
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**ARTIFICIAL INTELLIGENCE TO QUALIFY AS INTELLECTUAL
PROPERTY: HOW? PERSPECTIVE OF DIFFERENT COUNTRIES
WITH SPECIAL EMPHASIS ON INDIA**

- Nikita Tiwari¹

The protection of intellectual property rights gained momentum with the introduction of technological advancements in the 20th century, and as international developments for intellectual property rights increased, so did the notion of rewarding novelty and commercial viability across the entire global economy.

The current chapter explores several legal interpretations used in India to safeguard intellectual property rights. As a law student, I would always look for constitutional connections in every national legal framework, which is why I would bring up the relationship between the constitution and intellectual property rights. After the developments of the WTO agreement, Indian views on intellectual property rights have changed. India signed the WTO agreement with TRIPS as a required component.

The protection for intellectual property rights can be introduced by various diverse legislations, of which colonialization had a greater impact on sharpening the legislations and protections of intellectual property rights in India. However, to satisfy TRIPS obligations, a time period of 10 years was given to all the developing countries. In the year 1856, George Alfred de Penning was the first to submit a patent application in India. India made a point of creating its own laws and amending existing intellectual property rights after becoming independent from British rule. The Indian Parliament passed the Indian Patents Act in 1970, and it went into effect in 1972. Similarly, copyright act was formulated and adopted in 1957 and trade and merchandise act, 1958 which was later on replaced by Trade Marks act, 1999.

In India, copyrights, trademarks, and patents served as the cornerstone of IP protection. All of this was altered following the creation of the World Trade Organization (WTO). The trade-related aspects of intellectual property rights (TRIPS agreement), often known as the IPR

¹ Student at United World School of Law

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

accord, was a WTO agreement. The WTO agreement was signed and ratified by India. It should be highlighted that the WTO agreement gave member nations specific commitments and allowed for quick implementation. Member nations of the WTO could turn to a binding dispute settlement system in the absence of good implementation.

Trips agreement itself provided for a transition period of 10 years. The present chapter discusses the Indian endeavours for the protection of intellectual property rights Pre and Post TRIPS agreement in the light of constitutional basis. Moreover, law stated as to enforcement methods has been substantiated with provisions in the judiciary.

CONSTITUTIONAL DIMENSIONS OF THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

The universal human rights declaration, the European convention, the constitution of India and other international institutions of human rights enshrines the right to freedom of speech and to access information about details.

Adopted by the United Nations declaration on human rights Indicates –

“Everyone has a right to freedom of speech and expression this right includes freedom to hold opinions without interference and to seek receive and impart information and ideas through any media regardless of frontiers.”

The true significance of democratic system lays the freedom of speech and expression. The liberty to express one’s self freely is important for a number of reasons. First, self-expression is a significant instrument of freedom of conscience and self- fulfilment. Secondly, it enables people to contribute to debates about social and moral values. Thirdly, free expression is that it allows the political discourse, which is necessary in any country, which aspires to democracy. Fourthly, freedom of expression facilitates artistic and scholarly endeavour of all sorts.²

Indians faced numerous obstacles before winning the freedom of speech and expression. Every nation should value freedom of speech and expression as a fundamental value that contributes to social harmony and the principles of natural justice governing authority.

The people who have contributed in framing the constitution have attached its heart and soul into preamble stating that the freedom of speech and expression are the highest priorities and

²Dr. N.S Sreenivasulu, Human Rights: Many Sides to a Coin, Regal Publications, New Delhi, 2008, p.182.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

has a prominent place throughout the constitution. The supreme court of India has attached importance to the freedom of speech and expression.³

The ultimate goal of every democratic state is that “no idea should go unheard”. The beauty of freedom of speech is not in every idea express as the right expression, but can discover the myth in any idea express so that the truth ultimately found. Strictly speaking this right is true manifestation of all the democratic freedoms like the right to freedom of speech and expression, assembly, association, movement, residence and settlement and profession, occupation trade or business.⁴

