

IPR POLICY IN VARIOUS COUNTRIES; A COMPARATIVE STUDY

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Abstract

Intellectual Property Rights (IPR) are the monopoly rights given for the set of intangible asset to the creator. They can be of different types ranging from industrial property to copyright. In the context of global economy IPR has greater importance in the business growth apart from the innovation growth. Whereas Policy is a set of ideas or a plan of execution in certain conditions that has been agreed to officially by a group of people, a business organization, a government, or a political party. In current scenario when IPR has become important IPR policies have become equally important if not more. On May 12, 2016 India National IPR policy was unveiled with the slogan of 'Creative India Innovative India' by the Department of Industrial Policy & Promotion, Government of India. Aim of this review is to provide an overview of IPR policies of different countries and their impact in the light of current IPR policy of India.

Keywords: IPR Policy, History and evolution of IP, agreements

Summary: In the view of the approved National IPR Policy 2016, this paper is an attempt to assess the history and evolution of IPR in India and world over, how far we have come and how much we have to cover for coming at par with the world.

HISTORY AND EVOLUTION OF INTELLECTUAL PROPERTY POLICIES

When we go back to the history of modern Intellectual Property System we come across the patents origin as the first Intellectual property. The origin of patents starts from the Greece period. Though it was not a matter of public policy but it provided an incentive or a right by the Government to individuals, however, it was much of aesthetic in nature rather than utilitarian.

The Venetian patent statute (1474): it is considered as the first statute or Patent related law of the world which had description of newness or novelty of the work, a protection of 10 years and a process similar to examination procedure of nowadays in it. British system encouraged foreign technologies to be introduced and bringing it into public knowledge (Sell, 2004). Therefore, monopoly privileges were given to those who brought inventions into public knowledge and not to the inventors. US Origins: - US Constitution Article 1, section 8 was made to promote progress of Science and arts for securing for limited time the authors and innovators the exclusive right to their respective writings and discovery. Based on this law Patents Act 1790 was created by the national Government. Earlier USA patent system was made in such a manner so that the domestic innovation can flourish and foreigners can be restricted. The Patent system went under several amendments and came up with 1793 Act, 1836 Act, 1952 Act. Recently the change of first to file to first

to invent to match the procedure followed by rest of the world.

Copyright: Copyright (or author's right) according to the WIPO definition 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. Different countries had system of printing privileges before the copyright system came into being. Britain built the first modern copyright law in 1709 - "the Queen Anne Act." This was the era of industrial revolution hence forth this led to the spreading of patent and copyright laws in various European countries.

Trademark As per WIPO, trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. Though the protection of marks for business purpose was reported several centuries back in India. But the modern days Trademarks protection came into being in a very late stage. Trademarks originated in Spain. The trademark system in the modern sense began in the 19th century. In 1857, France set the first legal system to protect trade marks in world. Subsequently, the trademark system rapidly developed in the world.

At the same time, new types of intellectual property rights have and continue to be gradually integrated into the system of intellectual property rights.

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GLOBAL IPR POLICIES

In the period of Globalization it was impossible to do business and IPR protection remaining in isolation therefore the need of uniform rules and laws across globe was felt. So that the MNCs could do their work seamlessly and wider protection of IPR could be ensured. This need gave rise to Standard International organization and multipartite treaties and agreements.

World Intellectual Property Organization (WIPO) with 189 member states, became first of its kind International organization with the objective 'to promote the protection of intellectual property throughout the world through cooperation among States and, where appropriate, in collaboration with any other international organization. India became the member in 1975.

Few of the important multipartite treaties are as below;

The Paris Convention treaty (1883) with 176 member states: for the Protection of Industrial Property was one of the first intellectual property treaties. It is administered by WIPO. India became the signatory in December 07, 1998.

The Berne Convention (1886) with 172 member states: for the Protection of Literary and Artistic Works. India's membership into the convention came into force on April 1, 1928.

Rome Convention 1961 with 92 member states: for the Protection of Performers, Producers of Phonograms and Broadcasting. India became the signatory in October 26, 1961.

UPOV Convention 1961 with 74 member states: International Convention for the Protection of New Varieties of Plants

TRIPS Agreement with 162 member states: The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement that sets minimum standards for intellectual property applicable to the contracting states. It is administered by World Trade Organization. India became the signatory in March 26, 2007.

The Patent Cooperation Treaty 1970 with 151 member states: It is administered by WIPO. PCT makes it possible to have patent protection for an invention simultaneously in a large number of countries by filing a single application. India became the signatory in December 07, 1998.

The Madrid Agreement 1891 with 98 member states: For the International Registration of Marks. India became the signatory in July 08, 2013.

Strasbourg Agreement 1971 with 62 member states: For the International Patent Classification.

This is how the Intellectual Property System started as Privileges given to the nationals and outsiders by the King or the state, thereafter formulation of national

laws in different countries to globalization leading to multipartite treaties.

MAJOR EVENTS IN THE HISTORY OF IP PROTECTION IN CHINA AND US

China is a good example of adopting the IPR and developing fastly with the global scenario. In the above given table we can clearly see that China has completed making law related to IPR in a very short span of time.

