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**ACCEPTANCE OF TRIPS IN INDIAN INTELLECTUAL PROPERTY SYSTEM**- P. Unnathi<sup>1</sup>**ABSTRACT**

Prior to the establishment of the World Trade Organization (WTO), the General Agreement on Tariffs and Trade (GATT) served as the only multilateral organisation to regulate international trade since 1948. WTO was established in 1995 to regulate World Trade. One of the important WTO agreements is the TRIPS Agreement. The Trade-Related Aspects of Intellectual Property Agreement (TRIPS) is a multilateral agreement that went into force on January 1st, 1995 and is managed by the World Trade Organization ("WTO"). The TRIPS Agreement is a minimal standards agreement that gives Members the option to offer more comprehensive intellectual property protection in relation to copyright, trademarks, patents, confidential information etc. Members are free to choose how to implement the Agreement's provisions in accordance with their respective legal framework and standards. This Research paper will throw light on the origin and evolution of the TRIPS agreement and the aspects that are covered in it. It also covers about the Indian intellectual property acts that came into force after the TRIPS agreement and its similarities or compliances with the TRIPS agreement. This agreement has brought significant change in the Intellectual property laws in India and has helped to govern it in a standardised way. India has taken a ten-year transition period to adapt itself for the application of TRIPS agreement in India. This study aims to analyze how TRIPS has affected Indian laws governing intellectual property, such as copyright, patents, and trademarks etc.

**Keywords:** TRIPS, Implementation, world politics, World Trade Organisation.

**INTRODUCTION**

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The global economic system went through a shift in the post-colonial world in the late 20th and early 21st centuries, when international trade and investment increased and required regulation. As a result, the General Agreement on Trades and Tariffs was established in 1947 and served as the regulatory agreement until 1995. However, as a result of the Uruguay Round of negotiations and the Marrakesh Agreement, an international organisation known as the World Trade Organization was established in 1995 to regulate global trade. It also included ratification of the agreement on the trade-related aspects of intellectual property rights.

The Trade-Related Aspects of Intellectual Property Agreement (TRIPS) is a multilateral<sup>2</sup> agreement that went into force on January 1st, 1995 and is managed by the World Trade Organization (“WTO”). The TRIPS Agreement is a basic standards agreement that gives Members the option to offer more extensive intellectual property protection if they so choose. Members are free to choose how to apply the Agreement's provisions in accordance with their respective legal framework and standards. In order to promote trade and investment and enhance living standards worldwide, it aims to build fair and secure international trading arrangements.

### **RESEARCH OBJECTIVE**

The objective of this paper is to understand how the Trade-Related aspects of Intellectual property (TRIPS) was applied in the Indian Intellectual property regime and their similarities.

### **RESEARCH PROBLEM**

This research paper aims to understand the possible similarities in TRIPS agreement and how the Indian Intellectual property laws have accepted or modified the laws in order to be in compliance with the TRIPS agreement. Since 1995, numerous legislative acts have amended the nation's system of intellectual property rights.

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<sup>2</sup>World Trade Organisation, ‘Overview: the TRIPS Agreement’.

## **RESEARCH QUESTION**

- 1) what is the TRIPS Agreement?
- 2) what is the origin and History of TRIPS agreement and what are the sectors of Intellectual property covered in it?
- 3) How are the Indian Intellectual property acts like patent, trademarks etc are in compliance with TRIPS?

## **RESEARCH HYPOTHESIS**

Indian Intellectual property laws are modified or amended in a way to be in compliance with the TRIPS agreement in some aspects and the minimum duration prescribed for the registration and filing of such application of a Intellectual property is same for the both.

## **RESEARCH METHODOLOGY**

The research paper, which had been carried out by the author after extensive data collection and data analysis with the assistance of multiple books, articles, and journals along with web references, is a doctrinal project that belongs to the descriptive and explanatory research approach.