Constitutional Directive to Respect Treaty Obligations

As provided by article 51(c) of the constitution of India, the state is under constitutional directive to foster respect for international law and treaty obligations in the dealings of the organized peoples with one another. Though the directive principles of state policy cannot be enforced in the municipal courts, they are nonetheless fundamental in the governance of the country.⁵

The constitutional concern for respecting international law including international treaties and conventions is also reflected in article 253. The parliament is empowered to legislate with respect to the subject of entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries⁶however, barring treaties which require legislation to be made, the international agreements entered into by the union in exercise of its executive power under article 73 which are not contrary to law; are required to be recognized by the municipal courts. Indian legislature while catering the requirement of various international treaties has enacted the laws for fulfilling the criteria mentioned therein.

India has been party to important treaties and conventions on intellectual property. As member of the WTO the TRIPS agreement binds it under article ii of the WTO agreement. It is, therefore, under a treaty obligation to give effect to the provisions of the TRIPS agreement for adequate protection of intellectual property rights.

³ AIR 1950 SC 124

⁴ Lydia Pallas Loren, “The purpose of copyright”, Open Spaces Quarterly, quoted in Dr.Madhabushi Sridhar

⁵ Minerva Mills v. UOI AIR 1980 SC 1789.

⁶ The Constitution of India, Art. 246 read with Entry 14 of the Union List of subjects on which it can legislate contained in Schedule VII

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

The courts exercising jurisdiction under the intellectual property laws have to provide effective and expeditious remedies against any act of infringement of intellectual property rights keeping in view the treaty obligations undertaken by the state in the process of interpretation of the statutory provisions, exercise of its discretion and granting adequate reliefs against the infringements of the intellectual property rights⁷.

“Property” As Per Article 300a

The instilled article 300a, of the constitution of India, states the right to property is an essential right such that any person cannot be deprived of his property and it is saved by the authority of the provisions of law. The first and foremost question arising here is obvious that whether or not ‘intellectual property’ is accounted as ‘property’ under the present article 300a.

To support the proposition that ‘property’ as understood in article 300a is wider than just ‘immovable property’ in context of ‘intellectual property rights’ is the judgment of the supreme court in the case of Entertainment Network India ltd. (ENIL) v. Super cassette industries ltd. (SCIL). The apex court held the following: “The ownership of any copyright like ownership of any other property must be considered having regard to the principles contained in article 19(1) (g) read with article 300a of the constitution, besides, the human rights on property. But the right of property is no longer a fundamental right. It will be subject to reasonable restrictions.

In terms of Article 300 A of the constitution, it may be subject to the conditions laid down therein, namely, it may be wholly or in part acquired in public interest and on payment of reasonable compensation.”⁸ It can be derived with the following example of case law that the article 300a also safeguards the creations of intellectual property rights extending the scope of article 19(a) suggesting that if an individual has a right to freedom of speech and expression it impliedly means that the individual also has the right to protect his/her intellectual work. Software developments and technological advancements require proportionate amount of protection.

⁷ Justice R. K. Abichandani, ‘Role of Judiciary In effective Protection of Intellectual property Rights’, retrieved from gujarathighcourt.nic.in/journals accessed on 14th May, 2015.

⁸ (2008) 13 SCC 30

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Indian Intellectual Property Rights and The Acts Included Therein

India has various intellectual property rights and its legislations. Amongst the one codified are patent, Trade Marks, designs, and copyright legislations are the oldest. The legislations relating to these two where IP regimes were introduced during colonial itself. These legislations are in itself an extension of English legislations. The legislations relating to patents, for example, was introduced as early as 1856 in India.

