



ECONOMIC AND SOCIAL DEVELOPMENT THROUGH INTELLECTUAL PROPERTY RIGHTS IN INDIA

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Abstract

Knowledge is the paramount tool for the development of nation. The knowledge, and the ideas emanating from it existed from times immemorial but the protection of the human intellect was a matter of concern. Intellectual propriety law provides protection for the economic and social development of a nation and its prosperity. Intellectual Propriety Rights (IPRS) can play a positive role in encouraging new business development, rationalization of inefficient industry, and inducing technology acquisition and creation.

They may harm development prospects by raising the costs of imitation and permitting monopolistic behavior by owners of IPRS. The potential gains and losses depend on the competitive structure of markets and the efficiency of related business regulation, including aspects of competition policy and technology development policy.

Intellectual propriety rights safeguard creators and other producers of intellectual goods and services by granting them certain time- limited rights to control the use made of those productions. These rights also promote creativity and the dissemination and application of its result and encourage fair-trading, which contributes to economic and social development.

Key words: *Intellectual Propriety Rights, Immaterial product, Intellectual Property, Incorporeal property, Corporeal thing, Industrial Property - Patent, Industrial Designs, Trademark, Geographical Indications, Trade Secrets, Artistic and Literary Property - Copyright, Trade Related aspect of Intellectual Properties .*

1. INTRODUCTION

How Intellectual Property Rights (IPRS) affect the processes of economic and social development? And how growth is complex and based on multiple variables?.

The effectiveness of IPRS, in this regard, depends considerably on particular circumstances in each country. Intellectual property is a form of knowledge which societies have decided can be assigned specific property rights. They have some resemblance to ownership rights over physical property or land. But knowledge is much more than intellectual property. Knowledge is embodied in people, in institutions and in new technologies in ways that have long been seen as a major engine of economic growth (‘Alfred Marshall, the “father” of modern economics).

With recent scientific and technical advances, knowledge has become to an even greater degree than before the principal source of competitive advantage for both companies and countries. Salmond views “Immaterial product of a man’s brain may be as valuable as his land or his goods. The law, therefore, gives him a proprietary right in it

What is Intellectual Property?

Intellectual Property (IP) is the protection of creations of the mind, which have moral and a commercial value and confers on individuals, enterprises or other entities, the right to exclude others from the use of their creations.

Consequently, these may have a direct and substantial impact on industry and trade as the owner of an IPR may - through the enforcement of the right - prevent the manufacture, use or sale of a product which incorporates the IPR. Intellectual property rights protect the interests of creators by giving them property rights over their creations.

This protection encourages publication, distribution and disclosure of the creation to the public, rather than keeping it secret while at the same time encouraging commercial enterprises to select creative works for exploitation.

This propriety rights include a bundle of rights which a person can exercise and even it involves idea or intellect and is considered to be incorporeal property. This idea gives rise to a material thing, so intellectual property does not include incorporeal things only but corporeal thing as well.

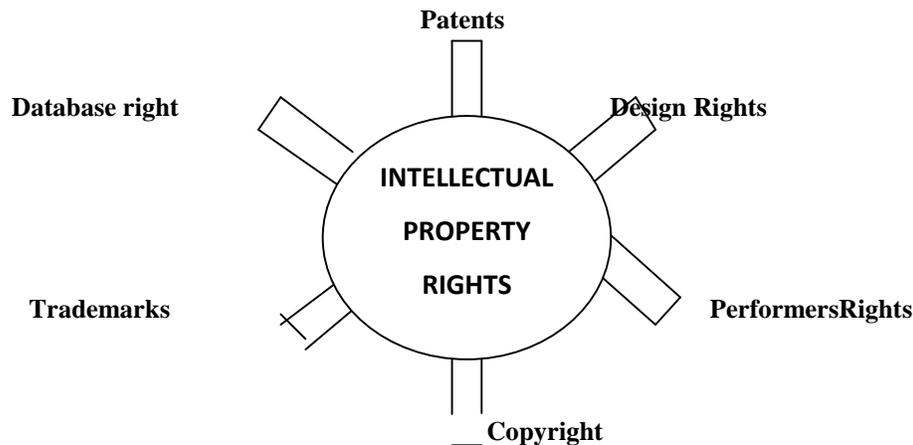
Intellectual property, in developed countries, is and has been important for the promotion of invention in industrial sectors, e.g. evidence from the 1980s indicates that the pharmaceutical, chemical and petroleum industries were predominant in recognising that the patent system was essential to innovation.

