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INTELLECTUAL PROPERTY RIGHTS; THE ASSET OF NEW INDIA

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Abstract

It is no less than a fact that there is no limit to the human intelligence and skills! From the early times of forming circular wheels and discovering the means to light up fire to the development of Artificial intelligence, there is not even a single instance wherein humans haven't seen an opportunity to discover new things. In the similar manner, since the past few decades there has been a lot of discussions on giving legal protection to the "Human Intellect", which in other words is called as Intellectual Property Rights.

In the era of technology and gadgets, the definition of properties is not only restricted to land, house or furniture but it is now extended to the novel intellectual ideas in terms of Industrial designs, Development of new procedure, Creation of designs and so on. Thus, Intellectual Property (IP) pertains to any original creation of the human intellect such as artistic, literary, technical, or scientific creation. "Intellectual Property Rights (IPR) refer to the legal rights given to the inventor or creator to protect his invention or creation for a certain period of time."[1]

Examples of Intellectual Property include an author's copyright on a book or article, design of a product, logo of a brand, method of production and the list goes on. However, question of the hour is why has IPR acquired so much popularity in recent times? What gave birth to the concept of IPR and how has it evolved the economy at a global level

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1 Chandra Nath Saha and Sanjib Bhattacharya, *Intellectual property rights: An Overview and Implications in Pharmaceutical Industry,* Journal of Advanced Pharmaceutical Technology & Research., (2011), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217699/#ref1.

especially in a developing country like India. Thus, the paper revolves around the nuances of Intellectual Property Rights, Predominant areas of Intellectual Property Rights and the role of Intellectual Property Rights in India.

***Keywords**: Intellectual Property Rights, Innovation, Economy, Competition.*

I. Introduction

Due to development of science and technology, the world around us is evolving at a faster pace and so are the perceptions and the reach of human beings. Today the existence of the term "impossible" can be seen nowhere as common people with the support of science and intellect can explore to any extent and invent things which can solve big world problems, and the most recent example to support the argument is the production of vaccines for the deadly disease called Co-vid 19 at a very short span of time. But the discussion does not stop at development or implementation of ideas but to give a legal recognition to it so as to protect the creator from duplication and to a certain extent commercialization of the same. Thus, this concept of giving a legal backing to the useful innovations is called as Intellectual Property Rights.

In India, the term Property *per se* has been defined nowhere, however it is used in its widest and the most generic sense. Property is the most extensive of all concepts since it is suggestive and prescriptive of every imaginable interest that somebody can have. As a result, it encompasses not only physical items, but also rights and interests that exist in or are derived from them.

Thus, properties can be divided into two forms, tangible and intangible. Tangible property means one which is physically present. For example, land, houses, money, these can be physically seen and felt. On the contrary, there is a type of valuable property that cannot be sensed since it does not exist in the physical world form. Intellectual property is a type of intangible property that has a monetary value.

Prior to the General Agreement on Tariffs and Trade (GATT), the Intellectual Property and its related rights were not a subject, to any international trade negotiations. The history of Intellectual Property Rights can be traced all the way to 500 BCE, when Sybaris, a Greek State made it possible for the citizens of their state, to obtain a patent for one year, for "any

new refinement in luxury[2]" or according to British intellectual property expert Robin Jacob, a patent was documented for "some kind of new-fangled loaf" of bread in the 600 BC.[3]

However, the only truth that we can strongly affirm is IPRs have become much wider and complex in today's era, wherein a person can acquire legal protection for an invention of a tiny pin to a massive construction.

II. History of Intellectual Property Rights

If we look at it from a global perspective, the Rights of discovery was in the form of dominance which was seen in the 1300 at the Alp Mountains wherein the people who identified the mines for the first time used to dictate the terms on the resources available in the surroundings, Example - water, wood etc.

In 1409 at Germany, special privilege used to be given for the people who constructed modern mill for storage of grains. However, French structured the recognition of IPR well by adopting the concept of registration and examination of invention before granting exclusive Rights.[4]

Some historians credit Filippo Brunelleschi, a Florence architect who invented a crane system for exporting and transporting marble from the Carrara highlands, with the first industrial patent application in 1421.[5]

In an exhibition conducted at Paris in 1867, Germany got its first serious recognition as an industrial country. The Americans declined to participate in the Vienna Exhibition (1873) in order to protect the German Nations' Intellectual Property Rights Inventions. As a result, the Paris Convention for the Protection of Intellectual Property was born. The nations that are members of the convention have the ability to claim precedence under this treaty.[6]

2 Palak Sinha, *History and Evolution of IPR*, Legal Desire, https:// legaldesire.com/history-and-evolution-of-ipr/ (Last visited August 8, 2020, 12:20 PM)

3 Matt Kwong, *Six Significant Moments in Patent History*, Thomson Reuters, https://www.reuters.com/article/us-moments-patent-idUSKBN0IN1Y120141104 (Last visited November 5, 2014, 2:17 AM)

4 2 BAYYA SUBBA RAO AND P. V. APPAJI, INTELLECTUAL PROPERTY RIGHTS IN PHARMACEUTICAL INDUSTRY: THEORY AND PRACTICE Chapter no. 1, 1 (B. S. Publications 2018) http://www.bspublications.net/downloads/05afc26c1e9088_Ch-1_IPR%202nd%20Ed._Subba%20Rao.pdf.