The Indian Trade Marks act was passed in 1940, corresponding with the English Trade Marks act, 1938. Remaining IP legislations relating to geographical indications (GIS) plant varieties, semiconductors and biological diversity were of post-WTO legislations. In other words, these legislations were introduced in India as a sequel to TRIPS agreement. Some of these legislations are introduced in order to the WTO/TRIPS agreements.

They are:

- (i) The copyright act, 1957;
- (ii) The patents act, 1970;
- (iii) The Trade Marks act, 1999;
- (iv) The geographical indications of goods (registration and protection) act, 1999;
- (v) The designs act, 2000;
- (vi) The semiconductor integrated circuits layout designs act, 2000;
- (vii) The protection of plant varieties and farmer's rights act, 2001.

TRIPS Agreement as The Basis for Indian Laws and Implementation

Intellectual property rights are granted and regulated primarily through national legislations. In other words, it can address that the rights and obligations arising out of an IPR are embodied in national laws.

Territorial limit is the key factor, though international conventions and treaties specify the minimum standards of protection. These minimum standards, either technical or substantive, need some kind of incorporation in the national legislations.

Trips agreement, it should be noted, did not provide sufficient policy space for the countries, particularly developing countries in the implementation process. Despite this, the judicial, administrative and institutional mechanisms for granting, regulating and even interpreting

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

IPR norms remain within the domain of countries. On the date TRIPS agreement entered into force India had designs act, 1911, copyright act, 1957 trade and merchandise act, 1958 and patents act, 1970, in place.

However, the scope of TRIPS agreement was wider and it included some new areas like geographical indications (GIS) and lay-design of integrated circuits. Trips agreement also defined 'undisclosed information' and the scope of its protection. India had no legislation or regulations in these areas at the time when TRIPS came in to effect; however, they were enacted later on.⁹

The patents act, 1970 was amended thrice⁶⁵ to give effect to TRIPS obligations. In other words, India was obligated to accept immediately product patent applications in the fields of pharmaceuticals and agricultural chemicals and provide proper legal means to do so. At that point of time India had no legal mechanism to accept these applications.⁶⁶ India to give effect to provision henceforth added chapter IVA (sections 24a to 24f) to its patents act and titled the chapter as 'exclusive marketing rights'.¹⁰

Evolution of Indian Patent System

In order to protect their own inventions within their colonial domain, the British had excessive influence over the structure of the patent rules in India.

The act guaranteeing inventors unique privileges was passed as the first legislation in 1856.

In India, a statute established the protection of inventions. Eventually, a new law modelled after the 1852 English Patent Act was introduced in 1859.

According to this act, an inventor of a new manufactured could get "exclusive privileges of making, marketing, and utilising the invention in India and authorising others to do so for a duration of 14 years from the time of submitting such specification" by filing a specification of his invention.

⁹ Id., Art. 1 provided "Members shall give effect to the provisions of this Agreement". Members of the WTO were not, however, obliged to "implement in their domestic law more extensive protection than is required by this Agreement provided that such protection does not contravene the provisions of this Agreement". Art. 1 further provides that the Members were "...free to determine the appropriate method of implementing the provisions of this Agreement within their legal system and practice."

¹⁰ India amended its Patent law thrice beginning in 1999. The two other major were affected into the enactment in 2002 and 2005. The 1999 amendments were pursuant to an immediate obligation that arose from the TRIPS Agreement Art. 70 (8) and (9).

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

For the purpose of providing protection for designs, the “patents and designs protection act” was passed in 1872.¹¹ In the period from 1911 to 1970, various amendments to this act were introduced. Efforts to evolve its own patent law by India began soon after independence. The focus was to evolve a law and policy based on the detailed assessment of the local situation.¹²

The Bakshi Tek Chand committee which was constituted in 1949, soon after India’s independence, had noted that the existing colonial law on the subject i.e., Indian patents and designs act, 1911 had failed to stimulate inventive activity. Subsequently, a committee was set up in 1957 under the chairmanship of justice RajagopalaAyyangar to look into the revision of patent laws in India. This committee submitted its Report in 1959.