1.1 Intellectual Property system in India

Indian Intellectual Property (IP) system has been visualized with robust intellectual property regimes and strong jurisdiction to back the laws. IP laws, over the years have evolved as a result of national policies. The National IPR Policy is focused towards boosting innovation and economic growth by encouraging employment and entrepreneurship. The key objectives proposed amendments are patent awareness and promotion, creation of more IPs, modifications in the legal and legislative framework, commercialization of patents and provisions for providing statutory incentives like tax benefits.

Economy places a tag of urgency on understanding and managing knowledge based assets like – innovations and know-how, where Intellectual property rights have become important in the face of changing trade environment duly characterized by global competition, high innovation risks, short product cycle, need for rapid changes in technology, high investments in research and development, production and marketing and need for highly skilled human resources.

1.2 Instruments of Intellectual Property Protection



Instruments differ in subject matter, extent of protection, field of application, reflecting society's objective to balance the interests of creators and consumers for different types of intellectual works.

1.3 IP categories

- Industrial Property (functional commercial innovations), and
- Artistic and Literary Property (cultural creations).

1.4 Industrial Property

Industrial property legislation is a part of law as intellectual property relates broadly to the creations of the human mind. These rights protect the interests of creators by giving them property rights over their creations.

a. Patents

Patent is an exclusive right awarded to an inventor to prevent others from making, selling, distributing, importing or using their invention, without license or authorization, for a fixed period of time. Trade Related aspect of Intellectual Properties (TRIPS) stipulates 20 years minimum from filing date. For sufficient disclosure of the invention, three requirements (details differ from country to country) determine the patentability of an invention:

- Novelty (new characteristics which are not "prior art"),
- Non-obviousness (an inventive step not obvious to one skilled in the field), and
- Utility (as used in the US) or industrial applicability (as used in the UK).

Patents establish a protected market advantage in return for revealing technical knowledge.

b. Industrial Designs

This protects the aesthetic aspects (shape, texture, pattern, color) of an object, rather than the technical features. TRIPS require that an original design be eligible for protection from unauthorized use by others for a minimum of 10 years.



c. Trademarks

Use of trade mark is exclusive rights for distinctive signs, like- symbols, colors letters, shapes or names to identify the producer of a product, and protect its associated reputation. The purpose of a trademark is to prevent customers from being misled or deceived. A trademark can be renewed indefinitely and the rights encourage firms to invest in name recognition and product quality. They also induce licensees to protect the value of assets by selling goods of guaranteed quality levels.

d. Geographical Indications

This identifies the specific geographical origin of a product, and the associated qualities, reputation or characteristics usually consist of the name of the place of origin, like - food products sometimes have qualities that derive from their place of production and local environmental factors. The geographical indication prevents unauthorized parties from using a protected GI for products not from that region or from misleading the public as to the true origin of the product.

e. Trade Secrets

They are protected by legal rules against learning by rivals through dishonest means. Usually consists of commercially valuable information about production methods, business plans, clientele, etc. and are protected as long as they remain secret by laws which prevent acquisition by commercially unfair means and unauthorized disclosure. Protecting trade secrets is beneficial to the extent it encourages the development and commercial use of sub-patentable inventions.

1.5 Artistic and Literary Property

Literary and artistic creations and computer software are protected by copyrights, which provide exclusive rights for some period to copy and sell particular expressions of ideas after they are fixed in some medium. Related IPRS include neighboring rights of performers and broadcasters, moral rights of original artists, and copyrights for derivative products.

a. Copyright

These grant exclusive rights to the creators of original literary, scientific and artistic works and only prevent copying, not independent derivation. Copyright protection begins without formalities, with the creation of the work, and it prevents unauthorized reproduction, public performance, recording, broadcasting, translation, or adaptation, and allows the collection of royalties for authorized use. This provides exclusive rights for some period to copy and sell particular expressions of ideas after they are fixed in some medium. Related IPRS include neighboring rights of performers and broadcasters, moral rights of original artists, and copyrights for derivative products.

