**DEVELOPMENT OF IPR IN INDIA**

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Intellectual property is primarily a creation of intellect or relates to intellect. Intellectual property rights are legal rights that govern the utilization of creations of the human mind and work.

## History of IPR in India:

The western development of intellectual property law extremely influenced the development of intellectual property rights in India.[[1]](#footnote-2) IP in India has had a colonial past. Some of the current legislations have been re-enacted in post-independent India. However, various kinds of IP laws have been extended to India in the colonial period. India’s specific laws were also enacted during this period. The following provides a brief review of the history of IPR laws in India.

## Copyright:

The system governing Copyright in India has undergone a continuous evolution, spanning over a period of 150 years and occurring in three different phases.

* Phase one was marked with the enactment of the 1847 British statute on copyright. It provided copyright protection for the lifetime of the author plus 7 years after the demise, with 42 years as the maximum period of protection.
* The second phase commenced with the enactment of Copyright Act, 1914 in India which was a modified version of the British Copyright Act of 1911, with certain minor withdrawal in the form of criminal sanctions for copyright infringement and modification of the scope of the term of 10 years as envisaged for sole authors. To synthesize and amend the old laws, the copyright Act was re-enacted in 1957.[[2]](#footnote-3)
* The third phase witnessed the enactment of the first Copyright law of independent India in 1957 inserting sections 32A and 32B. With subsequent amendments in 1984, 1994, and 1999; the 1957 underwent the most significant amendment in the year 2012 to include the provisions for protecting copyright in the context of digital space. The Copyright Act, as amended by the Finance Act of 2017 in combination with the Copyright (Amendment) Rules, 2016 administers the present day Copyright system in India.

## Trademark:

With the evolution of the trademark system, the Indian law on Trademark has also developed along with industrialization. From the time when craftsmen marked their products with their signatures to establish identity to the time when we witness continuous wars for acquisition and use of trademarks, the trademark system has experienced significant changes.

The trademark law in India was earlier governed by the common law system which was prevalent in England before the enactment of the Registration Act, 1875.[[3]](#footnote-4) The first legislation on trademarks in India was the Trade Marks Act of 1940, which was based on the UK Trade Marks Act, 1838.

In 1958, the Trade & Merchandise Act was enacted to consolidate the law governing trademarks in a single piece of legislation.[[4]](#footnote-5) This Act was subsequently revoked by the Trade Marks Act of 1999 which was enacted in compliance with the TRIPS Agreement, 1994. The Act was further amended in 2010.

Trademark Rules underwent a major change in 2017, transforming and simplifying the procedure related to trademark registration. The present day trademark system is governed by the Act and the Rules, amended in 2010 and 2017 respectively.

**Patents:**

The current Patent law system in India has undergone an evolutionary process in the last 162 years. Its root trace back to Act VI of 1856, which was enacted to encourage new and useful manufactures and promote the disclosure of inventions by their inventors. It was based on the British Patent Law of 1852 and granted certain exclusive privileges to inventors for 14 years.

However, as it had been enacted without permission from the British Crown, it was repealed in 1857, followed by the enactment of new legislation for granting exclusive privileges in 1859 as Act XV of 1859. This Act introduced certain modifications to the earlier legislation, including limiting the grant of exclusive privileges only to useful inventions and extending the priority period from 6 months to 12 months. This Act noticed certain divergences from the British Act of 1852, particularly in allowing assignees to make applications in India and using publication in India or United Kingdom to ascertain novelty.

After 30 years, this Act was amended in 1888 and was named as the Inventions and Designs Act, 1888. Fresh legislation in 1911, named The Indian Patents and Designs Act was enacted to replace previous legislations and brought the administration of Patents under the supervision of the Controller of Patents. The Act underwent further amendments in 1920, 1930, and 1945.

After India attained independence, the Act of 1911, as amended in 1920, 1930, and 1945 was considered to be insufficient to govern the patent system, owing to significant political and economic changes. Based on the recommendations of the committee under the Chairmanship of Justice (Dr.) BakshiTek Chand, 1911 Act was further amended in 1950.

