

Intellectual Property Rights in India : An Introspect

*Dr. Rupesh kumar

Abstract

Intellectual property is a right which is pervading some material object. The intangible products of a man's brain are more valuable than his lands, money buildings, belongings, goods, etc. It is quite different from formal or a real property. In fiction, it is a kind of property. Hence, it is called as intellectual property. The rights concerning to the intellectual property are recognized by Indian law as the subject matter of rights of various intangible products i.e. skills and labour, human intelligence etc. In brief intellectual property is basically relates to intellect or a creation of intellect. The intellectual property rights are basically a legal rights which govern the use of creations of the human mind and work. Intellectual property rights have grown to a position from where it plays an integral role in the economy development of global over the past two decades. In 1990s, laws were strengthened in this area by many nations unilaterally. In the multilateral level, there was enhanced protection and enforcement of IPRs to the level of solemn international commitment because of the successful conclusion of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in World Trade Organization. There is a vast domain of intellectual property. Since a long time Copyrights, Designs, and Patents Trademarks have received recognition. Newer forms of the protection are also developing particularly encouraged by the stimulating emergence in scientific and technological activities. Many enactments has been adopted by Indian Government and various judicial decisions has been passed by Apex Court for safeguarding Intellectual property rights.

Key Words : Intellectual, pervading, formal, intangible, creation, decade, multilateral, enhanced, conclusion.

INTRODUCTION

Intellectual property rights has grown to a position from where it plays an integral role in the development of economy of World over the past many decades. From 1990s, laws and regulations are strengthened in this specific area by many nations unilaterally. In the multilateral level, there was protection at enhanced level and enforcement of Intellectual property rights to the level of solemn international commitment because of the successful conclusion of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in World Trade Organization. There is a vast domain of intellectual property. Copyrights, Designs and Patents Trademarks have received recognition from a long time. New forms of the protection are also developing particularly encouraged by the stimulating emergence in scientific and technological activities.¹

What are Intellectual Property Rights ?

- Intellectual property rights (IPR) are the rights which are given to people over the creations of their minds: artistic works, literary, inventions and artistic works, and

¹ P. Alston, *Centuries of IPR* 25 (The Chaucer Press, London, 2nd edn., 2000).

names, symbols and images used in commerce. They usually provide the creator an exclusive private right over the use of his/her creation for a certain period of time.

- These rights are described under **Article 27 of the Universal Declaration of Human Rights** which gives for the right to benefit from the protection of material and moral interests resulting from authorship of literary, scientific or artistic productions.
- The importance of Intellectual property rights was first recognized in the “**Berne Convention for the Protection of Literary and Artistic Works**” (1883) and “**Paris Convention for the Protection of Industrial Property**” (1886). Both treaties are recognized and administered by the “**World Intellectual Property Organization.**”

Intellectual property rights are divided into two main specific areas:

(i) Copyright and Rights Related to Copyright:

- The rights of authors of artistic and literary works (books and other writings, paintings, musical compositions, computer programs, films and sculpture) are protected by copyright, for a period of 50 years after the death of the author.

(ii) Industrial property:

Industrial property is divided into two main areas:

- **Protection of distinctive signs**, in particular geographical indications and trademarks.²
 - **Trademarks** distinguish the services or goods of one undertaking from those of other undertakings.
 - **Geographical Indications (GIs)** identify a goods as originating in a place where a given characteristic of the goods is essentially attributable to its geographical origin.
 - The main motive for protection of such signs is to stimulate and ensure fair competition and to protect consumers, by enabling them to make informed choices between various goods and services.
 - The protection may continue indefinitely, provided the sign in question continues to be distinctive one.
- **Trade Secrets and Industrial designs:** Numerous and other kinds of industrial property are protected to stimulate innovation, design and the creation of technology. In this category inventions are industrial designs and trade secrets.³