2. INTELLECTUAL PROPERTY RIGHTS AND ECONOMIC DEVELOPMENT

The National regimes of intellectual-property protection depend on the level of economic development. Economic analysis of IPRS is utilitarian, asking whether the benefits of any system outweigh its costs, both in static and dynamic terms. The anticipated benefits and costs depend on characteristics of markets, products, and social institutions.

The system of intellectual property protection covers 2 central economic objectives: -

- First to promote investments in knowledge creation and business innovation by establishing exclusive rights to use and sell newly developed technologies, goods, and services. (In Absence of the rights, firms would be less willing to incur the costs of investing in research and commercialization activities. The weak IPRS create a negative dynamic externality and fail to overcome the problems of uncertainty in R&D and risks in competitive appropriation)
- Second to promote widespread dissemination of new knowledge by encouraging (or requiring) right holders to place their inventions and ideas on the market. (It is socially efficient to provide wide access to new technologies and products, once they are developed, at marginal production costs, the costs could be quite low for they may entail simply by copying).

a. Labor and Agricultural Wages

Agricultural wages have been traditionally low due to low productivity, large disguised unemployment in agriculture, even though in this trend a perceptible change took place in recent years due to rapid economic growth and adoption of policies for employment generation including promotion of self employment opportunities.

Table 1 shows the average daily wages for agricultural field labor for ploughing and harvesting at all India level and the average wages paid for industries covered increase in average wage for agriculture (ploughing and harvesting) is higher than percentage increase in average wage for industrial workers covered by ASI during the decade 2001-02 to 2010-11.

**Table - 1: Wage increase in Agriculture & Non – Agriculture Sector during 2001-2011
(Wage in Rs. per day)**

Occupation	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	CAGR During 2001-
Ploughing	69.9	71.5	73.8	72.3	76.3	81.8	91.4	102.9	120.9	145.5	8.5%
Harvesting	56.3	58.0	60.1	62.0	65.0	68.5	75.2	87.1	102.8	122.5	9%
Non-Agriculture sector (Industry covered by ASI)	152.4	158.8	165.6	168.6	174.8	185.8	206.0	224.7	247.7	NA	6.3%

Source: Labor Bureau & CSO.

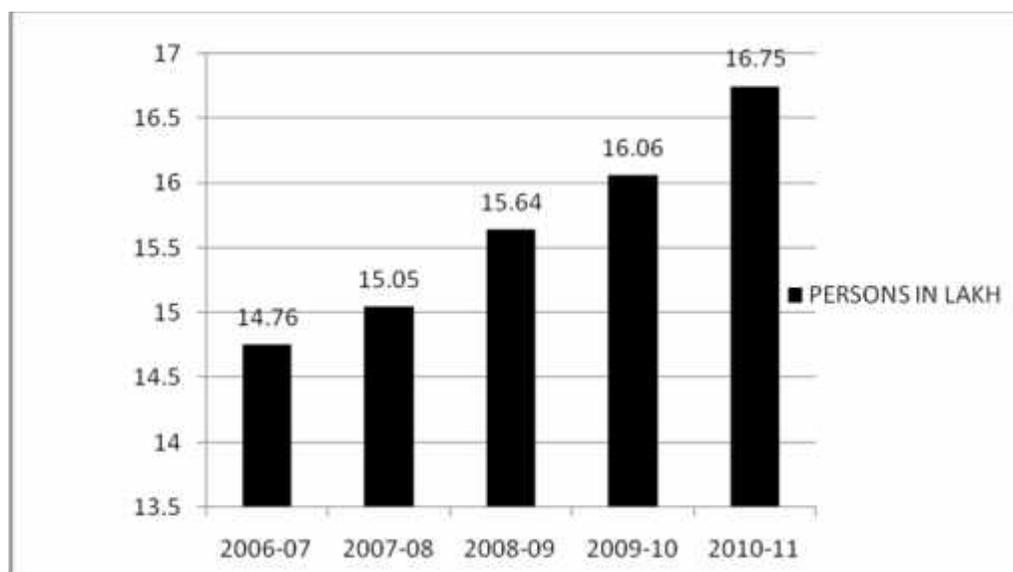
The average daily wages for agricultural field labor for ploughing and harvesting at all India level have increased at higher rates, (8.5 per cent and 9 per cent per annum respectively) during 2001- 02 to 2010-11 as against the average wages paid for industries covered under Annual Survey of Industries (ASI) (6.3 per cent per annum). However, agricultural wages, in general, are still much lower than the industrial wages.

