

CONSTITUTION DAY : 26th NOVEMBER

Technical Session:

“Law and Justice in a Globalized World”

Topic:

**“Trade and Intellectual Property Rights
in a Globalized World”**

Department for Promotion of Industry and Internal Trade (DPIIT)
Ministry of Commerce and Industry

Trade and Intellectual Property Rights in a Globalized World

I. International Level

II. National Level

III. Next Steps

Trade and Intellectual Property Right in a Globalized World

I. International Level

Intellectual Property Rights(IPR) : Trade and Economic Growth

IP rights facilitate the following:

- 1. Incentive for Innovation**
- 2. Market Competitiveness**
- 3. Job Creation**
- 4. Technology Transfer**
- 5. Attracting Investment**
- 6. Consumer Confidence.**
- 7. Cultural & Artistic Development.**
- 8. Continuous Innovation Cycle**

Trade and Intellectual Property Rights in a Globalized World

- IP drives innovation, creativity, and economic growth.
- IP addresses societal concerns: public health, information access, environment, climate change, and food security.
- IPR monopoly boosts innovation, introduces new protected technologies.
- Adequate IPR protection, effective enforcement expand trade, FDI, economic growth, job opportunities.
- IP needs a balance between development incentives and effective distribution.
- IPR impact varies by sector: pharmaceuticals rely on patents, audiovisuals on copyright.
- IP innovation fosters globalized markets via online platforms and digital networks.

IPR: Multilateral and Bilateral Trade Agreements

1. **WTO's TRIPS agreement (1995) and Globalized Trade:**

- TRIPS international agreement on IP, supporting creativity, knowledge, and trade.
- Ensures WTO members to achieve national policy objectives & facilitates dispute resolution.
- TRIPS sets minimum standards for 7 forms of IP.
- 'National treatment' and 'Most favored nation' principles are applied to IP.
- Exceptions and limitations to balance IP interests with public health and economic development.
- TRIPS balances the IP system, considering innovation, technology transfer, and public welfare.
- Flexibilities for developing and least developed countries to promote IP.

IPR: Multilateral and Bilateral Trade Agreements

2. FTAs and BITs: Promote Global Trade and Economic growth

- Substantive obligations on additional IP protection & investment covering IP.
- Fair and equitable treatment, full protection & security, and prohibition of expropriation incompatible with TRIPS.
- Fall outside the arena of multilateral standard-setting on IPR.
- Promotes developed countries industries & their economic interests.
- TRIPS plus clauses contravening TRIPS flexibilities (especially compulsory licenses).
- But TRIPS flexibilities are inviolable, untouchable, and inalienable rights of WTO Members.
- Unlike TRIPS, impose binding obligations for transfer of technology.
- Prefer enforcing IPRs through Investor-State Arbitration.

Trade and Intellectual Property Rights in a Globalized World

II. National Level

Economic Benefits of IP

Macroeconomic level

- Increase GDP and competitiveness
- Enhance exports of high value
- Stimulate R&D
- Reduce brain drain by providing incentives
- Help address national human needs
- Develop national brand and cultural identity
- Attract beneficial FDI and local investment
- Job creation

Microeconomic level

- Create portfolios of IP as a source of competitive advantage
- Enhance products and promote brand value
- Enhance corporate value
- Avoid and defend against litigation
- Provide incentives and recognition

National IPR Policy, 2016

(*Creative India, Innovative India*)

- 1. IPR Awareness**
- 2. Generation of IPRs**
- 3. Legal and Legislative Framework**
- 4. Administration and Management**
- 5. Commercialisation of IPRs:**
- 6. Enforcement and Adjudication:**
- 7. Human Capital Development**
- 8. Cell for IPR Promotion and Management (CIPAM)**

National IP Strategy

- 1. IP and SDGs:** Innovation is also essential to achieve SDGs (2, 3, 6, 7,8, 11 and 13)
- 2. IP and Climate Change-Clean Energy-**
- 3. IP-TRIPS and Public Health**
- 4. IP and Competition Law: IPR: Strong IP and Weak IP:**
- 5. India's comparative advantage** in ICT and Generic Pharma medicines.
- 6. COVID-19 pandemic and TRIPS Waiver:**

India: Global IPR Harmonisation

India has become a member of the following International IP Treaties ., in order to strengthen country's position as a major player on global IP platform:

1. **Paris Convention, 1883**
2. **Berne Convention, 1886**
3. **Patent Cooperation Treaty (PCT) , 1970**
4. **Budapest Treaty, 1977**
5. **Madrid Protocol, 1989**
6. **Locarno Agreement, 1968**
7. **Nice Agreement, 1957**
8. **Vienna Agreement, 1973**
9. **WTO-TRIPS Agreement, 1995**
10. **Marrakesh Treaty for Visually Impaired Persons and Persons with Print Disabilities, 2013**
11. **WIPO Copyright Treaty (WCT),1996**
12. **WIPO Performances & Phonographs Treaty (WPPT), 1996**

Access to Affordable Medicines in India

India has adopted six policy tools to enhance access to affordable medicines, following the *TRIPS Flexibilities* for Developing Countries and the *Doha Declaration, 2001*, which supports PM's *Janaushadhi Scheme*.

