

# PROTECTION OF INTELLECTUAL PROPERTY RIGHTS IN INDIA: ISSUES AND WAY AHEAD

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## ABSTRACT

Due to the emergence of new technologies, enforcement of IPRs has become a difficult task for the Indian government. Protecting intangible assets in a globalized environment has become increasingly challenging, as many individuals and organizations face the common threat of imitation and exploitation of their IPRs. This article highlights an overview of various challenges related to the protection of intellectual property rights in India. This article is based on a review of literature and a descriptive analysis of secondary data collected from articles published in online research journals and newspapers. Despite all the challenges related to the protection of Intellectual Property Rights in India the Indian market for IPR is

poised for significant growth and development, hence those innovators and investors who understand the intricacies of IPRs can reap significant benefits out of it.

**Keywords:** IPRs, Patent, Trademark, Counterfeiting and Piracy

## INTRODUCTION

In this era of Globalisation attempt to establish a global harmonisation of Intellectual Property protection has become the focal point in global trade practices across the world. Hence a balanced IPR System is required by every nation to promote and protect the innovative and creative outputs of its citizens. Intellectual property rights are territorial rights that are registered and governed by the legal authority of a particular nation. The Intellectual Property Rights provide the scope of commercial utilisation of the invention to its inventor as they can be sold, bought, or licensed like any other commodity.

The basic IPRs in India include trademarks, patents, designs, geographical indications, etc. which are also recognized by the Trade Related Intellectual Property Rights Agreement (TRIPS) and governed by the WTO (World Trading Organization). India, being a member of WTO and a signatory to the TRIPS is required to frame its intellectual property rights laws based on the TRIPS agreement.

To safeguard the intellectual property rights of its citizens, the government of India has established a cell for IPR Promotion and Management (CIPAM) to work towards accomplishing IP policy objectives. Also, a massive digitisation exercise and recruitment of a

large number of examiners are undertaken by the present government. Facilitators have been appointed to encourage start-ups to seek protection of their IP and to file patent applications. However, these actions have not yet given any real benefits to the Indian innovators, so our country remains one of the world's most challenging economies for the protection and enforcement of IPRs.

Due to the emergence of new technologies, enforcement of IPRs has become a difficult task for the Indian government. Protecting intangible assets in a globalized environment has become increasingly challenging, as many individuals and organisations face the common threat of imitation and exploitation of their IPRs.

## REVIEW OF LITERATURE

**Birendra Srivastava, R. Tiwari, G. Tiwari, and A. K. Rai, (2011)** in their research paper “Management of Intellectual property rights in India: An updated Review” concluded that the effective management of intellectual property is essential to help product development and dissemination in India.

**S. Lakshmana Prabu, T.N.K. Suriyaprakash, C. Dinesh Kumar. (2012)** in their research paper “Intellectual property rights and its development in India” articulated that IPRs are tools that help in acquiring economic and technological progression by a nation as well as provide a formal basis of ownership of such innovations in the name of its creator.

**Y. Srinivasa Rao. (2014)** in his paper “Intellectual Property Rights in India: Significance of Patents” concluded that India although it earns huge revenues through IPR follows a stringent patenting system,

policies, and enforcement system to protect IPR laws.

**Arpan Banerjee and Neil Gane. (2022)** in their paper “Copyright Piracy and Cybercrime: Enforcement Challenges in India” concluded that state governments may consider setting up their IP cybercrime units.

**Sudhir Ravindran & S.A. Chenthil Kumaran. (2021)** in their article “Intellectual Property Crime” believed that to curb IP crime collaborative approach is required including various stakeholders like the public, legislature, and enforcement authorities.

## OBJECTIVES

- To find out challenges related to the protection of intellectual property rights in India.

## RESEARCH METHODOLOGY

This paper is based on the literature review and a descriptive analysis of secondary data collected from online research papers/articles published in various journals and newspapers.

## FINDINGS AND DISCUSSIONS

- **Lack of Awareness about IPRs Among Indians:** As per the 161st report of the Parliamentary Standing Committee on Commerce, 64% of the patents filed in India are by non-resident/foreign residents, and merely 36% of the patents were filed by Indians. The committee mentioned in its report that the lack of awareness about IPRs among businessmen, artisans, and craftsmen is responsible for the low share of patents being filed by Indian

citizens. Hence, the indigenous innovators and creators are not able to encash the benefits of IPRs. Heena Lamba (26 April 2022).

