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**HISTORICAL DEVELOPMENT OF PATENT REGIME - FOCUS ON  
NATIONAL AND INTERNATIONAL PERSPECTIVE**

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**ABSTRACT**

Patents are legal instruments granting inventors exclusive rights to their creations, providing incentives for innovation and technological advancement. TRIPS, established by the World Trade Organization, regulates international intellectual property standards, including patents. TRIPS aims to strike a balance between promoting innovation and ensuring access to essential goods, such as medicines. However, debates persist regarding its impact on access to crucial technologies, particularly in developing countries. This abstract encapsulates the dynamic interplay between patents and TRIPS, highlighting their pivotal roles in shaping innovation, access, and global trade.

**I. Introduction**

The evolution of patent jurisprudence emerged in British India in 1856. The Legislative Council of India passed the Act No.VI of 1856, an Act for granting exclusive privileges to inventors and provided a provision for a petition to leave to file a specification for a new invention before the Governor General of India Council, in writing.<sup>3</sup> The Governor General passed an order after referring the petition for inquiry and report, allowing the petitioner to file a specification of the invention. The order to file a specification may be made subject to conditions and restrictions as the Governor General of India in Council may think expedient. An inventor from abroad was entitled to file a petition for leave to file a specification

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<sup>3</sup>Avery N. Goldstein, *Patent Law for Scientists and Engineer*, Taylor & Francis Group, Boca Raton, Florida, US, 2005.

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for granting exclusive privileges right for his new invention in British India. The condition for filing a petition for leave to file a specification was in writing and stating that the invention would be of public utility and not publicly known or used in India and provided the title of the invention and description ascertain the nature of the invention and in what manner the same was to be performed. But there was a serious allegation that the Act No. VI of 1856 was passed without the sanction of Her Majesty of the United Kingdom. Her Majesty's Law Officers have given it as their opinion that the Legislative Council of India was not competent to pass Act VI of 1856 without previously obtaining the sanction of the Crown, and the Court of Directors of the East India Company had in pursuance of the power vested in them by Law disallowed Act No. VI of 1856 and having signified to the Governor General of India in Council their disallowance thereof, the Act of VI of 1856 was repealed by Act IX of 1857. Hence, the sanction of Her Majesty to the passing of "An Act for granting exclusive privileges to inventors" having been previously obtained and passed the Act No. XV of 1859 and the specification writing principle was carried forward with modification inserting 'in any part of the United Kingdom of Great Britain and Ireland' and for the first time mentioned the basic principle of anticipation by previous publication in Section-XIX of the Act No. XV of 1859 that "An Invention shall be deemed a new invention within the meaning of this Act, if it shall not, before the time of applying for leave to file the specification, have been publicly used in India or in any part of the United Kingdom of Great Britain and Ireland or been made publicly known in any part of India or of the United Kingdom by means of publication, either printed or written or partly printed and partly written.<sup>4</sup> The public use or knowledge of an invention, before the application for leave to file a specification, shall not be deemed a public use or knowledge within the meaning of this Section, if the knowledge shall have been obtained surreptitiously or in fraud of the inventor, or shall have been communicated to the public in fraud of the inventor or in breach of confidence; provided the inventor shall, within six calendar months after the

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<sup>4</sup>Kamil Idries: *Intellectual Property, A power tool for Economic Growth*, WIPO Publication, Geneva, Switzerland, 2003.

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commencement such public use, apply for leave to file his specification, and shall not previously have acquiesced in such public use; provided also that the use of an invention in public by the inventor thereof, or by his servants or agents, or by any other person by his license in writing for a period not exceeding one year prior to the date of his petition, shall not be deemed a public use thereof within the meaning of this Act. "By passing the Act No.XVI of 1883, "An Act for the protection of Inventions exhibited in the Exhibitions of India" also provided more scope for novelty concept by inserting section-3 stating that "If, within six months from the time of the opening of an Exhibition, a person, being the inventor or exhibitor of any manufacture exhibited at that Exhibition, petitions the Governor General in Council, under Act XV of 1859, for leave to file a specification of his invention, the circumstances that the invention as at any time after the opening of the Exhibition been publically used or made publically known shall not prevent the invention being deemed to have been at the time of presenting the petition a new invention for the purpose of the said Act."

In the year 1888, the above Acts was repealed and passed Act No. V of 1888, an Act to consolidate and amend the law relating to the protection of inventions and design and was titled as 'The Inventions and Designs Act, 1888' received the assent of the Governor General on the 16<sup>th</sup> March 1888 and came into force on the 1<sup>st</sup> day of July 1888. The 1888 Act provided an improvement in the scope of protection of inventions and provided wider clauses giving importance for specification writing principles for grant of proper protection for new inventions.