## **ORIGIN OF TRIPS AGREEMENT**

The first agreement to regulate international monetary policy was made in 1944 at Bretton Woods by many countries. It established the International Bank for Reconstruction and Development (IBRD) in 1945 and the International Monetary Fund (IMF) in 1946, both of which are referred to as Bretton Woods Institutions. In order to unify international trade, the General Agreement on Tariffs and Trades (GATT) was subsequently founded in 1947.

Prior to the establishment of the World Trade Organization (WTO) in 1995, the General Agreement on Tariffs and Trade (GATT) served as the only multilateral organisation to regulate international trade since 1948.

The final GATT round was the Uruguay Round (1986-1994). The initial debates on trade related to services, intellectual property rights, and agriculture took place during this session. India was one of the 123 nations that participated in the Uruguay Round and joined the WTO.

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164 nations currently constitute the WTO, representing about 90% of the world's nations. New international trade agreements are negotiated and put into effect by the World Trade Organization (WTO). In order to promote trade and investment and enhance living standards worldwide, World Trade Organization aims to build fair and secure international trading arrangements. One of the important WTO agreements is the TRIPS Agreement. The World Trade Organization's member countries are all parties to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which is a global legal agreement.

The TRIPS Agreement is a minimal standards agreement that gives Members the option to offer more comprehensive intellectual property protection in relation to copyright, trademarks, patents, confidential information etc. Members are free to choose how to implement the Agreement's provisions in accordance with their respective legal framework and standards<sup>3</sup>. The three main features of Trade-Related Aspects of Intellectual Property Rights are standards, enforcement and dispute settlement. If these minimal conditions are not met, the defaulting nations will be subject to WTO enforcement provisions<sup>4</sup>.

Under the TRIPS Agreement, the following sectors of intellectual property are covered –

1. Copyrights and Related rights (like the rights of performers, producers of sound recordings and broadcasting organizations)
2. Trademarks (also service marks)
3. Geographical Indications (including appellations of origin)
4. Industrial Designs
5. Patents (including protection of new variety of plants)
6. Layout-designs of Integrated Circuits
7. Undisclosed Information (Trade secrets and Test data)

The above-mentioned Intellectual properties are governed under the articles of TRIPS, where the TRIPS has 73 articles in it which constitutes the seven parts of the TRIPS agreement. The general principles and goals of TRIPS are outlined in Part I. The minimal requirements for the various types of intellectual property are outlined in Part II.

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<sup>3</sup>TRIPS Agreement, Article 1(1), provides that “Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.”

<sup>4</sup> Jayshree Watal, Intellectual Property Rights in WTO and Developing Countries, Oxford University Press, New Delhi, at p. 167.

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## **LEGISLATIONS THAT CAME INTO FORCE AFTER TRIPS - IN INDIA**

Following laws were enacted as a result of the TRIPS agreement's-imposed requirements-

- 1) Geographical Indications of Goods Act, 1999<sup>5</sup>,
- 2) The Protection of Plant and Varieties and Farmers Rights Act, 2001<sup>6</sup>,
- 3) The Designs Act, 2000<sup>7</sup>,
- 4) The Biological Diversity Act, 2002<sup>8</sup>,
- 5) Semiconductor Integrated Circuits Layout Design Act, 2000<sup>9</sup>.

## **COPYRIGHT IN TRIPS**

The member states are required to abide by specific Articles of the Berne convention and its annex in terms of copyright protection. Only expressions are covered by copyright; ideas, operating processes, and mathematical concepts are not<sup>10</sup>. Computer programmes have to be protected as “literary works” as they come under the ambit of literary work as per the copyright act<sup>11</sup>.

In some cases, member nations must also grant exclusive rental rights for computer software and visual effect compositions. Additionally, they must include ways for artists and media companies to stop unauthorized recording, transmission, or duplication of live performances. Sound recordings must be made available for a minimum of 50 years as per Article 12 of TRIPS<sup>12</sup>.