Concept of Intellectual Property Rights

The concept of intellectual property's is not a new one as Renaissance, Italy is thought to be the mastermind of the intellectual property system. A Venetian enactment of 1474 made the first methodical attempt to protect inventions in a form of patent, which allowed right to a person for the first time. The invention of the printing machine by Johannes Gutenberg around the year 1550, helped in the origin of the first copyright system in the global. By the end of 19th century, new creative and different ways of manufacture aided caused industrialization in large scale accompanied by fast growth and development of cities, nationalism, the investment of capital and expansion of railway networks led many nations to establish their modern Intellectual Property legislations. In this new scenario time, the International Intellectual Property system began to take shape with the creation of the, “**Paris Convention for the Protection of Industrial property**” and the “**Berne**

² P. Nagia, *Intellectual Property Rights in India* 176 (Janak Publications, New Delhi, 2nd edn., 1990).

³ Alex Georgie, *IPR and the State in India* 33 (Oxford University Press, Oxford, 4th edn., 1991).

Convention for the protection of Literary and Artistic Works.” The evidence underlying Intellectual Property throughout the history has been that the credits and rewards related with ownership of creative works and inventions encourage further creative and inventive activity that, motivates economic growth

The Convention ⁴ establishing the World Intellectual Property Organization (1967) mention the following list of the subject matter protected by intellectual property rights: 1. trademarks, commercial names, service marks and designations; 2. industrial designs; 3. inventions in all fields of human endeavour; 4. literary, artistic and scientific works; scientific discoveries; 5. protection against unfair competition; 6. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.” 7. performances of performing artists, phonograms, and broadcasts; ⁵

The importance and role of the intellectual property protection has been formed in the, **“Trade-Related Intellectual Property Systems”(TRIPS)** Agreement, with the establishment of the World Trade Organization (WTO). At the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) treaty in 1994, it was negotiated.

The TRIPS Agreement incorporates, in principle, every form and type of intellectual properties and basically targets the complementary and standards of protection and providing for operative and tremendous enforcement at national and international level. It addresses the applicability and implementation of general GATT principles and the provisions in international contracts on IP (Part I). It also builds firmly standards for usage, scope, readiness (Part II), enforcement (Part III), acquisition and maintenance (Part IV) of Intellectual Property Rights. Moreover, it addresses major related dispute settlement and prevention mechanisms (Part V). Formal general provisions are addressed in Part VI and VII of the contract, which cover institutional and transitional arrangements, respectively.

The TRIPS Agreement came into force on 1st January 1995, is considered till date most complete multilateral agreement on intellectual property. The areas of intellectual property it covers are as following:

1. Patents which include protection of new varieties of plants;
2. Geographical indications which include appellations of origin;
3. The information which are not closed which includes test data and trade secrets;
4. Trademarks which include service marks as well;
5. Industrial designs;

⁴ The Convention of World Intellectual Property Organization, 1967.

⁵ *Id.* art.24(1).

6. Copyright and related rights (i.e. producers of broadcasting organisation, the rights of performers);
7. The lay-out designs (topographies) of assimilated circuits;

Intellectual Property System in India

In 1485, the first system of protection of intellectual property came in the form of Venetian Ordinance historically. In 1623 in England, it was followed by Statute of Monopolies, which extended rights of patents for Technology Inventions. In year 1760 in United States, patent legislations were introduced. Between 1880 and 1889 patent laws of most European countries were developed. In India, in the year 1856, Indian Patent Act was introduced which remained in effect for more than 50 years which was later amended and was called "The Indian Patents and Designs Act, 1911". A complete bill on patent rights was enacted after Independence in the year 1970 and was called, "The Patents Act, 1970."