5 Matt, *supra* note 3, at 2.

6 Bayya, *supra* note 4, at 3.

> *"In India, IPR existed since the time of Harappa Civilization, special marks were identified on the pottery indicating as trademarks."*[7]

The first official legislation for IPR in India was Act VI of 1856 on the Protection of Innovations, which was modelled on the British Patent Law of 1852 and offered specific exclusive advantages to inventors of new manufactures for a period of 14 years.

However, as the Act was passed without the authority of the British Crown, it was revoked by Act IX of 1857. Under Act XIII of 1872, it was called "The Patterns and Designs Protection Act." The Act of 1872 was revised again in 1883 (XVI of 1883) to include a provision to protect the uniqueness of inventions that were disclosed in the Indian Exhibition prior to filing an application for protection.

All prior Acts were repealed by the Indian Patents and Designs Act, 1911 (Act II of 1911). For the first time, this Act placed patent administration under the control of the Controller of Patents. In 1920, the Act was changed again to enter into reciprocal agreements with the United Kingdom and other countries in order to secure primacy. After Independence, it was felt that the Indian Patents & Designs Act, 1911 was not fulfilling its objective. It was found desirable to enact comprehensive patent law owing to substantial changes in political and economic conditions in the country. As a result, the Government of India established a committee in 1949, chaired by Justice (Dr.) Bakshi Tek Chand, a retired Judge of the Lahore High Court, to study Indian patent law in order to ensure that the patent system is in the national interest.[8]

Due to the insertion of Article 372(1) in the Indian Constitution which authorizes the legislature or any competent body to repeal, alter or amend the pre-constitutional laws, it became possible for the pre-constitutional laws to be in force in India. For example, the repealing of 1911 Patent Act and the passage of new Patent Act, 1970. Furthermore, Article 253 of the Indian Constitution, which mandates the recognition of the international aspect of laws, legislations, and agreements and empowers the Indian parliament to enforce international treaties through the law-making process, plays a significant role in recognising Indian IPR with other international IPRs.

Today, India is a signatory and member of various international organizations and agreements for the protection and recognition of IPR rights of its own country at a global stage as well as of its member countries; starting from being the member of World Trade Organization,

7 *Ibid.*

8 INTELLECTUAL PROPERTY INDIA, https://ipindia.gov.in/history-of-indian-patent-system.htm, (Last visited Mar. 16, 2022).

Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, Marrakesh Treaty to facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities to the recent MOU between US and India in the year 2020 which dealt with knowledge sharing pact and Sector agnostic pact.[9]

III. Intellectual Property Rights in India

Indian Constitution is the Grundnorm of all the existing laws in India till date! The Constitution of India is enshrined with Fundamental Rights, Duties and Constitutional Rights which are to be abided by the people residing in India or the citizens of India.

In India, the provision of Right to Property had been one of the controversial issues in the early 1980s. Prior to the 44th Amendment of 1978, the Right to Property was considered as the Fundamental Right; wherein Article 31 protected individuals from the government's or state's arbitrary seizure of private property for both public and private purposes. That means that if this right is violated, a person has the right to move to the Supreme Court and Article 19(1)(f) "provided for the freedom to citizens to acquire, hold, and dispose of the property within the territory of India."

However, by the 44th Amendment of 1978, the above two mentioned Articles were deleted and a new Chapter IV was added in Part XII, containing only one article 300A, making the Right to Property a Constitutional Right thus the remedy available to an aggrieved person is to approach the Supreme Court under Article 32 of the Constitution is no more available, he can only approach the High Court under Article 226 of the Constitution.

Unlike the U.S Constitution, Indian Constitution does not mention Intellectual Property *per se* under the Articles relating to the Property to constitute IPR as a Constitutional Right. However, Entry 13 and 14 of List I of Schedule II gives a superficial hint on IPR and Entry 49 of List I of Schedule II clearly mentions about Intellectual Property Rights, but it restricts only to patent, inventions, designs, copyright, trademarks and merchandize marks; but it is also important to note that as the legislature have the exclusive power under Article 248 to make laws with respect to any matter not enumerated in the concurrent List or State List; thus it is safe to assume that all the other Intellectual Property Rights may come under the ambit of Constitutional Rights under List I of Schedule II.

9 ET Bureau, India, *US ink pact on intellectual property rights,* The Economic Times, (Feb. 20, 2022. 08:03AM), https://economictimes.indiatimes.com/news/international/business/india-us-ink-pact-on-intellectual-property-rights/articleshow/74218241.cms?from=mdr.