The Berne Convention (1971), which stated that compilations of data or other material are considered intellectual creations due to the selection or arrangement of their contents, and it was incorporated into the Copyright Act, 1957, which was amended in 1999 to comply with the TRIPS agreement. Article 10, which dealt with computer programmes and compilations

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<sup>5</sup> The Geographical Indications of Goods (Registration and Protection) Act, 1999.

<sup>6</sup> The Protection of Plant and Varieties and Farmers Rights Act, 2001.

<sup>7</sup> The Designs Act, 2000.

<sup>8</sup> The Biological Diversity Act, 2002.

<sup>9</sup> Semiconductor Integrated Circuits Layout Design Act, 2000.

<sup>10</sup>Section 1: Article 9, The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1995.

<sup>11</sup> The Copy Right Act, 1957.

<sup>12</sup>Section 1: Article 12, The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1995.

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of data, stated that the source or object code, shall be protected as literary works under the TRIPS agreement<sup>13</sup>.

Consequently, the Indian Legislature incorporated Sections 2(d)(vi), Section 2(ffb), and Section 2(ffc) in the Copyright Act, 1957 to define authors, computers, and computer programmes<sup>14</sup>. The changes were brought about by the rapid rise in digitization and the computer-based revolution, which made it possible to address intellectual property in an entirely new format<sup>15</sup>.

## **TRADEMARKS IN TRIPS**

Section 2 of the TRIPS agreement mentions about Trademarks, Article 15 defines Trademarks as –

“Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colors as well as any combination of such signs, shall be eligible for registration as trademarks”<sup>16</sup>.

The agreement attempted to encourage member nations to base trademark registration on distinctiveness, if symbols cannot by themselves distinguish the pertinent goods or services, then are not to be registered under TRIPS. Additionally, the agreement made reference to mandatory registration compliance with The Paris Convention's obligations (1967). The Trademarks Act of 1999 included service marks, collective marks as trademarks.

The member nations are required to provide trademark and service mark owners with a set of essential rights in terms of trademark protection. The trademark must first be registered for a duration of at least ten years and be renewable indefinitely according to the Trademark Act, 1999. Under special circumstances, certain periods of trademark non-use must prove prima facie proof of abandonment. The Trademarks Act of 1999 protects well-known marks and allows for the registration of multiple classes of marks, service marks, an extension of the registration term, certification marks, legal actions for infringement and passing-off, among

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<sup>13</sup>Section 1: Article 10, The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1995

<sup>14</sup> Section 2, The Copyright Act, 1957

<sup>15</sup> <http://www.oirj.org/oirj/nov-dec2013/55.pdf>

<sup>16</sup>Section 2: Article 15, The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1995

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other things. The act also contains provisions for the registration of service-related trademarks. Article 16 of the TRIPS agreement is strictly adhered to in the Trademark Act, 1999.

## **GEOGRAPHICAL INDICATIONS IN TRIPS**

As per Article 22 (1) of the TRIPS Agreement states geographical indications as –

“Indications which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin<sup>17</sup>.”

Articles 22 and 23 of TRIPS define a standard level of protection for all goods, wines and spirits, respectively, whereas Article 24 outlines exceptions to the protection, such as those relating to terms that have become generic and priority trademark rights. The Members are free to choose the legislative framework for the protection of geographical indicators under the TRIPS Agreement.

The responsibilities of member countries of TRIPS regarding Geographical indications are that the use of product descriptions that mislead consumers about the geographic origins of goods are prohibited, and trademark registrations that do contain a deceptive indication of origin are invalidated. And also, the Geographical indicators for wines and spirits must be safeguarded, with a few exceptions.

The Geographical Indications of Goods Act<sup>18</sup>, 1999 also complies with the TRIPS agreement and states that geographical indications for items or classes of goods that acquired their common names in India on or before January 1st, 1995 are exempt from this Act. It safeguards anyone's right to use their own name or the name of their ancestor in business, unless doing so could confuse or mislead the public. It also states that no action relating to the use or registration of a trademark may be taken after five years have passed since the date that the registered proprietor or the authorized user first learned of the use or registration that violates any geographical indication registered under this Act.