Table-2 shows the increasing trend of persons employed under registered food processing industries from 2006-07 to 2010-11(provisional). The growth percentage of persons employed in the same industries is varying year wise - 6.09 % in 2006-07 to 4.30% in 2010-11 respectively. The average annual growth rate accounted to 3.79%. The continuation graph below shows the increasing trend of amount of percentage persons employed in registered food processing industries.

Table – 2: Persons Employed under Registered Food Processing Industries

Year	2006-07	2007-08	2008-09	2009-10	2010-11(P)	AAGRS
Persons (in lakh)	14.76	15.05	15.64	16.06	16.76	
Growth	6.09	1.96	3.87	2.71	4.30	3.79

Source: Annual Survey of Industry, MOSPI; P: Provisional Results; Average Annual Growth Rate.



Source : Annual Survey of Industry, MOSPI.

b. Capital Investment

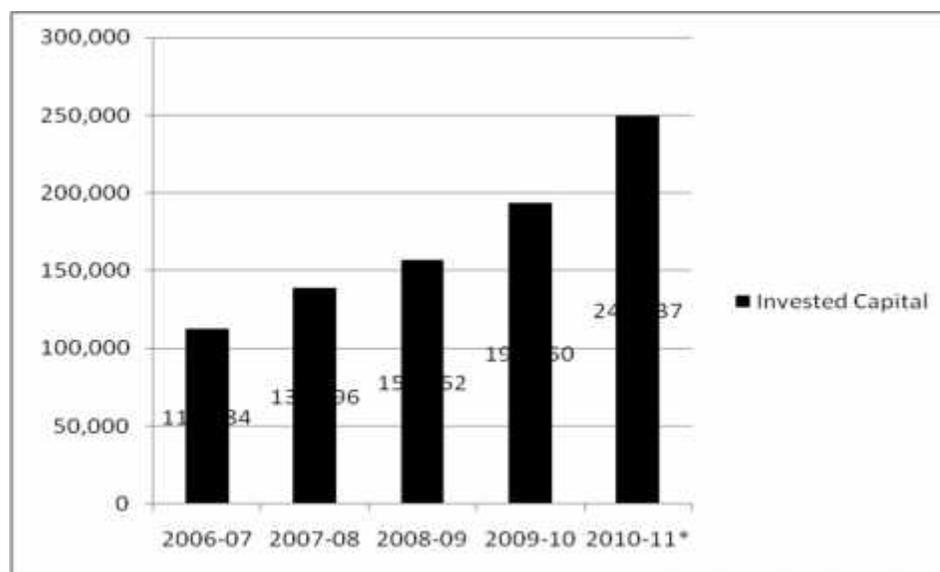
Table-3: focus on the trend of capital investment in registered food processing industries in India from 2006-07 to 2010-11 respectively. The growth rate of capital investment in the same industries shows 22.21% in the year 2006-07 to 28.62% in the year 2010-11 which is almost in increasing trend, and the average annual growth rate indicate 22.17% which is in progressive in nature. The continuation graph below shows capital investment in food processing industries in increasing trend from 2006-07 to 2010-11.

