

SHORT COMMENT

INDIA'S FIRST NATIONAL IPR POLICY: WHERE WE STAND

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“Intellectual property, more than ever, is a line drawn around information, which asserts that despite having been set loose in the world - and having, inevitably, been created out of an individual's relationship with the world - that information retains some connection with its author that allows that person some control over how it is replicated and used.

- Nick Harkaway

Intellectual Property Right is the right conferred upon the individual or organisation for his creation and innovations made by the application of his intellect in product or processes for a definite period of time.

Like all other nations, India is also bestowed with bumper natural resources and Indians are blessed with sagacity, acumen, imagination, and brain power. Combination of these two results in various innovations in regards to comfort, requirement, and benefit. Earlier these innovations were common properties. Once after it came into existence its use was at the disposal of society at large. Nevertheless, with the passage of time, the efficacy of these innovations, creations were recognised and the need for intellectual property right was felt.

Earlier, in 1994, the member countries of the world trade organisation entered into and signed the treaty on trade related aspects of intellectual property rights (TRIPS) which has formulated the norms for IPR on global basis. As a signatory to this TRIPS agreement India went on to introduce different legislations governing and regulating intellectual property in India. Different kinds of IP law in India are Trade Marks Act, 1999; Patents Act, 1970 (as amended in 2005); Copyright Act, 1957 (as amended in 2012); Designs Act, 2000; Geographical

Indications of Goods (Registration and Protection) Act, 1999; Protection of Plant Varieties and Farmers' Rights Act, 2001; Semiconductor Integrated Circuits Layout-Design Act, 2000 and Biological Diversity Act, 2002.

Currently, India has approached a commitment to protect innovation in order to achieve a cherished goal of protecting the interest of its citizen with regard to Intellectual Property. India's first IPR policy has aimed to nurturing creativity, stimulating transformation in a knowledge economy; to amplify socio-cultural developments; to accelerate the trend of entrepreneurship. Before bringing in the India's first national IPR policy, there had been no definite and significant drafted statement which circumscribed the abovementioned objectives in order to facilitate the business of intellectual property.

The Department of Industrial Policy and Promotion in the Ministry of Industry & Commerce, Government of India (DIPP) has constituted a think tank on Intellectual Property Rights to draft a national IPR policy and advise the government on a range of IPR related snags. The think tank highlighted the anomalies in the present IPR legislations and provided possible solutions to the Government. The six-member panel was headed by Justice Prabha Sridevan, former Chairperson of the Intellectual Property Appellate Board and retired judge of the Madras High Court.

The significant objectives of the policy¹ can be described as; *firstly*, the policy aims to create awareness in every nook and cranny of the society thereby not just emphasizing upon the economic and social benefits of IPR but also upon its virtual benefits. This would help people to a great extent to recognize their intellectual property and the benefits which they can take out of it. What is imperative to note here is that it has been made a mandatory part of academics in esteemed institutions and in addition to it, a national research institute for IPR has been proposed in order to amplify the ambit of this arena. *Secondly*, the idea of innovation has been put as another paramount consideration of the policy. In order to minimize the enlarging foreign dependence of India on developed nations, it is quite imperative on the part of India to develop indigenous products. By virtue of its first national IPR policy, the main propel of the government is to create such an environment where unconventional and off-centre ideas can

¹ <http://pib.nic.in/newsite/PrintRelease.aspx?relid=145338> (accessed on 29 August 2016 at 18:09 pm).

be generated and people may bring in something which is non-obvious in every field. The policy is mainly intended to aid those inventors and entrepreneur who are dealing surcharge of such knowledge and ideas which need to be safeguarded from infringer by means of trademark, copyright, or patent, as the circumstance may provide. *Thirdly*, the policy is intended to create a balance structure of legal framework as it is the need of hour to protect intellectual property. A well-defined system of law is required in order to put the interest of public with those of owners of intellectual property at equal footing. In absence of any shielding mechanism in form of law, the people will hesitate to take incentive for creating intellectual property. This policy is a step on part of government to curb intellectual property offence at all possible level. *Fourthly*, the policy aims to overhaul the administration of IPR. The main incentive in part of government signify that by 2017 the government aims to lower the time period for registration application of IPR to 18 months down from 5-7 yrs and in case of trademark from 13 months to 1 month. *Fifthly* the policy provides a benefit for Indian companies to get proper value of their intellectual property by means of commercialization. For instance, a brand or goodwill is an intangible asset for company that have an impact on the net value of business. At the time of valuation or where the owner is thinking to sell of the business, then apart from the tangible assets, these intangible assets can bring in more value as compared to value taken alone by tangible asset. *Sixthly*, the policy provides for an adjudicatory mechanism in order to combat with IPR infringement and by such mechanism, the company can stop other from stealing its work. This needs co-ordination between various agencies that play an essential role in monetising innovation. *Seventhly*, the policy provides for a platform for establishing new institution teaching IPR, opening R&D institution and aiding in skill building in IPRs. The ultimate aim is being in together the pool of experts in this area to add to IP asset.

Conclusion and suggestion.

The policy is said to be a blue print for IPR in India in order to ensure the compliance of global norms and international obligations. *Prima facie*, the policy can be seen from two view point i.e; positive and negative. Though the policy through its objective can be look from positive view point but the negatives can't be overlooked. The very first idea that strikes in a lawmen perspective is how a mere policy can bring the requisite changes in India where the statute and law have significantly failed to do so. Though the IPR laws in India seems apt enough to

comply with the international obligation as imposed by WTO agreements but the problem lies in actual implementation of these laws. It needs a dedicated effort from every side in order to reach the desired destination. It shall be borne in mind that this policy is merely a statement of cherished goal and not a legal instrument that could be enforced by due process of law. So it is amply clear that the policy not bring a law that could not be enforced by taking the recourse of the court. What this policy actually signifies is the deliberate effect from all in order to achieve the objective put forth. This cannot be done by government and its agency alone.

The lacunae in this policy are that it does ensure the effective protection of one's right over his creation, innovation. A right in strict sense is said to exist when a right holder has been vested with power to get his right, so conferred, enforced through judicious mechanism in case of its infringement. But, as previously states, this bring mere policy does not ensure the possibility of legal enforcement of any right with projects like "make in India" coming and with growing digitalized era, the proper enforcement mechanism is a key to ensure the success.

With the growing technology and increasing techno crime, the call for proper and effective procedure to curb them can't be overlooked. It is recently perplexing to understand as to how a mere policy can stand up to expectation where the enforcement agencies today have failed to deliver in case of traditional crimes, it strictly requires honest effort to deal with the crime of present days. This draft policy is like a road map for the future growth of Indian economy and hence when acted upon with sincere and dedicated effort will guarantee success not only in terms of compliance of international obligations but also with regard to development of intellectual property in India.