- **Intellectual Property Crimes:** Intellectual property (IP) crime generally known as counterfeiting (wilful trademark infringement) and piracy (wilful copyright infringement) is one of the major areas of concern while implementing IPRs in India. Indian authorities are not able to curb such actions which are posing as serious threats to innovators, businessmen, consumers, and the government itself. The legal framework for the protection of IPRs and their enforcement mechanisms is inadequate as India does not have separate legislation to curb counterfeiting, unlike the United States of America. As a result, there are high levels of piracy, counterfeiting, and infringement of IPRs in India, particularly in the software, pharmaceutical, and entertainment industries. The FMCG sector is also losing approximately 15% of its revenue to counterfeit goods with several top brands losing up to 30% of their business due to IP crime. Dr Sudhir Ravindran & S.A. Chenthil Kumaran (Sep 6, 2021).
- **Lack of Personnel:** The Indian IPRs regime is suffering from a deficiency of required manpower at various offices much needed to clear all the pending applications related to the grant of patents/trademarks/copyrights. Even the number of legal experts/officials required to resolve the litigation related to IPRs is less, resulting in judicial delays. Both for an individual and businesses saving their IPRs is a costly affair in India due to slow and complex legal procedures leading to high litigation costs.
- **Weak Enforcement:** All the disputes related to various IPRs are

often highly technical in nature hence a higher degree of understanding of the subject matter is required to ascertain a question of their infringement. However, the IPR infringement cases are heard by judges of either the district courts or the high courts who are not specially trained in this area. Hence the challenges that arise before the courts (especially district courts) is that the judges are not equipped enough to understand the intricacies of IPRs. Justice Madan B. Lokur, Justice Gautam Patel, Justice Prathiba M. Singh and Justice Manmohan Singh. (n.d.)

## RECOMMENDATIONS

- A holistic approach should be taken by the government to disseminate awareness about IPRs amongst businessmen, artisans, and craftsmen located in remote areas and provide them with insights into the creation, ownership, and protection of their IPRs. Indian researchers and innovators should be made aware of basic precautions that are to be exercised. IP education should be provided across the country and the possibilities of adding it to the curriculum of schools should be explored. All the major universities and colleges (especially dealing with law subjects) across India should work in close association with the Department of Industrial Policy and Promotion which has formulated a Scheme for Pedagogy & Research in IPRs for Holistic Education & Academia (SPRIHA) to facilitate intellectual property education and research. At present, only 12 institutions have been selected for setting up IPR Chairs. [www.algindia.com](http://www.algindia.com) (17 October 2018).

- The role of the Cell for IPR Promotion and Management (CIPAM) under the IPR Promotion and Management (IPRPM) scheme, should be further strengthened so that it can spread awareness and improve understanding about IPRs effectively in India.
- During the six-year time frame beginning from 2012-13 to 2016-17 a total of Rs. 7.83 Crores have been utilised by the IP Facilitation Centre for MSME but the total number of beneficiaries was 10417. msme.gov.in (n.d.). Hence, the IP Facilitation Centre for MSME should be made robust so that it can play an effective role in sensitizing SMEs on IPR-related issues through its awareness as well as sensitization Programmes.
- To overcome the possible threats of Intellectual Property Crimes, a Central level Body for the enforcement of IP laws should be established which will work in association with Ministries, Departments, and Governmental agencies to enforce and adjudicate the IP laws and enactment of specific legislation to curb counterfeiting and piracy. Separate provisions should be added in the present IPRs Act for the protection of AI-related inventions.
- Several qualified and trained officials involved in the process of granting patenting/trademark/copyright should be increased to expedite this process, also the staff should be provided with a congenial working environment so that they do not look for jobs elsewhere. For the speedy and effective resolution of IPR-related cases, an Intellectual Property Division (IPD) with dedicated IP benches as done by the Delhi High Court can be established by the other state governments to solve the problems associated with delay in the disposal of such cases. Justice Madan B. Lokur,

Justice Gautam Patel, Justice Prathiba M. Singh and Justice Manmohan Singh (n.d.)

- All the state governments could play an instrumental role in evolving a strong IPR regime by formulating their strategies and policies within the broad framework of India's policy on IPR.

## CONCLUSION

At present the Indian market for intellectual property rights (IPR) is experiencing a significant transformation as India is trying to establish itself as a global economic power. Though there have been significant improvements in the legal and regulatory framework for IPR protection, challenges remain in the areas of its awareness and enforcement. Despite these challenges, the Indian market for IPRs offers significant opportunities for businesses and investors, mainly in industries related to technology and innovation.

The steps taken by the Indian government to strengthen the legal and regulatory framework for IPR protection and the growing consumer market of India make our country an attractive destination for companies that are looking to expand their intellectual property portfolios. At present the Indian market for IPR is poised for significant growth and development, hence those innovators and investors who understand the intricacies of IPRs can reap significant benefits out of it.

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