The specific kind of statutes protected for only specific type of intellectual output; till very recently only four forms were protected. The protection was in the form of grant of patents, designs, trademarks and copyrights. In India, copyrights were regulated under the Copyright Act, 1957; trademarks under Trade and Merchandise Marks Act 1958; patents under Patents Act, 1970; and designs under Designs Act, 1911.⁶

The establishment of WTO and India also being signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), many new enactments were passed for the safeguarding of intellectual property rights to meet the various types of obligations internationally. These included the following: Designs Act, 1911 was changed by the Designs Act, 2000; Trade Marks, called the Trade Mark Act, 1999; the Copyright Act, 1957 was revised number of times, the latest is known as Copyright (Amendment) Act, 2012; and the recent amendments made to the Patents Act, 1970 in 2005. Moreover, plant varieties and geographical indications were also enacted in new laws. These are called Geographical Indications of Goods (Registration and Protection) Act, 1999, and Protection of Plant Varieties and Farmers' Rights Act, 2001 respectively.

Intellectual property rights have developed to a great extent from where it plays an integral role in developing economy across World, over the last many years. In 1990s, laws and regulations were strengthened in this area by many different nations unilaterally. In the multilateral level, there was enhanced safeguard of IPRs to the level of solemn international commitment because of successful conclusion of the Agreement on, "**Trade-Related Aspects of Intellectual Property Rights**" (TRIPS) in World Trade Organization.

Development of Trips Agreement in India

The Development of World Trade Organisation was as a result of International trade calls and framework of trade calls for harmonization of various features of Indian Legislations

⁶ M. Koteswara Rao, *Human Rights and Intellectual Property Rights* 167 (Allahabad Law Agency, Allahabad, 3rd edn., 2006).

relating with the Intellectual Property Rights. The TRIPS agreement set minimum and eligible standards for protection for IPR rights and also set a time frame work within which nations were required to make necessary changes in their enactments to comply with the required degree of protection. In view of this, India has taken necessary action to modify and amend the numerous Intellectual Property Acts in the last few years.

➤ **The Patents Act, 1970:**

India after signing and forming part of the TRIPS agreement establishing the World Trade Organization (WTO) for the purpose of reduction of impairments and distortions to international trade and promotion of protection of intellectual property rights, became signatory, the Patent Act as amended time to time in the year 1995, 1999, 2002 and 2005 to meet its obligations under the TRIPS agreement. Further, it has been amended to support the technological developments in India, to match with the development of the International intellectual property laws, India has also made amendments in the Intellectual property rights.⁷ The amendments were also aimed at making the Act a modern, harmonized and user-friendly enactments for protection of public and national interests along with fulfilling India's international obligations under the TRIPS Agreement. Subsequently, the rules under the Patent Act have also been amended and these became force from May 2003. These rules have been further amended by Patents (Amendment) Rules 2005 w.e.f 01.01.2005. Thus, the Patent Amendment Act, 2005 is now fully effective and operative.

➤ **The Trade Marks Act, 1999:**

The law of trademarks is also now modernized under the Trademarks Act of 1999. A trademark is a symbol for distinguishing the goods put in the market and offered for sale by one dealer from another. In India, the trademarks were protected for more than four decades as per the provisions of the Trade and Merchandise Mark Act, 1958. Thereafter, India joined the World Trade Organisation. One of the agreements that is related to the Intellectual Property Rights (TRIPS). In December, 1998, India acceded to the Paris Convention. Also, The Trade Mark bill which was introduced in 1994, is the result of vast modification made in Trade and Merchandise Marks Act, 1958. The said modification can be called modernization made for commercial practices and easy trading, to increase trading overseas by globalisation and bring investment from overseas and most importantly to make trademark management system as simple and possible and more recognition of the same in judicial system.⁸

The bill could not be passed due to some reasons but pointed out the areas where the huge changes were required, therefore the Trademarks Bill of 1999 was introduced with the fresh changes of the required development in numerous areas, such as commercial and trade practices, globalisation etc., the same was thereafter passed in the Parliament and replaced with Trade and Merchandise Act, 1958 with assent of the President on 30th December,

⁷ Sakshi Sinha, Intellectual Property Rights and International Conventions" 8 *The Indian Journal of Public Administration* 101-108 (2012).