Therefore, to conclude, an Intellectual Property Right is a Constitutional Right and not a Fundamental Right in India.

IP is divided into two categories:

a. Industrial Property

b. Copyright

Industrial property, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and

Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs.

The different types of Intellectual Property Rights in India are:

1. The Indian Patents Act, 1970

Patent rights are issued for new and inventive processes, products, or articles of manufacture that can meet the patent eligibility standards of novelty, inventive steps, and potential for industrial application.

To strengthen the patent rights in India, Government of India has come up with an initiative called as Patent Analysis and Management System (PAMS), wherein services are offered with the intention of raising awareness of intellectual property (IP), promoting and safeguarding innovations, and offering a wide range of value-added IP-related services. Adding to this, there is a one-of-a-kind chance to work with us directly to establish a culture of IP identification, protection, and monetization for your cutting-edge R&D inventions and results.

2. The Copyright Act, 1957

This act prevents unlawful uses of original works of literature, drama, music, and art, as well as films on film and sound recordings. In contrast to patents, copyright safeguards expressions rather than ideas.

3. The Trademark Act, 1999

The Trademark law was replaced with the Trademark and Merchandise Act, 1958. It offers improved trademark protection and stops unauthorised or dishonest use of marks on goods. The Act allows for trademark registration, giving the owner of the mark a legal right to its sole use. Trademark in India is governed by Trademark Act, 1999 and Trademark Rules, 2017 framed under this Act.

4. The Designs Act, 2000

The Design Act of 2000 is an Act to consolidate and amend the law relating to the protection of designs. Its main objective is to protect new or original designs from getting copied which causes loss to the proprietor. As per Section 44, priority can be claimed from a convention application if the design application in India is filed within six months of the priority date. Since India is a party to the Paris Convention, priority may be claimed for applications made in any nation, group of nations, or organisation of nations to whom the Paris Convention applies. However, India is not currently a signatory to The Hague Convention.

5. The Geographical Indications of Goods (Registration and Protection) Act, 1999

A geographical indication (GI) is a label placed on a product to identify its place of origin. The product must exhibit the reputation and characteristics of its country of origin. One of the famous cases in India relating to Geographical Indication is the “Darjeeling Tea.” The Tea Board of India made its first attempt to safeguard the “Darjeeling” trademark far back in 1983, when the “Darjeeling” emblem was developed. The Indian Trade and Merchandise Marks Act of 1958 allowed The Tea Board to gain domestic protection for the Darjeeling emblem as a certification trade mark (now the Trade Marks Act, 1999). In 1986, the Tea Board was given permission to register in class 30. The logo was also registered as a trademark in a number of other nations in the same year including the United Kingdom, the United States, Canada, Japan, Egypt, and under the Madrid Agreement, which covers Germany, Austria, Spain, France, Portugal, Italy, Switzerland, and the former Yugoslavia.

6. The Biological Diversity Act, 2002

This act was passed by the parliament of India to protect biodiversity and facilitate

the sustainable management of biological resources with the local communities.

7. Protection of Plant varieties and Farmers rights, 2001

This act was enacted to acknowledge and protect the farmers' rights with regard to their ongoing efforts to preserve, enhance, and make available plant genetic resources for the creation of new plant kinds.

V. Recent Initiatives for Intellectual Property Rights in India

Since few years, India has become a fertile land for innovation and investment, and one of the reasons of such growth is recognition of Intellectual Property Rights especially in priority sectors like Pharmacy and MSME. India has achieved significant success not only in fulfilling its responsibilities under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, but also in building its own IP framework and balancing the trade-off between monopoly rights and unfettered access to information.[10]

1. Establishment of Anti-Piracy Coordination Cell: The cell was established with the approval of the Ministry for Human Resource Development on 15th October 2015 which will serve as a centralised agency to coordinate government and industry efforts to combat piracy, as well as a platform to showcase the impact of anti-piracy activities in India to the rest of the globe. It will contribute to ensure "zero tolerance" for piracy by boosting the battle against it.

2. International Searching Authority and International Preliminary Examining Authority: The international preliminary report on patentability gives the applicant the opportunity to evaluate the chances of obtaining patents in elected Offices before incurring the expense and trouble of entering the national phase. Under the Patent Cooperation Treaty, the Indian Patent Office was designated as an International Searching Authority and an International Preliminary Examining Authority, and it began operations on October 15, 2013.

3. Initiative by FICCI: FICCI has conducted many awareness programs with respect to Intellectual Property Rights in India. It also holds continuous interaction between the industry and the Government with a view to provide an interface for businesses to resolve their issues pertaining to IPRs.