1. No Evergreening -Sec. 3(d) of the Patent Act, 1970.
2. No Data Exclusivity
3. No patent Linkage
4. Compulsory Licensing
5. International Exhaustion
6. National List of Essential Medicines(NLEM)

India is called “Pharmacy of the World” – Generic Drugs

Access to Knowledge in India

Copyright law that promote access to knowledge, education and entertainment as per the Appendix to the Berne Convention as included in the WTO-TRIPS for Developing Countries:

A. Compulsory Licensing:

1. Works withheld from public(Sec. 31.)
2. Unpublished or published orphaned works(Sec. 31A.)
3. Benefit of disabled (Sec. 31B).
4. To produce and publish translations(Sec. 32)
5. To reproduce and publish works those are not available or sold in India(Sec. 32A)

B. Statutory Licensing:

1. For cover versions (Sec. 31C.)
2. For broadcasting of literary and musical works and sound recording(Sec. 31D.)

C. Fair dealing exceptions

1. For education, research,
2. court proceedings
3. government & marriage ceremonies and
4. for visually impaired and print disabled persons

India: Implementation of IPR Strategy

- 1. IPO website facilitates online filing and registration**
- 2. Reduced filing fees for Start-ups and SMEs**
- 3. Scheme for Facilitating Start-ups Intellectual Property Protection (SIPP) Expedited examination system grants patents**
- 4. Accelerated processes for trademark registration**
- 5. Technology and Innovation Support Centers (TISC) and IP Facilitation Centers in universities**
- 6. IP generation by Start-ups, MSMEs, and other innovators.**
- 7. Draft Patent Rules, 2023**

StartUps: Intellectual Property Rights Protection

1. **Startup ecosystem** started only in 2016 after **PM Modi's** initiative
2. India is **No.3** ranking in the Startup ecosystem in the world (**1,12,718 Startups**).
3. **111 unicorns** worth \$ 349.67 Bn.
4. **5 Decacorn startups** (Flipkart, BYJU's, Nykaa and Swiggy), worth more than \$ 10 Bn each.
5. ***Startup India Seed Fund Scheme (SISFS):***
6. **Raise investments** from angel investors or venture capitalists
7. ***Credit Guarantee Scheme for Startups***

Commercialisation and Enforcement of IPR

- **Cell for IPR Promotion and Management (CIPAM)** has been entrusted with the work of creating awareness in respect of commercialization of IPRs.
- **Creating awareness** in IP Enforcement & Adjudication for preventing counterfeiting of IPRs.
- **Capacity-building programs** for State enforcement officials including WIPO organized workshops.
- **Toolkit for Police Officers**
- **District level Commercial Courts** set up in Delhi, Mumbai, Bengaluru and Kolkata for IPR disputes
- **Pre-Institution Mediation (PIMS)** introduced for speedy resolution of disputes
- **Income tax deduction** allowed on income received through patent royalty.
- **“Patent Box”** introduced by the Finance Act, 2016.

India: Towards Innovation Hub

- India's rank in Global Innovation Index(GII) moved to 40th position in 2022 from 8st rank in 2015.
- India clocked a gigantic rise of 31.6 per cent in patent filing by resident applicants,
- Highest of any country in 2022 as compared with the previous year.
- India saw 8.5% increase in resident patent filings (61,573).
- India also saw 15.1% increase in resident trademark filings (488,526).
- 3rd in Trademark filings:
- Trademark fillings: Health is a top sector and clothing and accessories is 3rd top sector.

Trade and Intellectual Property Rights in a Globalized World

III. Next Steps

India and IPR in a Global World: Next Steps in Amrit Kaal

India's IPR strategy should help to achieve the following:

- India as a Developed Country by 2047.
- 3rd largest Global Economy by 2030.
- Top 10 Rank in Global Innovation Index by 2047.
- Increase in R&D investment by both government (10%) and the Industry.
- IPO should grant 1,00,000 patents in every year.
- Promotion of Indian technology and goods in global supply chain and markets.
- Continue consistently as most favoured destination of FDI with more than US \$100 Billion.
- Need to join Lisbon Agreement, Strasburg Agreement, Hague Agreement and Beijing Treaty.
- Revise all IPR legislations to promote overall growth.
- Single-Window for music copyright licensing
- Awareness of IPR from school to University level.