

INTELLECTUAL PROPERTY AND CONTEMPORARY INDIAN LEGAL SCENARIO

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Intellectual property is considered as a major factor in calculations of many indexes these days. It plays a crucial role when comes evaluate development of any country in the field of Science and Technology and also it, is an important factor to determine the policies with respect to trade and finance. It is also something that continues to contribute towards knowledge base of any country. To ensure that the country is progressing, it is must to have a strong IP regime in place and also an efficient enforcement mechanism must be established to ensure the effective enforcement.

Intellectual Property are a set of laws that protect creative and innovative products through legal rights called patents, copyrights, and trademarks While the source, goals, and forms of IP can be different, they can all be seen as protecting and encouraging creative efforts. In other words copyright protects creative expression, a patent protects a new invention, and a trademark identifies and distinguishes the source of goods of one party from another.

IP had been a critical front, which all the developing countries are addressing, and are formulating laws related to the same. India has no different story. There are many schemes which current dispensation has launched in order to facilitate the people. However the poor enforcement mechanism continues to be an issue. The recent IP rankings as issued by US Chamber of Commerce, India has been placed at overall at 44th rank amongst 50 nations. Although India has improved its ranking (43rd out of 45) from last year but the rate of improvement has been really slow.

On certain other measures GIPC has put India last with Thailand, Pakistan and Egypt in terms of International Treatise. Whereas, in enforcement India ranks 43rd out of 50 Nations. In patents, trademarks and copyrights India has been ranked 45th, 33rd and 33rd out of 50 respectively. In other factors of evaluation India has done considerably good job. All credits go to implementation of certain parts of National IPR Policy of 2016.

However still many reforms are waiting for their turn to get implemented, as their implementation will create substantial impact on the system.

The issue herein is the huge backlog of the applications. In cases of patents, over 2.32 lakh patent applications were pending with the Indian Patent Office as on November 30 2017. Primary reason for the same is shortage of technical manpower as stated by Minister of State for Commerce and Industry C R Chaudhary in a written reply to the Rajya Sabha. Most importantly this is the scenario even after appointment of new patent inspectors. More or less copyrights and trademarks are also facing similar issues where almost lakhs of application are pending from years. Also, according to US Chamber of Commerce India lacks in IP regime as it has a limited framework for protection of life science IP and the patentability requirements are outside international standards. To add on to this are lengthy pre-grant opposition proceedings and no participation in international Patent Prosecution Highway tracks (PPH). PPH speeds up the examination process for corresponding applications filed in participating intellectual property offices. It increases the speed of the grant of Patent by speeding up the examination processes thus fast tracking it. Furthermore, lack of expert judges in the field of IPR creates more obstacles in the IPR Litigation and irregular decisions in the field of IPR (*The Chancellor, Masters & Scholars Of The University Of Oxford & Ors. V/S Rameshwari Photocopy Services & Anr*).

It is must that awareness must be spread amongst people, which is equivalent to none in the present scenario as the local manufacturers, to lure the customers are illegally selling the goods with deceptively similar marks and these products are freely available in public domain without any restrictions. Ironically this is the first objective of the policy and still remains underachieved at some fronts and unachieved at many. The issue is not just limited to the formulation of policies and mere implementation but the effective administration of the same is needed.

Also, Indian participation in the international IP treaties and conventions has been very limited and thus we are not able to exploit the international system of governing IP. “Make in India” also went through the scanners of many stakeholders and got its fair share of the lime light but to no avail as the process which is now eased out is still full of rigidity and lacunae will stop the investors from investing an/or even considering India for a place to manufacture.

The other objectives in the policy includes Generation of IPR’s (Objective 2), Legal and Legislative Framework (Objective 3), Administration and Management (Objective 4), Commercialization of IPR (Objective 5), Enforcement and Adjudication (Objective 6), Human Capital Development (Objective 7).

As far as things about other objectives are concerned generation of IP must not be an issue as we have seen a growth in no. of filings every year , annual reports of IP as issued by ministry is a proof of the same. Further in the policy it has been clearly stated that Indian Government will be updating its laws according to the Doha declaration on TRIPS Agreement. Administration and management includes the expansion of manpower and modernize the infrastructure to accelerate filings and processing’s.

Moreover, under each objective we can see some common steps that include developing manpower, infrastructure and coordination between different stakeholders and incentivizing the concerned right holder. And the most important of them is sensitizing the people including the right holders and spreading awareness about the subject matter at hand.

On a concluding note it is apt to say that, it is high time to realize that some drastic changes are the need of the hour. The field of IPR is comparatively new to the Indian legal system but is not nascent anymore. Also stating in terms of Kelsen, the law is dynamic in nature and thus it must remain contemporaneous and relevant. Therefore we are desperately in need of reforms especially in this field as the old laws and policies have been proved highly inefficient in terms of addressing the issues.