⁸ Ravinder Sharma, "Trends, Causes and Consequences of Infringement of Intellectual Property Rights" 7 *The Indian Journal of Public Administration* 57-62 (2010).

1999; the introduction of Trade Marks Act, 1999 has been proved to be very fruitful to India for going global in commerce and trade area.

The salient characteristics of the Act mainly includes :

1. Earlier goods and services were covered by the way of registration, but in this Act the infringement has broadened the meaning as it must also include confusingly similar mark or unauthorized use of similar mark where the goods and services which are similar and create confusion.⁹
2. Even though where the unauthorized use of trademark is made of any well known trademark of India and the right and interest of the owner is any way infringed, the legal action of infringement can be taken against the same.¹⁰
3. Further, it gave more power to police agency by authorizing them to seize and seal any infringing material without any warrant issued.¹¹

➤ **The Designs Act, 2000:**

The Science and technology started enhancing up in the beginning of 20th century, and the urge to provide with more reliable and impartial judicial system came in place for better protection and safeguarding of this field and industrial designs. The more steps were required to be taken to promote more development in design industry by providing protection under registered design. Though it was very important to protect the design only to the extent it was required. This Act is accordingly with the TRIPS agreement and therefore line with globalization of commerce and trade.

The Industrial products basically includes two important factors, i.e. artistic work and functioning part of the product. Though in the Design Act only artistic work is covered and not functioning part of the product, though the artistic work must be unique. For example, table with four legs and top would not become and considered as design, but the table with unique top and unique style of bottom can be registered. Nowadays industrial designs are becoming daily part of our life of the consumer by catching consumers eyes through unique designs. For the same reason, it has become important to provide protection to such industrial designs.

The salient features of the Design Act, 2000 are as follows: 1). Definition of the terms “article,” “design,” and “prior publication” is given wide scope. Introduction of numerous provisions for delegation of powers of Controller to other officers and stipulating various statutory duties of examiners.¹² 2). Provisions of the identification of non-registration designs. 3). Provisions for substitution of applicants before registration of a design. 4). Substitution of Indian classification by internationally followed system of classification. 5). Provision for inclusion of to maintain a register on computer as a Register of Designs. 6).

⁹ The Trade Marks Act, 1999, s. 5(e).

¹⁰ *Id.* s. 9.

¹¹ *Id.* s. 14.

¹² The Designs Act, 2000, s. 2.

Provision for restoration of lapsed designs.¹³ 7). Provisions for appeal in High Court against orders of the Controller instead of Central Government.¹⁴ 8). Revoking of period of secrecy of three years of a registered design. 9). Providing for mandatory registration of any written document for transfer of legal right in the registered design. ¹⁵10). Introduction of various additional grounds in cancellation proceedings and numerous provisions for initiating the cancellation proceedings before the Controller and not in the High Court. 11). Enhancement of quantum of penalty imposed for infringement of a registered design.¹⁶ 12). Provision for grounds of cancellation to be taken as defence in the infringement proceedings in Session Court only 13). Enhancing period of registration from 5 to 10 years, to be followed according to law by a further extension of 5 years. 14). Provision for allowance of priority to other convention nations and countries belonging to the inter-governmental organizations or group of nations apart from United States of America and other Commonwealth nations.¹⁷ 15) Provision for avoidance of restrictive conditions for the proper control of anti competitive practices in contractual licenses.

➤ **The Geographical Indications of Goods (Registration and Protection) Act, 1999:**

The Geographical Indications are new in India and recently introduced. Where neem, turmeric and basmati were patented by persons outside India. To avoid misusing the Indian Geographical indications by foreign nationals and indicating that the goods are basically indicated from Indian locality. After such instance it became mandatory to have enactment for registration and providing suitable protection to geographical indications. The bill introduced in the parliament of India and passed with the assent of the president, the Geographical Indication of Goods (Registration and Protection) Act, 1999, came into force. The Act is administered by the Geographical Indication Registry under the jurisdiction of the Controller General of Patents, Designs and Trade Marks.

