have been motivated by access to an IPR.
- It may adversely affect biological diversity and ecological balance.
- Adversely affect the livelihood of the poor in developing countries.

Issues Related to IPR in India

- **lacks effective enforcement:** While the IPR regime in India consists of robust IP laws, it lacks effective enforcement, for which "least priority given to adjudication of IP matters" is often quoted as a reason. The key challenge is to sensitize the enforcement officials and the Judiciary to take up IP matters, at par with other economic offences, by bringing them under their policy radar.
- **Missing Think Tank:** it is imperative that there be established a 'Think Tank' or a group, which can bring the varied sets of stakeholders on to a common platform, leading to extensive/exhaustive and an all inclusive debate/discussion, facilitating well-informed policy decisions in accordance with India's socio-economic-political needs.
- **Compulsory Licensing:** Compulsory licensing is when a government allows someone else to produce a patented product or process without the consent of the patent owner or plans to use the patent-protected invention itself.
- **Patent evergreening:** Evergreening is the term used for legal and technological alternatives adopted by Pharmaceutical companies to extend their exclusivity of over production and sale of patented medicines beyond the prescribed statutory timeline of 20 years. To address the issue of evergreening, the Indian Parliament introduced Section 3(d) by way of 2005 Amendment to the Patents Act, 1970. Section 3(d) categorically excludes the derivatives, salts (trivial tweaks) to the known compound as not being inventions under the Act. The Supreme Court of India, in 2013, held Section 3(d) to be constitutionally valid
- The challenges also lie in having an IP fund, which can be utilized for further developing the IP culture in the country
- **Low Awareness**

Recent Controversies related to IPRs

- **The Special 301 Report:** The Office of the U.S. Trade Representative has once again placed India on 'Priority Watch List' in its annual Special 301 Report on the state of intellectual property protection. The report has slammed the Indian health ministry for "creating uncertainty in the pharmaceutical market" by demanding that pharmaceutical companies provide details of how they were using the granted patents.
- **Gujarat farmers vs Pepsico:** Recently the US multinational 'Pepsico' sued nine farmers for alleged "rights infringement" by "illegally" dealing with its registered potato variety used in its Lays chips. Although after discussions with the government, the company has agreed to withdraw cases against farmers.

Steps Taken by the government to protect IPRs

Apart from passing various legislations, GOI has taken various steps to ensure continuous and unending improvement of the Indian IP ecosystem in the country. To this effect, the DIPP has formulated a multi-pronged strategy to develop an Intellectual Property regime (IPR) in the country to promote creativity and to develop the culture of respect for innovations and creativity.

- The IP office has been transformed to enhance efficiency in processing of applications, uniformity and consistency in the examination of applications, bilateral cooperation at the international level, and raising the awareness level of the public.
- To modernise the administration, an additional 1,033 posts have been created -- 666 posts for patents and designs and 367 for trademarks and GI (geographical indicators) at various levels.
- Recruitment is underway and patent and trademarks examiners are being taken on contract to deal with the backlog, to cater to the immense flow of the papers filed, a single central server at IPO Delhi has also been put in place.
- Online e-filing facilities for patent and trademark application were introduced. Due to these steps, online filing has jumped from under 30 per cent to over 80 per cent in just a year.
- To increase transparency and dissemination of information, the real time status of IP applications and e-registers is now open to the public MSMEs
- To encourage for innovation and seek protection for their inventions, a 50 per cent fee reduction has been provided.
- Add IPR Awareness programs have been conducted in over 200 academic institutions, including rural schools through satellite communication, and for industry, police, customs and judiciary.
- Recently GOI has introduced a National IPR policy.

Way Forward

Due to Government's efforts, India's rank in the GII Report issued by WIPO has improved from 81st in 2015 to 57th place in 2018. There is no doubt that much more awareness about the creation, protection and enforcement of IPRs would go a long way to encourage the Indian industry not only to innovate but also to protect and enforce their innovations. GOI should try to implement the new IPR policy effectively so that the IP Rights are fully protected.