10 Dr. S Md. Ghouse and B R Aswini, *Current trends of intellectual property law in India*, 3, Issue. 2, International Journal of Conceptions on Management and Social Sciences, 32, 33-34, (2015)

The FICCI IPR Division has established an Intellectual Property Education Centre (IPEC) with the goal of providing specialised training in the field of intellectual property. The objective is to raise awareness about intellectual property rights and to create a pool of IPR specialists whose expertise and services will benefit the entire industry.

4. DRDO grants free patent access to boost indigenous production in 2019

5. Government brings key changes in Manual of Patent Office Practice and Procedure: This New Manual seeks to adapt different improvement like automating and digitalizing the process and also tries to make the functioning of Patent Office efficient.

6. Extending the intellectual property right (IPR) defence to abuse of dominance Section 4(a) of Competition Act 2020: In addition to the pre-existing exemption from the scope of anti-competitive agreements, IPR holders' rights to prevent infringement or set reasonable restrictions to safeguard their IPR rights are intended to be excluded from provisions of the Act that prohibit the abuse of dominance.

7. Centre of Excellence in Intellectual Property (CoE-IP): This is one such project, with the goal of assisting inventors, start-ups, and SMEs in understanding the value of Intellectual Property (IP), providing value-added services, and ensuring effective IPR protection. CoE-IP is being implemented over a five-year period with a budget of Rs.323.77 lakhs. The project's goal is to promote the expansion of IP in ICT by establishing a suitable environment for identifying, protecting, and monetising IPRs.

8. IPR Facilitation for MeitY R&D Societies and Grantee Institutions

9. Support for International Patent Protection in E&IT (SIP-EIT) – II for Micro, Small and Medium Enterprises and Technology Start-up Units: MeitY created this initiative to assist MSMEs and start-ups in securing Intellectual Property Rights on a worldwide scale. The SIP-EIT plan provides financial assistance to MSMEs and tech start-ups in order to foster innovation and recognise the value and potential of global IP in order to gain a competitive edge. The initiative was designed to support 200 worldwide ICT patent applications over a five-year period

10. Patent Analysis and Management System (PAMS): This helps in providing wide range of services related to IPR protection, and also conducts activities to create awareness about IPR and its importance.

11. IP Panorama: The IP Panorama's major goal and aim is to raise IPR awareness among targeted stakeholders in the ICT sphere, such as tech start-ups, MSMEs, and academics.

VI. Impact of IPR in the various sectors of Indian economy

Since the recognition of importance of IPR in India, a significant development can be seen in the major sectors of the Indian economy with respect to the contribution of the said rights. As per the reports of WIPO, today IPR filings contribute around 8,443.36 US Dollars in the Indian Economy (2020).[11] Thus, some of the major areas where IPR has its presence in the market share are as follows:

1. IPR and Start-up

> *"The term start-up refers to a company in the first stages of operations. Start-ups are founded by one or more entrepreneurs who want to develop a product or service for which they believe there is demand.[12]"*

Since the past few years, India has seen an upward graph in the establishment of start-ups by young entrepreneurs. Therefore, looking at the zeal and zest of the innovators, Indian government came up with several Central and State government schemes and incentives to support the entrepreneurs for example, SAMRIDH scheme, Start-Ups Intellectual Property Protection (SIPP), Start-up India Seed Fund and many more.

One of the noteworthy moves of the government in improving the status of start-ups is recognition of importance of IPR in Start-up companies! The Start-up Action plan 2016 provided with legal support and IPR facilitation benefits by fast-tracking start-up patent applications so that they can realise the value of their IPRs as soon as possible, provided with a panel of facilitators to assist in filing IP applications and free legal support and fast-tracking patent examination, the start-ups have to only bear the cost of statutory fees payable. As a result of these initiatives, it is reported (Evolution of Start-up India –

11 World Intellectual Property Organization, https://www.wipo.int/ipstats/en/statistics/country_profile/profile.jsp?code=IN (last visited Mar. 17, 2022).

12 Investopedia https://www.investopedia.com/terms/s/startup.asp#:~:text=The%20term%20startup%20refers%20to,they%20believe%20there%20is%20demand (last visited on March 17, 2022).

Capturing the 5-year Story) that 5,020 patent applications have been filed as of November 2020, 1,170 patent applications have been filed for expedited examination by start-ups; of these, 884 applications have been examined and 459 patents have been granted, and 12,264 trademark applications have been filed. 510 patents and designs facilitators and 392 trademark facilitators are enrolled under the scheme.[13]

Thus, through IPRs, Start-up companies would get an edge over its competitors by being able differentiate itself in terms of Brand, Designs and Quality which would lead to establishment of name and goodwill in the market without any problem relating to protection of their intellectual asset.