The salient features of this enactment are as follows : 1) Provision of definitions of several integral terms such as “goods,” “geographical indications,” “goods,” “packages,” “producers,” “registered proprietor,” “authorized user” etc. 2) Provision for the maintenance of a Register of Geographical Indications in two parts-Part A and Part B and use of computers etc. for maintenance of such Register. While Part A must contain all and various registered geographical indications, Part B must contain particulars of registered authorized users. ¹⁸ 3) Prohibition of registration of certain geographical indications. 4) Registration of geographical indications of goods in specified certain mentioned classes. 5) Provisions for framing of various rules by the Government of India for filing of application, its contents and matters relating to the substantive examination of geographical indication applications.¹⁹ 6) Registration of authorized users of registered geographical indications and providing numerous provisions for taking infringement action either by a registered proprietor or an authorized user. ²⁰ 7). Compulsory advertisement of all accepted geographical indication

¹³ *Id.* s.7.

¹⁴ *Id.* s. 18.

¹⁵ *Id.* s. 19.

¹⁶ *Id.* s. 23.

¹⁷ *Id.* s. 26.

¹⁸ The Geographical Indications of Goods (Registration and Protection) Act, 1999, s. 3.

¹⁹ *Id.* s. 8.

²⁰ *Id.* s. 16.

applications and for inviting objections. 8). Prohibition of registration of geographical indication as a trademark. 9) Provisions for higher level of protection for notified goods. 10) Prohibition of assignment etc. of a geographical indication as it is public property. 11) Appeal against Registrar's decision would be to the Intellectual Property Board established under the Trade Mark legislation. 12) Provision detailing the effects of registration and the rights conferred by registration. 13) Provision relating to offences and penalties 14.) Provision for reciprocity powers of the registrar, maintenance of Index, protection of geographical indications etc.²¹

➤ **The Copyright Act, 1957:**

One of the oldest existing intellectual property right act is The Copyright Act, 1957. It has been amended quite a few times to align with global trade and commerce. The act relates to person creativity to, it protects the right of artistic, literary, musical works and sound recordings and cinematography films. For instance, it provides the copyright to author for his lifetime. It does not required to be qualitative work for being eligible for the registered under this act, any unique work with very little in common with any other work can be considered as eligible for this purpose. Under the copyright, the author not only get right to the authorship but also get right under which without his prior permission his work cannot be amended.²² If any amendment which may done against his will can be brought into the court by the author, and he can get order to recover any kind of damages and stop such act immediately.

A digital industry sees very big role of copyright, the computer programming was added in the Act in 1984 as literary work to give recognition to computer programming and provide protection to the same. Though, the separate definition was provided for the same later in 1994. Introduction of the Computer programming created lot of confusion for the inbuilt programmes without which a computer cannot run, which could not be transacted for free with the computer. Later in 1999 with amendment, it was possible to allow selling computers and other similar equipments with the inbuilt programmes for free. It also ensured the growth of newly introduced internet.

➤ **The Semi Conductor Integrated Circuits Layout Design Act, 2000:**

In past two decades, digital industry and information technology has seen biggest development, the development also getting increasing day by day, and can be called fastest growing sector of the century. The industry has seen significant major change in electronic equipments such as telecommunication, computers, etc. and also it has affected human life in the biggest manner by providing advancement in different ways. Microelectronics, which primarily refers to Integrated Circuits (ICs) ranging from, Small Scale Integration (SSI) to Very Large Scale Integration (VLSI) on a semiconductor chip – has rightly can be called the core, strategic technology world-over, especially for Information Technology (IT) based society. Integrated circuits require expertise knowledge and the effort to create one depends

²¹ Mohan Lal Saggar, *IPR and Agriculture* 59 (Jayant Publications, Allahabad, 2nd edn., 2013).