India has a systematic Patent registration system from 01-01-1912 onwards according to the Indian Patents and Designs Act, 1911 (II Of 1911). After the independence of India, the Government of India appointed a Seven Member Patents Enquiry Committee presided by Dr. Bakshi Tek Chand, retired Judge of the High Court of Lahore on the 1st October 1948 to review the Patents Law to ensure that the patent system was more conducive to national interests and the Indian Patents and Designs Act, 1911 was amended in the year 1950 (32 of 1950).

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In the year 1957, the Government of India appointed Shri Justice N. Rajagopala Ayyankar Committee for the revision of the Patents and Design Laws, the committee submitted its report in the year 1959. Almost all the recommendations of the Committee are included in the Patents Act 1970. The Patents Act, 1970 was amended three times after the ratification of the TRIPS Agreement. The present Patent Regime was developed by a centuries process still the performance of the Patent regime was not up to the mark, not even during the post-TRIPS period in India.<sup>5</sup>

A comparative study is essential to assess the present status of a patent regime of a country and suggest how to improve the system. India and China are important competing countries in developments of science and technology from Asia with top ranks in the number of world populations, but in the patent regime, India is far behind China. A comparative study is most relevant to prove the objective of this study and find out the reason why Indian Patent regime is far behind even after TRIPS obligation was fulfilled in 2005 and to suggest an effective solution to improve the patent regime in India along with the developed countries of the world.

India fulfilled the TRIPS obligation after ten years of the transition period on the 1st day of January 2005. According to the World Intellectual Property Organisation's (WIPO) statistical report of 2015 India's population is more than 1,311 million, ranked Number 2, while in the grant of Patents, India has the 25<sup>th</sup> rank<sup>6</sup>. At the same time, China's population is more than 1,371 million ranked Number 1<sup>7</sup>, as well as in granting of Patents also among more than 200 countries. In the year 2015, China granted 2,63,436 patents but the Indian Patent

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<sup>5</sup>World Intellectual Property Organisation, *Inventing the Future: An Introduction to Patents for small and medium-sized Enterprises*, WIPO Publication, Geneva, Switzerland, 2005.

<sup>6</sup>Statistical Country Profiles, India, WIPO, Available at [http://www.wipo.int/ipstats/en/statistics/country\\_profile/profile.jsp?code=IN](http://www.wipo.int/ipstats/en/statistics/country_profile/profile.jsp?code=IN) (Last visited on 11-03-2017)

<sup>7</sup>Statistical Country Profiles, China, WIPO, Available at [http://www.wipo.int/ipstats/en/statistics/country\\_profile/profile.jsp?code=CN](http://www.wipo.int/ipstats/en/statistics/country_profile/profile.jsp?code=CN) (Last visited on 11-03-2017)

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Office granted 822 patents only to their domestic applicants. Indian Patent Office has more than 100 years of patent prosecution history but in China, the first Patent Law was passed only on March 12, 1984, and came into force on April 1, 1985. Within these 30 years China gained Number 1 in granting of Patents and became one of the active participant patent office among the world's leading patent offices, 'IP5' International Forum.

## **II. China becomes part and parcel of IP5- Cooperation of leading World Patent Offices.**

The 'IP5' is the Forum of the Five Intellectual Property Offices set-up by the European Patent Office (EPO), the Japan Patent Office (JPO), the Korean Intellectual Property Office (KIPO), the State Intellectual Property Office of the People's Republic of China (SIPO) and the United States Patent and Trademark Office (USPTO).

Initially, It was known as "Trilateral Offices" (EPO, JPO & USPTO, 1996-2007), later, in the year 2008, the Korean Intellectual Property Office (KIPO) joined and referred as "Four Offices" (2008-2010). In 2011-12 China joined and re-named as IP5 and this may be the turning point in the improvement of China's Patent Regime.

The main objective of the IP5 is to work together to improve the patent office's efficiency and address the issues related to the standard of Patent Examination and growing backlogs in the patent applications. The heads of IP5 meet every year to decide on IP Strategy and review the progress of IP5 countries. The IP5 Co-operation is helping the Patent Offices to improve their services and to make get the Patent System straightforward and legally certain in innovators from all their regions<sup>8</sup>.