According to the Economic Survey 2021-22, which was submitted in Parliament on January 31, the number of new recognised start-ups has surged from 733 in 2016-17 to over 14,000 in 2021-22. Following the United States and China, which added 487 and 301 unicorns, respectively, in 2021, India surpassed the United Kingdom to become the country with the third-highest number of unicorns.[14]

2. IPR and Artificial Intelligence

> *"Artificial intelligence (AI) is the ability of a computer or a robot controlled by a computer to do tasks that are usually done by humans because they require human intelligence and discernment."*[15]

In the era of technology and innovation, Artificial Intelligence has become the talk of the town in almost all the sectors of the economy. Its ability to replace the human's brain work with the help of algorithms and quick and efficient retrieval of data and information has made AI one of the greatest inventions of human kind. Some of the sectors where AI is predominant is Hospitality, Customer care and call centres, Software Development etc. According to the reports, the global artificial intelligence market size was valued at USD 62.35 billion in 2020 and is expected to expand at a compound annual growth rate (CAGR) of 40.2% from 2021 to 2028.[16]

13 Prof. (Dr) Vijay Kumar Singh, *INDIA'S STORY OF IP AND SMES: TAKING IDEAS TO THE MARKET,* The Daily Guardian, (May 3, 2021, 03:14AM) https://thedailyguardian.com/indias-story-of-ip-and-smes-taking-ideas-to-the-market/

14 Financial Express, https://www.financialexpress.com/opinion/need-to-fast-track-ipr-recognition/2427972/, (Last visited on Mar. 17, 2022).

15 Britannica, https://www.britannica.com/technology/artificial-intelligence, (Last visited on March 17, 2022).

16 Legal Services India.com http://www.legalservicesindia.com/article/1734/Judicial-Review-in-India-AndUSA.html (Last visited November 5, 2014, 2:17 AM)

> *"The Indian Artificial Intelligence market is valued at $7.8 Bn as of July – August 2021. This represents a 22% increase in size of market over 2020.The AI market share and size in relation to the Types of Companies is the highest across the broad MNC IT / Technology / Electronic category, which includes High-end Software and Hardware technology, IT Services, Semi-conductor, and Electronics firms.[17]".*

IPR is a critical instrument for protecting innovation and ensuring a financial return on intellectual capital, and AI has added a new dimension. Expert Systems, which solve problems in specific fields of knowledge such as medical conditions, Perception Systems, which allow technology to perceive the world with senses of hearing and sight, and Natural language Systems, which require a dictionary database to learn the meaning of words, are the three types of AI recognised by the WIPO.

With advent of AI in the global market, India has also taken this opportunity to give impetus to AI with mission of Digital India by increasing the budget allocation to $477 in 2020. India seeks to increase the presence of AI through cybersecurity, machine learning and robotics. Some of the recent initiatives taken in India for AI are; MCA 3.0, AI portal developed by MeitY and NASSCOM in June 2020 and many more.

The last five years have witnessed significant uptake of artificial intelligence (AI)-focused innovation in India, with over 4,000 AI patents being filed during the period, six times higher than the figure for 2011-2015. On a worldwide scale, AI patent families rated India seventh among the top ten countries.[18]

3. IPR and MSME

Medium and Small-Scale Industries play a vital role in the India economy in terms of GDP as well for providing employment opportunities to people thus bridging the gaps of national income and wealth and promoting regional equality. MSMEs employ over 120 million

17 Kashyap Raibagi, *State Of Artificial Intelligence In India 2021- By AIM & TAPMI,* Analytics India Magazine, (Oct. 18, 2021) https://analyticsindiamag.com/study-state-of-artificial-intelligence-in-india-2021-by-aim-researchtapmi/#:~:text=There%20are%20close%20to%20109000,personnel%20is%20INR%2014.3%20Lakhs,

18 Shivani Shinde, *India Now an Artificial Intelligence Innovation Hub, Reveals a Study*, Business Standard (October 12, 2021 14:38 IST) https://www.business-standard.com/article/technology/india-now-an-artificial-intelligence-innovation-hub-reveals-a-study-121071100854_1.html.

people, making them the second-largest source of employment after agriculture.[19]

In accordance with the Micro, Small and Medium Enterprises Development (MSMED) Act of 2006, the Indian government has launched MSME, or Micro, Small and Medium Enterprises. These businesses specialise in the manufacture, manufacturing, processing, or storage of products and commodities. MSMEs in India account for around 8% of the country's GDP, 45 percent of manufacturing output, and over 40% of exports.[20]

Thus, it is safe to say that developing countries like India should facilitate legal as well as financial framework for the growth of MSMEs and one of the contemporary ways of doing it is protection and promotion of IPR in this sector. A good IPR may assist a small business protect their inventions (patents), grow their brand (trademarks), and secure their designs and creative works (copyright and design laws). According to one of articles of Economic Times, it was said that "MSMEs should look at IPRs as legal monopolies-investments in which it will allow them to be ahead of their competition as IPRs, being negative rights, outrightly stop others from practising, using or selling any product or service that infringes on any of their IPRs."[21] Thus, MSME can acquire Intellectual Property Rights in the following ways to establish its goodwill in the market:

Distinctive name or logo of the organization- Trademark

Asset pertaining to designs or shape pertaining to a product- Industrial design

Creation of artistic work- Copyright

Handicraft or speciality of that particular region like *Banarasi* Silk, Darjeeling Tea- Geographical Indication

4. IPR and Pharmaceuticals

The Indian pharmaceutical business has seen an upward graph in the past few years and one of the reasons of growth is low cost of production and R&D in India. India is the world's largest supplier of generic medications, accounting for 20% of worldwide supply

19 LENDINGKART, https://www.lendingkart.com/msme-loan/what-is-msme/#:~:text=In%20India%2C%20MSMEs%20contribute%20nearly,40%25%20of%20the%20country's%20exports.&text=MSMEs%20are%20an%20important%20sector,the%20country's%20socio%2Deconomic%20development, (last visited Mar. 17, 2022).

20 *Ibid.*

21 Economic Times, https://economictimes.indiatimes.com/small-biz/sme-sector/why-msmes-should-treat-intellectual-property-rights-as-assets/articleshow/69304077.cms (May 13, 2019, 12:59 PM IST).

by volume, as well as supplying 62% of global vaccination demand.[22] India's domestic pharmaceutical market is estimated at USD 41 billion in 2021 and is likely to reach USD 65 billion by 2024 and further expand to USD 120-130 billion by 2030.[23] Recognition of Intellectual Property Rights is very crucial to provide a safe environment for the growth of Pharma in the global level.

Innovation, R&D and of course Science play an integral part in the development of a drug! Crores of rupees are invested in the formulation of a drug which starts from the very basic activity of identification, planning, producing to commercialization of the drug.

Therefore, if the IPR laws of a country are strong in the manufacturing as well as distributing countries, it would ensure healthy competition with adequate protection from the Trademark and Patent infringers.

India has provided protection to drugs and medicines under, Trademarks Act 1999, and Patent Act, 1970. The true milestone was reached by the Indian Pharmacy business during the period of Covid. India emerged out of its effects by ramping up the pharma manufacturing sector and maintaining a resilient supply chain of essential drugs despite of 2 deadly waves of Covid-19.

With the export of Covid vaccines from India surpassing the 65 million mark to more than 100 nations, the worldwide faith in the Indian healthcare industry has been reaffirmed once again, reaffirming India's place as the world's pharmacy. During the early stages of the pandemic, India supplied life-saving medications and medical equipment to over 150 nations, as well as more than 65 million doses of Covid vaccines to over 100 countries this year.[24] The pharmaceutical industry is currently valued at $41.7 bn and is expected to reach $65bn by 2024 and $120 bn by 2030.[25]

However, it is important to highlight at this stage of development that, though there has been an upshoot of the pharma sector yet there is a lack of proper utilization of such growth in this sector in terms of IPR as, out of 16,134 patents filed during the last 5 years,

22 Invest India, https://www.investindia.gov.in/sector/pharmaceuticals#:~:text=The%20pharmaceutical%20industry%20in%20India%20is%20currently%20valued%20at%20%2441.7,%2Dpatent%20during%202017%2D2019, (Last visited Mar. 17, 2022).

23 Bhawna Sharma and Sana Singh, *Pharmaceutical Industry and Intellectual Property Rights – An Indian Perspective,* Singhania & Partners (Jun. 21, 2021) https://singhania.in/blog/pharmaceutical-industry-and-intellectual-property-rights-an-indian-perspective.

24 Outlook India, https://www.outlookindia.com/website/story/pharmacy-of-the-world-india-delivers-over-65-million-doses-of-covid-vaccines-to-100-countries-this-year/401489, (Last visited Mar. 17, 2022).

25 FDI in India, https://www.fdi.finance/sectors/pharmaceuticals, (Last visited Mar. 17, 2022).

only 4,345 were granted patents (Report 2021).[26] Thus, the Department for Promotion of Industry and Internal Trade should fill in the gaps so that such administrative lacunas do not hinder the scale of progress.

5. Agriculture and IPR

There was no legal provision for the protection of plant varieties in India until 2005 as a result of TRIPS-WTO agreement which sought to protect the plant varieties and genetic modification either through Patent or Sui-Generis system.

Adding to this, there were many laws made for the purpose of protection of Intellectual Property Rights of the agricultural produce, some of them being passing of the Geographical Indications of Goods (Registration and Protection) Act, 1999, and the Protection of Plant Varieties and Farmers' Rights Act, 2001, as well as the revision of the Patents Act, 1970 in 1999 and 2002, also the requirement to offer protection is also being realised in the areas specifically related to the farm animal business.

IPR in agriculture helps to produce high quality seeds planting materials to the farmers. In India Krishi Vikas Kendra plays an important role in spreading awareness about IPR in Agriculture among the also it works as Knowledge and Resource Centre of agricultural technologies for supporting initiatives of public, private and voluntary sectors in improving the agricultural economy of the district.