²² Sudhindra Mehta, *The Employment In Technological World* 193 (Wadhwa Law House, Calcutta, 3rd edn., 2011).

on complexity of the output. Therefore, it is very important to cover the same under IPR and it is also necessary to encourage continue Research in the field of microelectronics.

The copyright and patent was unable to provide enough meaning to the legal right due to restrictions by definitions and purpose of those legislations are not sufficient to cover this type of complex right.²³ As the concept of the originality is important, irrespective of the fact that the same is novelty or not unlike patent law which requires both original and novel. Whereas the copyright law was too general to accommodate the original ideas of scientific creation of Layout-Designs of Integrated Circuits. Due to the same, the necessity to provide protection for Layout-Designs of Integrated Circuits felt and to reward and encourage an adequate level of investment of human, financial and technological resources.

Trade Secrets:

A confidential business information that provides a business an edge to a competition can be called as Trade Secret. Such information can be both manufacturing and commercial secret. A trade secret can be safeguarded for an unlimited period of time but a substantial element of secrecy must exist so that, except by the use of improper means, there would be difficulty in acquiring the information. Considering the vast availability of traditional knowledge in the nation, the protection under this will be very important in reaping benefits from such type of knowledge.

A utility model is an exclusive fundamental right granted for an invention, which allows the right holder to prevent others from commercially using the protected invention, without his authorization for a limited period of time. In its basic definition, which may vary from one nation (where such protection is available) to another, a utility model is similar to a patent. In fact, utility models are sometimes referred to as “innovation patents” or “petty patents.” Only a small but significant number of nations and regions provide the option of utility model protection. At present, India does not have legislation on Utility models.²⁴

The main differences between patents and utility model are the following:

The main requirements for acquiring a utility model are less stringent than for patents. While the requirement of “novelty” is always to be met, that of “inventive step” or “non-obviousness” may be much lower or absent altogether. In practice, protection for utility models is often sought for innovations of a rather incremental character which may not meet the patentability criteria. The term of protection for utility models is shorter than for patents and varies from nation to nation (usually between 7 and 10 years without the possibility of extension or renewal).²⁵

²³ Rajnish Malhotra, *The Copyright and Patent Rights* 45 (Sage Publications, New Delhi, 4th edn., 2009).

²⁴ R. C. Mehrotra, *Intellectual Property Rights Problems in India* 162 (S. Chand and Co., New Delhi, 2nd edn., 1981).

²⁵ Mohinder Gupta, *IPR Conventions* 187 (Midway Publications, Allahabad, 3rd edn., 2014).

In most nations where utility model protection is available, patent offices do not examine applications as to substance prior to registration. This means that the registration process is often simpler and faster, taking on an average three months.

Utility models are less expensive to obtain and to maintain. In some nations, utility model protection can only be obtained for certain fields of technology, and only for products but not for processes. Utility models are considered suitable particularly for SMEs that make “minor” improvements to, and adaptations of, existing products. Utility models are primarily used for mechanical innovations.

The “Innovation patent,” launched in Australia some time back was introduced as a result of extensive research into the needs of small and medium-sized enterprises, with the aim of providing a “low-cost entry point into the intellectual property system.”²⁶

➤ **The Protection of Plant Varieties and Farmers’ Rights Act, 2001:**

India is growing in the industry of research of plant breeds and to give protection to researcher and to encourage their interest in discovering better breed of plants, the idea of the Plant Breeders’ Right came in existence. It promises to sustain agricultural progress, as having large portion of land of India being agricultural land, therefore it is very essential. In wake of TRIPS under Article 27 of it, it was very necessary to give protection of plant varieties by an effective Sui generis system or patenting system or by any combination thereof, to effect to the same the government introduced the Protection of Plant Varieties and Farmers’ Right Act, 2001, to encourage development of new breeds of plants. Though, the enactment requires to more investment in research in both public and private sectors for better research of developing and discovering new breeds.²⁷ Further, it also promises to provide better growth in the seed industry and making available to the Indian farmers better quality of seeds.