Table - 3: Capital Investment in Registered Food Processing Industries

Year	2006-07	2007-08	2008-09	2009-10	2010-11(P)	AAGR
Invested Capital (Rs. crore)	112484	138996	157062	193850	249337	
Growth Rate	22.21	23.57	13.00	23.42	28.62	22.17

Source: Annual Survey of Industries, MOSPI

Total of Fixed Capital and Physical Working Capital, P: Provisional Results



Source: Annual Survey of Industries, MOSPL: Provisional Result.

In terms of Investment, FP sector has registered a positive growth in terms of Capital Invested (fixed capital and physical working capital). As per the ASI 2010-11(P), the Invested Capital in FP Industry stood at Rs. 2,49,337 crore growing at an AAGR of 22.17 per cent during five years ending 2010-11.

c. Index of Core Industries of India

Table- 4: highlight on the Index of Eight Core Industries (ICI) is a monthly index which measures the performance of eight infrastructure industries i.e. ICI is a lead indicator of IIP. During 2012-13, the Index of Eight Core Industries grew at 6.5%, with Refinery products. Cement, Coal, Steel and Electricity sectors registering a growth of 29.0%, 7.7%, 4.6%, 4.1 and 4.0% respectively. However, Natural Gas, Crude Oil and Fertilizers registered negative growth of (-) 14.5%, (-) 0.6% and (-) 3.4% respectively.

Table -4 : Growth Rate of Eight Core Industries (Growth rate in %)

Sector	Weight	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	Apr-Nov 2013-14
Coal	4.37887	6.6	5.9	6.3	8.0	8.1	-0.2	1.3	4.6	0.8
Crude Oil	5.21608	-5.2	5.6	0.4	-1.8	0.5	11.9	1.0	-0.6	-0.2
Natural Gas	1.70783	1.4	-1.4	2.1	1.3	44.6	10.0	-8.9	-14.5	-13.0
Refinery Products	5.93937	2.1	12.9	6.5	3.0	-0.4	3.0	3.1	29.0	1.7

Fertilizers	1.25387	0.6	3.1	-7.9	-3.9	12.7	0.0	0.4	-3.4	1.5
Steel	6.68443	7.0	12.8	6.8	1.9	6.0	13.2	10.3	4.1	4.3
Cement	2.40633	12.4	9.1	8.1	7.2	10.5	4.5	6.7	7.7	3.0
Electricity	10.316	5.1	7.3	6.3	2.7	6.2	5.6	8.1	4.0	5.6
Overall Index	37.9028	3.9	8.4	5.2	2.8	6.6	6.6	5.0	6.5	2.6

Source: Office of the Economic Adviser, DIPP.

During 2013-14 (Apr-March), the Index of Eight Core Industries recorded a growth of 2.6% as compared to the corresponding period of the previous year. All other industries recorded positive growth during this period except Natural Gas and Crude Oil which witnessed negative growth of (-)13.0 % and (-) 0.2 % respectively. For developing countries, (like the developed countries before them) the development of indigenous technological capacity has proved to be a key determinant of economic growth and poverty reduction. This capacity determines the extent to which these countries can assimilate and apply foreign technology.

3. EFFECTS OF POLICY ISSUES (2007-2013) INDIAN IP POLICIES CHALLENGES FOR US FIRMS

	Share of companies(%) Facing Substantially the Issue affected	
	Tariffs and customs procedures	29.6
Taxes and financial regulations	29.5	23.6
Other issues	27	19.6
IP and local-content requirements	20.2	13.5
Sanitary and phytosanitary measures and technical barriers to trade	10.5	8.3
FDI	9.1	7.1

Source: The Financial Express, February 21, 2015

The new indicators of economic growth have been revised to suggest a 50% improvement in development numbers in 2015. This means India's economic growth is almost 50 percent faster than previous years. The GDP is set to touch 6.0 percent in the first half of 2015. India's trade and investors confidence is set to benefit from its growth and investor confidence owing to reform (Modi lead BJP government).

4. GOVERNANCE OF INTELLECTUAL PROPERTY RIGHTS

Legal instruments are one of the pieces that form a national system of intellectual property protection. The system's overall effectiveness are the institutions administering these instruments, the mechanisms available for enforcing IPRs, and the rules regarding the treatment of non-nationals.