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<sup>17</sup>Section 3: Article 22, The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1995

<sup>18</sup>The Geographical Indications of Goods (Registration and Protection) Act, 1999

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## **DESIGNS IN TRIPS**

Articles 25 and 26, which constitute Section 4 of Part II of the TRIPS Agreement, define the protection of industrial designs. Industrial design protection must be accessible for designs that are fresh or original and independently generated, as stated in Article 25.1 of the TRIPS Agreement and if designs do not significantly differ from existing designs or combinations of existing design aspects, members may state that they are neither creative nor original<sup>19</sup>.

Designs Act, 2000 adheres to the TRIPS Agreement as both stipulates that the Industrial designs must be new and creative and also states that the industrial designs must be protected for at least ten years from date of registration<sup>20</sup>.

## **PATENTS IN TRIPS**

According to Article 27 of Section 5, “Patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application<sup>21</sup>.”

According to the TRIPS Agreement regarding patents, the member nations are required to provide patent protection for all inventions in all technological domains that are new, include an innovative step, and have the potential for industrial application. The patents must grant the right to prohibit the manufacture, use, offering for sale, importation, and sale of infringing goods by third parties. In specific, limited situations, use without the patentee's consent is permitted. The duration of the patent must be at least 20 years from the application's filing.

The Duration of every patent (International application<sup>22</sup> for patent also) is 20 years from the date of filing of the application under section 53 of the Patents Act, 1970 same as in compliance of TRIPS agreement.

## **INTEGRATED CIRCUITS LAYOUT DESIGN IN TRIPS**

Articles 35 to 38, which constitute Section 6 of Part II of the TRIPS Agreement, contain the provisions on the protection of integrated circuit layout designs. According to Article 35<sup>23</sup>,

<sup>19</sup> Section 4: Article 25, The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1995

<sup>20</sup> Section 11 of Designs Act, 2000 and Section 4: Article 26, The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1995

<sup>21</sup> Section 5: Article 27, The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1995

<sup>22</sup> Inserted by Act 15 of 2005, S.38 in the Patents Act, 1970

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members are required to protect integrated circuit layout-designs (also known as "topographies") in accordance with the TRIPS Agreement's additional provisions and the Treaty on Intellectual Property in Respect of Integrated Circuits (also known as the "Washington Treaty" or "IPIC Treaty").

The layout designs for integrated circuits are protected by the TRIPS agreement and also by the Semiconductor Integrated Circuits Layout- Designs Act, 2000. Both in the TRIPS agreement and in the act, they must be safeguarded for a minimum of ten years after they are first exploited for commercial purposes anywhere worldwide<sup>24</sup>. And Section 15 of the act mentions 10 years after filing the application.

## **CONCLUSION**

The TRIPS agreement is a significant international agreement that establishes a basic standard of protection for intellectual property rights at the global level. The TRIPS agreement's provisions are quite vast and ambiguous. Many of the sections are open to many interpretations because they are so broad and ambiguous. Different member nations interpret the TRIPS agreement differently. The TRIPS agreement has successfully widened the ambit of the GATT and the WTO over Intellectual Property Rights. The current TRIPS agreement covers not only the trade-related aspects of Intellectual Property but the entire regulation of the Intellectual Property regime. Developing nations like India, however, can ensure that their interests are protected.

Indian Intellectual property laws are framed or amended in a way to be in compliance with the TRIPS agreement in some aspects and the minimum duration prescribed for the registration and filing of such application of an Intellectual property is same for both TRIPS agreement and some laws relating to Intellectual property in India like Trademarks, patents etc.

The three main features of Trade-Related Aspects of Intellectual Property Rights are minimum standards of the subject-matter to be protected, domestic procedures and remedies for Intellectual property rights enforcement and dispute settlement between the members of WTO and TRIPS agreement.

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<sup>23</sup>Section 6: Article 35, The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1995.

<sup>24</sup> Section 15 of Semiconductor Integrated Circuits Layout- Designs Act, 2000 and Section 6: Article 38, The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1995.

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