National IPR Policy

- The National Intellectual Property Rights (IPR) Policy 2016 was adopted in May 2016 as a vision document to guide future development of IPRs in the India. It’s clarion call is “**Creative India; Innovative India**”.
- It encompasses and brings to a single platform all IPRs, taking into account all inter-linkages and thus aims to create and exploit synergies between all forms of intellectual property (IP), concerned statutes and agencies.
- **Department of Industrial Policy & Promotion (DIPP)**, Ministry of Commerce, Government of India, has been appointed as the **nodal department** to guide, coordinate and oversee the implementation and future development of IPRs in India.
- It sets in place an **institutional mechanism for monitoring implementation and review**. It’s motive is to incorporate and adapt global best practices to the Indian scenario.

²⁶ Charles Fried, *Economic Activities of Employees* 223 (Harvard University Press, Cambridge, 2nd edn., 2001).

²⁷ A. N. Singh, *The National Policy of Intellectual Property Rights* 19 (Manik Publications, New Delhi, 2nd edn., 1996).

- India's IPR regime is in compliance with the WTO's agreement on **Trade-Related Aspects of Intellectual Property Rights (TRIPS)**.²⁸

Issues in India's IPR regime

- The '**Cell for IPR Promotion & Management (CIPAM)**', setup under the aegis of DIPP, is to be the single point of reference for implementation of the objectives of the National IPR Policy.
- **Section 3(d) of the Indian Patent Act 1970 (as amended in 2005)** does not allow patent to be granted to inventions involving new forms of a known substance unless it differs significantly in properties with regard to efficacy. This means that the Indian Patent Act does not allow ever greening of patents.
 - This has been a great concern to the pharma companies. Section 3(d) was instrumental in the Indian Patent Office (IPO) **rejecting the patent for Novartis' drug Glivec** (imatinib mesylate).
- **Issue of Compulsory licencing (CL):** CL is problematic for foreign investors who bring technology as they are concerned about the misuse of CL to replicate their products. It has been impacting India-EU FTA negotiations.
 - CL is the grant of permission by the government to entities to use, manufacture, import or sell a patented invention without the patent-owner's consent. Patents Act in India deals with CL.
 - CL is **permitted under the WTO's TRIPS (IPR) Agreement** provided conditions such as 'national emergencies, other circumstances of extreme urgency and anti-competitive practices' are fulfilled.
- India continues to remain on the United States Trade Representative's (USTR's) '**Priority Watch List**' for alleged violations of intellectual property rights (IPR).
 - According to the latest **Special 301 report** of the United States Trade Representative (USTR), the US termed India as "one of the world's most challenging major economies" with respect to enforcement and protection of IP.
- **Data Exclusivity:** MNCs and Foreign investors alleges that Indian enactments does not protect against unfair commercial use of test data or other data submitted to the government during the application for market approval of pharmaceutical products or agro-chemical products. For this purpose they demand a Data Exclusivity law. Piracy of copyrighted materials is widespread and enforcement of the Copyright act is weak.

Trade-Related Aspects of Intellectual Property Rights (TRIPS)

It includes design rights, copyrights, patents, trademarks, as well as a number of related rights. Counterfeiting and Piracy are longstanding problems which are growing in scope and magnitude. They are of great concern to Indian Government because of :

- the threat they pose to the welfare of consumers,
- the negative impact by which they can have on innovation,

²⁸ Available at: http://knowintellectualpropertyrights.org/IPR_ (Visited on Sep. 4, 2019).

- the substantial resources through which they channel to organized crime, criminal networks, and other groups that corrupt and disrupt society. They are of great concern to business because of the high impact that they have on,
- Licensing and sales,
- brand value and firm reputation,
- The ability of firms to benefit from the breakthroughs they make in developing new products.