V. Ranking of India in Intellectual Property Right

India is a hub of innovators and entrepreneurs! Adding to this with the trend of "Aatmanirbhar Bharat" which was coined by the Hon'ble Prime Minister Narendra Modi in 2020, India has become a fertile land for invention and investment.

As of January 10, 2022, more than 61,400 start-ups have been recognised in India. In 2021, 555 districts, compared to 121 districts in 2016-17, had at least one new start-up.[27]

India has ranked 46th by the World Intellectual Property Organization in the Global Innovation Index 2021 rankings and has seen a huge rise in the Global Innovation Index

26 Rajya Sabha, *Review of Intellectual Property Rights Regime in India*, 10, 92, (2021), https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/13/141/161_2021_7_15.pdf.

27 Srinath, Sridharan, *Need to Fast-Track IPR Recognition*, Financial Express (feb. 8 2022) https://www.financialexpress.com/opinion/need-to-fast-track-ipr-recognition/2427972/.

(GII), from a **rank** of **81** in **2015** to **46** in **2021**.[28]

According to the report by NITI Aayog, "The consistent improvement in the GII ranking is owing to the immense knowledge capital, the vibrant start-up ecosystem, and the amazing work done by the public and the private research organizations. The Scientific Departments like the Department of Atomic Energy; the Department of Science and Technology; the Department of Biotechnology and the Department of Space have played a pivotal role in enriching the National Innovation Ecosystem.[29]"

As per the reports, the number of patents filed in India has gone up to 58,502 in 2020-21 from 39,400 in 2010-11 and the patents granted in India has gone up to 28,391 from 7,509 during the same period".[30]

However, there is a dip in the registrations of Trademarks from 2813609 (2019) to 293295 (2020) and a similar trend is seen in the registration of Industrial Designs where the registration has fallen down from 16422 (2019) to 11987 (2020).[31]

Also adding to this IPR registrations are dominated by the foreigners who are staying in India for commercial purposes with Indian filing of patents in the year 2019-20 accounted for 36 per cent of the total patent filings while a major share of patents of remaining 64 per cent had been filed by foreign entities.[32]

VI. Reasons For Slow Growth of IPR In India

There is no doubt that India has seen an upward graph in terms of activities surrounding Intellectual Property Rights, India climbed 35 ranks since 2015 on the Global Innovation Index to place 46th in 2021. Adding to this according to the Union Economic Survey for

28 Press Information Bureau, https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1756465#:~:text=India%20has%20climbed%202%20spots,81%20in%202015%20to46in%202021, (Last visited on 17th March, 2022, 6:36 PM).

29 *Ibid*.

30 Down To Earth, https://www.downtoearth.org.in/news/economy/more-indian-residents-filing-patents-than-mncs-despite-challenges-economic-survey-81344#:~:text=Overall%2C%20the%20number%20of%20patents,and%207%2C509%20in%202010%2D11, (Last visited on 17th March, 2022, 6:28 PM).

31 WIPO, https://www.wipo.int/ipstats/en/statistics/country_profile/profile.jsp?code=IN, (Last visited on 17th March, 2022, 6:40 PM).

32 Rajya Sabha, Review of Intellectual Property Rights Regime in India, 10, 25, (2021), https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/13/141/161_2021_7_15.pdf.

2021-22, more Indians filed for patents than multinational companies.[33]

However, if we look at the performance of India at a global platform, India is still lagging behind China, the United States, Japan and South Korea by a huge margin.

Thus, below are the reasons for the low performance of India:

1. **Low expenditure on Research and Development activities:** Research and Development plays a crucial role in the IPR sector as it helps the innovators to understand the existing registrations and compare the same with their ideas. Thus, as Novelty is the essence of Intellectual Property Rights, it becomes necessary to have an updated data on the same in terms of domestic Intellectual Property Right holders as well as cross boarder Intellectual Property Rights. The R&D spends in India were a mere 0.7% of the country's GDP in 2020.[34] According to the opinion pf various organizations, **"**absence of study undertaken by India to analyse the economic impact of IPRs on its GDP, growth of industries, generation of employment, trade and commerce, etc was one the primary reasons for slow growth of IPR in India also it was stated that such a study needs to be undertaken in wake of immense contribution of creative sectors and innovations and its impact on the economy.[35]**"**

2. **Lack of Awareness of IPR:** Another important reason of slow growth of IPR is lack of awareness amongst the people about the various rights of IPR and its importance. Many innovators who are own a MSME or a small business fail to commercialize their products or services due to illiteracy in terms of IPR. According to the reports, 35% of people are unaware of intellectual property rights (IPR), and the majority of respondents, including students, scholars, teachers, and managers, are unaware of the financial benefits of obtaining an IP right, the commercialization of acquired IP rights, or the legal ramifications of using a pirated product.[36]

33 Down To Earth, https://www.downtoearth.org.in/news/economy/more-indian-residents-filing-patents-than-mncs-despite-challenges-economic-survey-81344#:~:text=Overall%2C%20the%20number%20of%20patents,and%207%2C509%20in%202010%2D11, (Last visited on 17th March, 2022, 6:28 PM).