After another amendment in 1952, the 1911 was ultimately replaced in 1970 by the Patent Act of 1970 which was enacted on the recommendation of N. RajagopalaAyyangar Committee. The new Act of 1970 was made applicable in 1972 with the introduction of Patent Rules 1972. This Act was eventually amended in 1994, 1999, 2002, and 2005 and continues to govern the Patent system in India, with supplementation by the Patent (Amendment) Rules, 2006.

## Industrial Designs:

The first legislation in India to grant protection to new designs was enacted in the form of Patterns and Designs Protection Act, 1872 which provided inventors with the exclusive right to make, sell, and use a new pattern and design in India and also to authorize others to do the same, although for a shorter duration.

The Inventions and Designs Act, 1888 that was enacted to consolidate and amend the legal provisions governing the protection of inventions and designs, succeeded this Act. The provisions governing design protection were enacted in a separate part.

Later, this Act was replaced by British Patent and Designs Act, 1907 after which the Indian Patent and Designs Act, 1911 was modelled. The provisions of the Act governing Patents were revokedby the Patents Act, 1970 and subsequently, the Designs Act, 2000 repealed the Designs Act, 1911. The Act and the Design Rules came into force in 2001.

The present day Industrial Design regime is governed by the Designs Act, 2000 and Designs Rules, 2001 as amended in 2008 and further in 2014.

## New Legislations in the Post- TRIPS Context:

In 1994, India signed the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and subsequently, to comply with the provisions of the agreement governing the protection of different types of intellectual property. It enacted certain new legislations to protect intellectual property, whichwas not appropriately protected by the existing IP regime, leading to over-protection or under-protection.

**Geographical Indications** of Goods (Registration and Protection) Act, 1999. The TRIPS agreement lays down provisions in Articles 22 to 24 for protection of geographical indications. However, the TRIPS agreement does not require WTO members to enact a distinct GI legislation provided WTO members comply with the mandate of the agreement. To comply with the mandate, India chose to enact a separate Act for protecting Geographical Indications.

The **Protection of Plant Varieties** and Farmers’ Rights Act, 2001. Article 27.3 of TRIPS agreement requires the member countries to protect plant varieties either by a patent system or by a sui-generis system or by a combination thereof. To offer protection to plant varieties and to protect farmer’s rights, India enacted the Protection of Plant Varieties and Farmers’ Rights Act, 2001.

The **Semiconductor Integrated Circuits Layout-Design** Act, 2000. To conform to Section 6 (Article 35 to 38) of the TRIPS agreement, India enacted the Semiconductor Integrated Circuits Layout-Design Act, 2000 as an additional act to designs and with a view to protect semiconductor integrated circuits layout-designs.

**References:**

1. Denis de Freitas, “The Main Features of Copyright Protection in the Various Legal Systems” 28 Journal of Indian Law Institute, 1986.

2.See, UpendraBaxi, The Law of Intellectual Property: Copyright Law in India (1988).

3. Manoj Pillai, “The Patent (Amendment) Act 2005 and the TRIPS Compliance –A Critique,” Journal of Intellectual Property Rights (2005).

4.P. S. Sangal, “Trademarks and Domain Names: Some Recent Developments”, 41 Journal of Indian Law Institute (1999).

1. Denis de Freitas, “The Main Features of Copyright Protection in the Various Legal Systems” 28 Journal of Indian Law Institute, 1986 pp.441-443. [↑](#footnote-ref-2)
2. See, UpendraBaxi, The Law of Intellectual Property: Copyright Law in India (1988). [↑](#footnote-ref-3)
3. Manoj Pillai, “The Patent (Amendment) Act 2005 and the TRIPS Compliance –A Critique,” Journal of Intellectual Property Rights (2005) pp.235-238. [↑](#footnote-ref-4)
4. P. S. Sangal, “Trademarks and Domain Names: Some Recent Developments”, 41 Journal of Indian Law Institute (1999) pp. 30-43. [↑](#footnote-ref-5)