They are of concern to consumers because of the significant health and safety risks that substandard counterfeit and pirated products could pose to those who use and consume the items. Apart from the major difficulty of preventing infringement, it is not easy to estimate with any certainty the magnitude and total extent of the problem, as no records of pirated and counterfeit production and sales are available. There are no universally accepted, uniform and certain definitions of counterfeiting and piracy. The term, 'counterfeiting' is generally used in relation to the infringement of piracy and trademarks in relation to the infringement of copyright or related rights. Both the terms connote intentional infringement of IP rights for commercial benefit of the infringer, or for causing significant economic harm to the holder of the IPR. As regards piracy, the most affected industry is computer software.²⁹

The counterfeiting and piracy activities is growing exponentially all over the global. The multinational corporations, Government industry, and society are losing billions of dollars as a result of marketing of fake products. High profitability and Low penalty are making the counterfeiting activities easy. There is a need for a combine effort from various governments, business and industry to combat IPR crimes. Counterfeiters and Pirates around the Globe are stealing intellectual property on a scale never seen before, unleashing a flood of goods which are fake into world markets that threaten many jobs around the world which depends on the competitiveness of innovative industries. Intellectual Property Crime refers to pirated and counterfeit goods, manufactured and sold for profit without the authorization of the trademark, patent or copyright holder. Trade in counterfeit goods is not only limited or confined to music, software, and motion pictures. It includes luxury goods, watches, perfumes, fashion clothes, books, aircraft and automobile spare parts and toys. Intellectual Property Crime does not only cause revenue losses to the IP owners but it also impacts employment, tax revenues, investments, health and safety.³⁰

Some examples of the problems that can occur by using counterfeiting of replacement parts, pharmaceuticals and consumer goods are discussed below:

- Airline Parts: The dangers to airline passengers caused by using inferior and fake airline parts could be devastating. For example in 1989, an airplane which belong to Partnair, a Norwegian charter airline, crashed when its tail assembly fell off because

²⁹ A. William, *The Abolition of IPR Crimes* 188 (Cambridge University Press, Cambridge, 2nd edn., 1997).

³⁰ Editorial, "World and Intellectual Property Rights" *The Tribune*, Jan. 2, 2019.

of low and sub standard counterfeit bolts holding it to the rest of the body. Enquiry into the November 2001 crash of an American Airlines flight over New York indicates that it may have been caused by the failure of counterfeit parts.

- Fake Pharmaceuticals: Counterfeit drugs can also have very severe consequences on health. Parties could be defined life-saving drugs or could ingest products that could actually harm them.³¹
- Consumer Goods: Although sometimes perceived as a victimless crime, counterfeit consumer goods could also cause great significant dangers to consumers. For instance: fake software may contain unsafe levels of harmful ingredients and virus ingredients. IP infringement is a flourishing business of multi-billion dollar industry. Nowadays IP theft is sophisticated and well-organized criminal activities that criminals find it attractive because it permits minimum risk and maximum gain.

Conclusion

Intellectual property rights have grown to that position from where it plays an integral role in the global economy's development over the past many decades. In 1990s, legislations and regulations were strengthened in this specific area by many nations unilaterally. In the multilateral level, there was enhanced enforcement and protection of IPRs to the level of solemn international commitment because of the successful conclusion of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in World Trade Organization. There are a vast domain of intellectual properties such as Designs, Copyrights, and Patents Trademarks since a long time they have received recognition. Newer forms of the protection are also developing in this new scenario particularly encouraged by the stimulating emergence in scientific and technological activities. The Intellectual Property Rights (IPR) has economic, social, technological and political impacts. Globalization, Rapid technology and fierce competitions leading to protect the innovations from violations by the help of IPR such as trademarks, patents, industrial design registration, service marks, copy rights and trade secrets. But still there is infringement of Intellectual Property Rights. The Government of India is also taking specific measures to prevent them. There are numerous enactments regarding the prevention of Intellectual Property Rights Infringement. The Supreme court is doing tremendous work to protect Intellectual Property Rights.

³¹ Harsh Midha, *Problems of New Technological World* 90 (Kamal Publishers, Allahabad, 4th edn., 2008).