34 Financial Express, https://www.financialexpress.com/opinion/need-to-fast-track-ipr-recognition/2427972/, (Last visited on 17th March, 2022, 6:23 PM).

35 Rajya Sabha, Review of Intellectual Property Rights Regime in India, 10, 18, (2021), https://rajyasabha.nic.in/rsnew/Committee_site/Committee_File/ReportFile/13/141/161_2021_7_15.pdf.

36 Heena Lamba, *India: Reforming University Research Ecosystem Can Help Uplift India's IPR Index,* Modaq, (17th March, 2022, 6:20 PM), https://www.mondaq.com/india/patent/758100/reforming-university-research-ecosystem-can-help-uplift-india39s-ipr-index.

3. **Administrative issues:** According to the survey, the average time taken in India in 2020 to make a decision to award patents was 42 months, compared to 52 months in 2019 and 64 months in 2016. (2017). This is far slower than the US's 20.8 months, China's 20 months, South Korea's 15.8 months, and Japan's 15 months (Japan). According to the survey, the low number of patent examiners in India, which now stands at 615, compared to 13,704 in China, 8,132 in the United States, and 1,666 in Japan, is to blame for the delay in India's patent application.[37] India is home to some of the world's largest technology companies' R&D centres. Many of them, however, file their patent submissions outside of India to expedite the process. Only 24936 patents were issued in India in 2019, which is a low number when compared to the 354430 granted in the United States and the 452804 given in China.[38]

VII. Budget 2022

The budget 2022 focuses on over-all growth of the India by especially pumping the niche sectors such as Start-ups, Digital markets and Infrastructure.

To make the vision of *"Aatmanirbhar Bharat"* successful, Budget 2022 plays an important role to carve a pathway for the growth of local manufactures and to be self-reliant.

As this paper focuses on the aspect of Intellectual Property Rights, I have highlighted the impact of Budget 2022 on the Intellectual Property Rights in India.

1. **Aatmanirbhar Bharat:** The goal of achieving "Self-reliance" has brought in fresh wave of invention and investment in India. Since the announcement of Special economic and comprehensive package of INR 20 lakh crores – equivalent to 10% of India's GDP – to fight COVID-19 pandemic in India, there has been a significant impact on the domestic manufacturers, traders, and innovators. As this campaign focuses on pumping MSMEs, Agriculture sectors and Infrastructure, IPR plays an important role in protecting the innovation and commercializing the same at a global market. If we fail to recognize IPR at this point of time India would end up losing all its innovations to the developed countries and continue depending upon the foreign countries in terms of technology and infrastructure.

2. **Tax rates:** Budget 2022 seeks to provide tax relief to the Start-up companies to motivate the innovators to establish their business in India. Thus, this would

37 Financial Express, https://www.financialexpress.com/opinion/need-to-fast-track-ipr-recognition/2427972/, (Last visited on 17th March, 2022, 6:23 PM).

38 WIPO, World Intellectual Property Indicators, 2020, 7, 31, 2020, https://www.wipo.int/edocs/pubdocs/en/wipo_pub_941_2020.pdf.

move towards growth in innovation and the recognition of Intellectual Property Rights be it to protect their innovation of products or services or to safeguard the domain name of their websites. Adding to this the changes made in custom duties and provision of certain exemptions to MSMEs clearly portrays a positive impact to for the manufacturers and innovators in India.

VIII. Conclusion

To conclude, to encourage innovation and business at a global level, it becomes crucial to understand the importance of IPR, which could be possible with strong awareness of IPR and a proper framework of laws and its implementation at the ground level.

India being a hub for business and talented manpower, Intellectual Property Rights would help the Indian economy to become one of the leading economies in the world. Thus, following are the suggestions which I believe must be implemented for the betterment of the current situation:

1. Increase in the allocation of funds for Research and Development on IPR.
2. Spreading of awareness about IPR and its importance in primary as well as secondary schools and also at a public level.
3. Provide incentives to MSMEs and Small Businesses and Start-ups in India which have the capabilities of innovation and commercialization.
4. India is known for its traditional and indigenous knowledge; therefore, the government should give impetus to safeguard such rights at a global level.
5. Improvement in the procedural aspect of IPR registrations.
6. Utility Model: It's also known as a 'petty patent,' a 'short-term patent,' or an 'incremental patent.' Utility Models are especially valuable for discoveries that are only marginally creative and for which patents are either unavailable or difficult to obtain. It does not require official registration and may be easily registered for a period of 10 to 15 years. This was also recommended to the Standing Committee on Commerce in Rajya Sabha (2021) saying that "introduction of a Utility Model rights regime may be explored in India to encourage the role of small-scale innovators, inventors and artisans for protecting their innovations as IP.