Table 1: comparative table of IP laws in China and USA [Wang Hanpo]

Year	USA	China
1790	Enact patent law and copyright law	
1980	Passed and applied Bayh –Dole Act	Joined the World Intellectual Property Organization
1982		Enact trademark laws
1984	Renewed copyright law and revised patent law	Enact patent law
1985		Reform of the Science and Technology Management System Entered The Paris Convention Treaty
1986	Passed Technology Transfer Act	
1988	Passed Omnibus Trade a competitiveness Act Joined the Berne Convention	
1989		Joined the Madrid Agreement
1990		Enact Copyright law
1993	Made Anti-unjust Competition law, protecting trade secret	
1997	Passed No electronic theft Act	Implemented regulations on the protection of New Varieties of plants and signed the Int convention in 1999
2005	Est. the Office of US IP enforcement co ordinator	White paper on new progress in China's protection of IPR
2011	Pub the latest version of A strategy for American Innovation: Securing Our economic growth and security	Pub IP protection action plan of 2011

China took around three decades to achieve the legislature related to IPR where the developed country took centuries. From following the dates we can see that China came up with Trademarks law as its first IPR law in 1982, succeeded by Patents law in 1984 and Copyright law in 1990.

China started entering into International organization and Agreements quite late, if we compare to India also. Till 2005 joined all major international IP treaties. China joined the WIPO in 1980 and Madrid agreement

in 1989. Since 2007 China is in a practice of publishing the IP protection Action plan on yearly basis.

HISTORY AND EVOLUTION OF INDIAN IP POLICIES

Though we have laws in relation to Intellectual Properties since 1857 onwards but modern days laws to different types of Intellectual Properties are as following. This gets amended time to time.

1. **The Patents Act, 1970**
2. **The Trade Marks Act, 1999**
3. **The Designs Act, 2000**
4. **The Geographical Indications of Goods Act, 1999**
5. **The Copyright Act, 1957,**
6. **The Semiconductors Integrated Circuits Layout-Design Act, 2000**
7. **The Protection of Plant varieties and Farmers' Rights Act, 2001**
8. **The Biological Diversity Act, 2002**

Before the National IPR policy was approved different Intellectual Property Rights were handled by different ministries of Government. Patents, Trade Marks, Designs and Geographical Indications of Goods were under Ministry of commerce and industry; Department of Industrial Policy and Promotion, while Copyright under Ministry of Human Resource Development, The Semiconductors Integrated Circuits Layout-Design under ministry of Information Technology, The Protection of Plant varieties and Farmers' Rights under ministry of Agriculture and The Biological Diversity under Ministry of Environment and Forestry. Once the policy is approved all six IP rights are now in Ministry of commerce and industry; Department of Industrial Policy and Promotion. Rest two rights The Protection of Plant varieties and Farmers' Rights Biological Diversity are still under their respective ministries.

Department of Science and Technology, in March 2000, issued guidelines in the form of "Instructions for Technology Transfer and Intellectual Property Rights". This was used for the projects funded by the Department of Science and Technology and Department of Ocean Development. This policy has guidelines for commercialisation, benefit sharing, revenue generation, government rights etc. (Saha, 2005).

Science and Technology Policy 2003 released by Department of Science and Technology gave emphasis on protecting our indigenous knowledge systems, primarily through national policies, supplemented by supportive international action. (Saha, 2005).

STI Policy 2013: The Science Technology and Innovation policy, 2013 talks about an innovative project -Public Private Partnership ("PPP").

IPR Policy of universities: The famous Bayh Dole Act 1980 of USA gave permission to a university, small business, or non-profit institution to elect to pursue ownership and licensing of an invention for federal funded work. This gave a boost in US universities for technological inventions and other IPR's.

Similarly in India many IIT's, NIT's, IISc, BHU and few other universities made their IPR policies. Basic features of these policies deal with the Ownership of any inventions, copyright, trademarks; commercialization, licensing, revenue sharing.

So we can see that India already had a strong legal system and various policies available in ministry of Science and technology as well as in universities being amended and changed as per the need of the time. National IPR policy 2016 is first of its kind comprehensive one which not only talks about traditional knowledge but trade secret also. It covers all IPR's, having a system of review of legislature and policy as per the need of time.

NATIONAL IPR POLICY INDIA (2016)

Vision Statement An India where creativity and innovation are stimulated by Intellectual Property for the benefit of all; an India where intellectual property promotes advancement in science and technology, arts and culture, traditional knowledge and biodiversity resources; an India where knowledge is the main driver of development, and knowledge owned is transformed into knowledge shared.

Mission Statement Stimulate a dynamic, vibrant and balanced intellectual property rights system in India to:

- foster creativity and innovation and thereby, promote entrepreneurship and enhance socio-economic and cultural development, and
- focus on enhancing access to healthcare, food security and environmental protection, among other sectors of vital social, economic and technological importance.

Seven Objectives: The Policy has mainly seven objectives which are as mentioned below.

1. **IPR Awareness: Outreach and Promotion**
2. **Generation of IPRs**
3. **Legal and Legislative Framework**
4. **Administration and Management**
5. **Commercialization of IPR**
6. **Enforcement and Adjudication**
7. **Human Capital Development**

These seven objectives could be broadly divided into three categories i) those dealing with the generation and commercialization of IPR's- Objectives 2 and 5 ii) Those dealing with legal aspects, enforcement and

adjudication – objectives 3 and 6

iii) Popularization and strengthening the administrative machinery for dealing with IPR issues objectives 1, 4, and 7. (Mani 2016)

Conclusion: In this era of creativity, knowledge based growth and globalization, no state can remain isolated and develop. Therefore to grow along or ahead of other states; there is a need of protection of IPR. For the protection of IPR strong legislature and dynamic policies are one of the essential requirements. India already had a robust legal and legislature framework in relation to the Intellectual Property Rights. With the approval of National IPR policy on May 13, 2016 by the cabinet the much awaited policy came into being. From the history we can see that how this modern IPR system started germinating in Europe. Later on USA become the hub of successful patenting and other aspect of IPR. In last two decades China started making laws and policies; picked up the momentum and is at a good position. Similarly we may hope that the advent of new era in Indian IPR regime with National IPR policy will shortly lead us to a very good position globally.

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