The 1970 patent laws were basically introduced keeping in the mind the recommendations of this committee.

Salient Features of Indian Patent System:

The salient features of the Indian patent law, albeit briefly, could be summarized as under:

- (i) It defines ‘invention’ and various other terminologies; an invention to be patentable should be new, should involve an inventive step and should be commercially viable;
- (ii) It outlines ‘what is not patentable’ i.e., mere ideas, mere incremental inventions, trivial and frivolous inventions, method of agriculture, traditional knowledge;
- (iii) It provides basic details for the application and granting of patents;
- (iv) It allows and provides procedures for international filing of patent applications;
- (v) It provides for organizational structures such as patent office, controller general, examiners and others;
- (vi) It provides for infringement proceedings; also provides for pre-grant and post-grant opposition of patent applications;
- (vii) It provides for working of patents and its compulsory licensing or revocation in public interest; and
- (viii) It establishes for the purpose of settlement of technical and other procedural issues

¹¹ J. K. Das, Intellectual Property Law, Kamal Law House, Kolkata, 2008, p.159

¹² David Bainbridge, Intellectual Property, Pearson Education, Delhi, 2003, p.321

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

an IP appellate board.¹³

Term of Patent

This is an important aspect of patent grant. Before TRIPS regime, countries would fix the term taking into account their domestic requirement. India had fixed the patent term for 14 years for all categories and 7 years for pharmaceutical and medicines. This has been amended now to make its provisions consistent with TRIPS agreement and extended to twenty years.¹⁴

CONCLUDING NOTE

According to the TRIPS agreement, situations of willful copyright infringement or deliberate counterfeiting on a large scale are subject to criminal prosecution and other sanctions.

An essential component to the offence of infringement for criminal prosecution is the Indian substance of mens rea in the form of knowledge of the accused. According to established law, proof of knowledge must be convincing and unequivocal in order to prove that the offence of copyright infringement was committed. According to Section 63 of the Copyright Act of 1957, no court less than that of a Metropolitan Magistrate or a Judicial Magistrate of First Class shall try any offence under this Act.

The offence punished under Section 63 of the Copyright Act of 1957 shall therefore be subject to the provisions of Section 438 of the Code of Criminal Procedure. A criminal court has the authority to impose punishments including jail time and fines. The court also possesses the authority to order the police to confiscate the pirated copies.

Consequently, it can be said that even while the path to a TRIPS compliant regime was challenging for the Indian legal system, it has given India a head start in becoming a global centre for intellectual property investment in the twenty-first century.

Therefore, this can safely be addressed that although the journey to reach a TRIPS compliant regime was a difficult journey for Indian legal system, yet it has given India a passage ahead for development of intellectual property investment hub of the 21st century. While the discussion in this chapter is confined to three issues that the Indian intellectual property

¹³ V.K Ahuja, Intellectual Property Law, Lexis Nexis Butterworths, New Delhi, 2014, p.84

¹⁴ Indian Patent Act, 1970, s 53 provides that the patent term “shall be twenty years from the date of filing of the application for the patent.” This amendment to Indian law came into effect through an amendment in 2002. Art. 33 of the TRIPs Agreement provides that the “term of protection available shall not end before the expiration of a period of twenty years counted from the filing date.”

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

regime face in the anvil of the new TRIPS compliant regime, the transition from a limited term process patent regime to the product patent regime, the development of Indian intellectual property legislations passing through various amendments; can have several other futuristic implications.

In the ensuing years, the effects of this change will become clear. India's research and development has significantly increased in the modern intellectual period. Emphasis has been placed throughout this chapter on how the IPRs contribute to building a solid foundation for India is evolving into a nation with many new investments and advancements in the fields of technology, artificial intelligence, and its progress over the years of transition.

A recent study projected that there were 20 times as many trademark and patent filings this year as there were in prior years.