The administration of IPRs is most significant in the area of patents, industrial designs, trademarks, and plant breeders' rights. Copyright and neighbouring rights protection applies automatically upon creation of the intellectual work. The enforcement of intellectual property rights relies on a country's judicial system. IPRs are created by national laws and apply at the level of each jurisdiction.

5. ASSESSING THE IMPACT OF THE INTELLECTUAL PROPERTY SYSTEM ON ECONOMIC GROWTH IN INDIA

The Economic growth has been one of the major reasons for rise in awareness about impact of a structured IP system. Implementations of laws governing IP system are an important consideration for smooth economic trade and bilateral agreements between countries. The contribution of Foreign Direct Investment in maintaining economic health of a nation is well known and protection of IPR is seen as an important factor in maintaining good international trade diplomacy. Patent laws are crucial for smooth operation of the Indian manufacturing industry and helps in boosting economic growth and competitiveness.



India's relation with one of the world's most powerful demand creator – the USA, highlight that IPR and patent issues have been a bone of contention amongst the two countries for years.

Mr Barack Obama, Honorable President of America, recently emphasized that “patent protection in India is very important to make the country an attractive investment destination”.

6. CONCLUSION

IPRs protection is becoming increasingly relevant to policy makers in developing economies. This trend reflects not only international commitments made in the context of multilateral negotiations (e.g., the TRIPS Agreement), but also the growing reliance on private sector R&D in areas of particular interest to developing countries. In the case of agriculture, for example, IPRs policies may affect the lives of millions of low-income farmers in the developing world by influencing the pace and focus of advances in biotechnology.

The challenges these developments pose for developing countries are significant. Protection of IPRs influences how knowledge is created and diffused within and between economies. Developing countries can enhance the benefits of TRIPS-motivated reforms by building national consensus on the desirability of IPRs protection and establishing efficient and credible institutions for administering and enforcing IPRs.

REFERENCES

1. CHEN, Y. and T. PUTTITANUM, 2005. Intellectual Property Rights and Innovation in Developing Countries. Forthcoming in Journal of Development Economics.
2. TYBOUT, J. R., 2000. Manufacturing Firms in Developing Countries: How Well do They do and Why?. Journal of Economic Literature March, 2000.
3. SCHANKERMAN, M., 1998. How Valuable is Patent Protection? Estimates by Technology Field. RAND Journal of Economics, Vol. 29, pp 77-107.
4. MASKUS, K. and M. PENUNBARTI, 1995. How Trade-related are Intellectual Property Rights? Journal of International Economics, 39, pp 227-248.
5. MANSFIELD, E., 1986. Patents and Innovation: An Empirical Study. Management Science 32, no. 2: pp 173-81.
6. LANJOUW, J., 1997. "The Introduction of Pharmaceutical Products Patents in India: Heartless Exploitation of the Poor and Suffering?". NBER Working Paper 6366.
7. GOULD, D.M. AND W.C. GRUBEN. 1996. "The Role of Intellectual Property Rights in Economic Growth." Journal of Development Economics 48:323-350.
8. LONG, P.O. 1991. "Invention, Authorship, Intellectual Property and the Origin of Patents: Notes Toward a Conceptual History." Technology and Culture, Special Issue: Patents and Invention, Vol. 32(4).
9. PARK, W.G. AND J.C. GINARTE. 1997. "Determinants of Patent Rights: a Cross-National Study." Research Policy 26: 283-301.
10. SHERWOOD, R.M., V. SCARTEZINI, AND P.D. SIEMSEN. 1999. "Promotion of Inventiveness in Developing Countries Through a More Advanced Patent Administration." IDEA: The Journal of Law and Development 39(2).
11. CHIN, J.C. AND G.M. GROSSMAN. 1988. "Intellectual Property Rights and North-South Trade." National Bureau of Economic Research Working Paper. No. 2769.
12. Government of India, Ministry of Commerce and Industry, Department of Industrial Policy and Promotion, 2013-14 Annual Report.