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<sup>8</sup>About IP5 co-operation, Five IPO Offices, Available at <http://www.fiveipoffices.org/about.html> (last visited on 11-03-2017)

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### a. Patent Domestic Filing in India and China.

Science and technology are developing every moment and thousands of new inventions are being filed every day worldwide. Countries development can be assessed according to the development of science and technology and the number of patents filed in that country. Our scientists and youth are researching in almost all fields and publishing thousands of research papers in India and abroad. Indian Space Research Organisation (ISRO) broke a world record by launching 103 satellites, it consists of 100 foreign satellite and three satellites from India using the world-famous PSLV-C37 rocket. *"India's Polar Satellite Launch Vehicle, in its thirty ninth flight (PSLV-C37), launches the 714 kg Cartosat-2 series satellite for earth observation and 103 co-passenger satellites together weighing about 663 kg at lift-off into a 505 km polar Sun Synchronous Orbit (SSO). PSLV-C37 was launched from the First Launch Pad (FLP) of Satish Dhawan Space Centre (SDSC) SHAR, Sriharikota. This was the sixteenth flight of PSLV in 'XL' configuration (with the use of solid strap-on motors). The co-passenger satellites comprised of 101 nano satellites, one each from Kazakhstan, Israel, The Netherlands, Switzerland, United Arab Emirates (UAE) and 96 from United States of America (USA), as well as two Nano satellites from India. The total weight of all these satellites carried on-board PSLV-C37 was about 1377 kg. PSLV-C37 also carried two ISRO Nano satellites (INS-1A and INS-1B), as co-passenger satellites. These two satellites carry a total of four different payloads from Space Applications Centre (SAC) and Laboratory for Electro Optics Systems (LEOS) of ISRO for conducting various experiments. The 101 International customer Nano satellites were launched as part of the commercial arrangements between Antrix Corporation Limited (Antrix), a Government of India Company under Department of Space (DOS), the commercial arm of ISRO and the International customers."*<sup>9</sup>

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<sup>9</sup>Launch of PSLV-C37, Available at [gov.in/launcher/pslv-c37-cartosat-2-series-satellite](http://gov.in/launcher/pslv-c37-cartosat-2-series-satellite) (last visited on 14-03-2017)

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## **b. The consequence of TRIPS Agreement and Patents Law Amendments in Indian Patent Regime.**

India executed the TRIPS Agreement with effect from 01/01/1995 and The Patents Act, 1970 amended three times within the TRIPS transition period to comply the obligations under the TRIPS Agreement as The Patents (Amendments) Act, 1999, The Patents (Amendments) Act, 2002 and The Patents (Amendments) Act, 2005 but the Patent Office *sue motto* suggested several amendments through the Department of Industrial Policy and Promotion (DIPP) to the Ministry of Commerce and Industry, those amendments scope was beyond the TRIPS obligation and several new procedures incorporated in the Patents Act and Rules.<sup>10</sup>

The Indian Parliament amended the patents laws beyond the demand of the TRIPS Agreement and establishes new procedure with an intent to increase the revenue of the patent office without considering the practical application of the amended laws and procedure, practical difficulties and the adverse effect of the reforms on the patent applications and complicated the prosecution and administration of patent regime.

## **c. New Government Policy annihilated by bureaucrats.**

In 2016, The Cabinet approved the new 'National Intellectual Property Rights Policy' along with the government's other policies to attain the aim of Prime Minister's 'New India' Policy but the aimless Officers of the Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry is proved that they cannot change the IPR Regime in India from the following experience:-

### **i. Example-I.**

#### **a) Prime Minister declared 80 percent fee reduction for Starts up.**

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<sup>10</sup>Justice N.Rajagopala Ayyangar's Report on the revision of the PatentsLawinIndia,1959.

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In 2016, January the Hon'ble Prime Minister Shri Narendra Modi said, While addressing the 'Start-up India, Stand-up India' event that "Patent fee for startups will be reduced by 80 per cent. India's future lies in innovation and creativity. New comers should get equal opportunities"<sup>11</sup>. But the concerned department, Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry amended the Patents Rules, 2003 as Patents (Amendment) Rules, 2016 with effect from 16th May 2016. Unfortunately, the Ministry amended the Rules without amending the Act, In the Patent Act there is no provision for a startup but the rules provided special privilege and procedure for an application filed by the start-ups and even the rules are prepared without applying the mind to get the desired result. In effect, the fees to start ups are very high without any particular relief. Every amendment in the history of DIPP is to increase the revenue and they are intentionally ignored the Prime Minister's promise. This amendment to the patent rules was an opportunity to implement Cabinet policy and Prime Ministers Promise. But unfortunately, the DIPP is not able to work in tune with Cabinet policy. Now the patent procedures are more complicated and the amendments are constitutionally not maintainable. It is clear from the following examples:

**b) Stipulated time and Fees for a Patent grant for Non-startups**

According to Patents (Amendment) Act 2005, with effect from 01/01/2005, a patent can be granted within 8 months if the applicant requested for early publication and ordinary/normal request for Examination with reasonable fees much lesser than present fees. That is Rs. 1,000/ for a natural person and Rs. 4,000/ for others. The new fees are given in the following table

**Table-2.11**

**The fees according to The Patents (Amendment) Rules, 2016**

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<sup>11</sup>80% reduction in patent fees for start-ups: Modi, Business Standard, Published on Jan 16, 2016, Available at [http://www.business-standard.com/article/news-ians/80-percent-reduction-in-patent-fees-for-start-ups-modi-116011600716\\_1.html](http://www.business-standard.com/article/news-ians/80-percent-reduction-in-patent-fees-for-start-ups-modi-116011600716_1.html) (last visited on 5/4/2017)

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Particulars (e-filing)	Natural Person	SmallEntity	Others
Form I & II	Rs. 1600 /-	Rs. 4,000/-	Rs. 8,000/-
Form-18	Rs.4,000/-	Rs.10,000/-	Rs.20,000/-
Form-9	Rs.2,500/-	Rs.6,250/-	Rs.12,500/-
Total Fees	Rs.8,100/-	Rs.20,250/-	Rs.40,500/-

### c) Stipulated time and Fees for a Patent grant for Starts ups

According to Patents (Amendment) Rules 2016, even if the applicant requested for early publication and expedited request for Examination, the time frame for conducting the examination is the same in both the cases. In effect, the start up is submitting an ornamental expedited examination request with higher fees and without an expedited procedure for the examination of the application.

**Table-2.12**

**The fees according to The Patents (Amendment) Rules,  
2016 for Start-ups**

Particulars (e-filing)	Startup	Small Entity alongwithstartup	Others along with startup
FormI&II	Rs. 1,600 /-	Rs. 4,000/-	Rs. 8,000/-
Form-18A	Rs.8,000/-	Rs.15,000/-	Rs.40,000/-
Form-9	Rs.2,500/-	Rs.6,250/-	Rs.12,500/-
TotalFees	Rs.12,100/-	Rs.25,250/-	Rs.60,500/-

(i). A start up has to pay minimum Rs.12,100/- [30 pages with 10 claims].

That means a start-up has to pay Rs. 4000/- more than a natural person

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(ii). A start up along with small entity have to pay Rs.35,250 [Non-start up Rs.20,250/-;Rs.5,000/- more along with start-up]

(iii). A startup( a student) alongwith others (a university) have to pay Rs.60,500/- A university without start up [Non-start up Rs.40,250/ Rs.20,000/- more with start up.

There is no difference in the stipulated time frame for the ordinary request for examination and expedited request for examination for starts up. According to the Act and Rules, the procedure is the same and different categoryof starts up have to pay more fees than the different ordinary applicants.

### III. CONCLUSION

The Patent Law Jurisprudence in India endeavour to encourage inventions and grant of patents to secure the patents that are worked in India on a commercial scale without delay. Patents are not granted to enjoy a monopoly for the importation of the patented articles, this principle shall encourage the 'make in India' programme and the protection and enforcement of patent rights contribute promotion of technological innovation, transfer, and dissemination of technology, to the mutual advantage of producers as well as users of technological knowledgewhich is conducive to social and economic welfare. To achieve the above principto the fullest, cooperation among Applicants, Patent Attorneys, and Patent Officersareessential.

Department of Industrial Policy and Promotion (DIPP), Ministry of Commerceand Industry had taken several initiatives to modernize the Patent administration in India to achieve the best quality of service and established the modernized building and infrastructure for all regional patent offices along with increased human resources in the Patent Office. Indian Intellectual Property Office has a Commonhead is known as Controller General of Patents, Designs, Trade Marks and Geographical Indication and the Patent Office have 140 Controllers in different categories as Sr.Joint Controllers, Joint Controllers, Deputy Controllers and Assistant Controllers. Moreover, Indian Patent Offices also have 526 Patent Examiners in various subjects of specializations.

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The Indian Patent Office is the only Patent Office in the world has more than 140 Controllers of Patents.

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