



## NEWSLETTER

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CENTRE FOR RESEARCH IN CORPORATE LAW AND GOVERNANCE

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### About CRCLG...

Taking the legacy of standing distinct in the field of academic excellence in legal education, Army Institute of Law, Mohali, launched the Centre for Research in Corporate Law and Governance (CRCLG) in 2018 to provide to its scholars, a deep insight into the contours of corporate conundrums.

CRCLG, as a multi-faceted functional body, looks forward to conduct workshops, panel discussions, seminars, conferences, and guest lectures by the leading and eminent scholars from the legal field. It effectively deals with the discipline, balances and imbalances of corporate law exhaustively to provide to the readers a holistic understanding of the subject and matters connected and incidental thereto. It shall work promptly to promote and provide:

- comprehensive research; preparing the students with analytical skills to critically evaluate legal provisions of corporate law & governance.
- in-depth study of corporate law and governance interwoven with its economic, business and legal context with particular regard to how corporate law and governance mechanisms facilitate or inhibit economic activity.
- to provide a new way of thinking about the growing challenges in corporate law and how to respond to them.

Dealing with the traditional issues and the contemporary ones, the newsletter shall give the reader an opportunity to fathom into the corporate world.

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# INTELLECTUAL PROPERTY RIGHTS: AN OVERVIEW

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**NISHANT TIWARI  
(3RD YEAR)**

## INTRODUCTION

Since the origin of early economics and branches of business, the commodities have been invariably divided into 'assets' and 'liabilities'. The roots of the intellectual property rights lie right here intertwined with these two terms of business.

'Assets' can be broadly classified into 'tangible assets' (like house, car, building, machinery etc.) and 'intangible assets' (such as human resources, business relationships, brands, know-how, amongst others).

These intangible business assets are:

1. Results of human creativity- industrial models, concepts, songs, trademarks, inventions, literature, inter alia, and,
2. Can't be materially evaluated the worth of.

Therefore, they are guarded against the cheating and malpractices by issuing a promissory license in favor of the inventor or the founder, which simultaneously bars the others from claiming a right on that technology or the brainchild of the founder. In lay man's terminology, this is the arena of 'intellectual property rights' that is guarded by copyrights and

patents. They allow the owner to be completely benefitted from the abstract idea that he has given a concrete form of utility to. These legal rights bestow an exclusive right on the inventor (or the assignee thereof) to utilize his creation for a given period of time.

## CLASSIFICATION OF Intellectual Property

Intellectual Property can be widely classified into three sub-categories:

1. Copyright and related rights: literary and artistic works related databases. These are protected legally from infringement.
2. Industrial Property: trademarks, patents, and industrial designs. These create a justiciable claim in favor of the owner too.
3. 'Soft' Intellectual Property: secrets, know-how, confidentiality.

These are not protected specifically by registration and IP legislations. Protection of Intellectual Property Rights.

Protection of IPR allows the innovator/brand owner/patent holder/copyright holder to benefit from his/her work, labor and investment, which does not mean monopoly of the intellect. This has also been stated in the International Declaration of Human Rights, which duly provides for the right to benefit from the protection of the moral and physical interests resulting from the right holder's work; literal or artistic product.

## **Laws Related to Intellectual Property Rights in India**

After the Venetian Ordinance, the course of IPR was treaded upon by England (1623), the United States (1760), rest of the European nations (1880-1889).

In India, the Act that was introduced in 1856 in the form of India Patent Act, that remained in force for more than 50 years, and was later revised and called the "Indian Patents and Designs Act, 1911". A complete bill on patent rights was brought into force in 1970, which was called "The Patents Act, 1970".

In India, 'copyrights' were protected under the Copyright Act of 1957, 'trademarks' under the Trade & merchandise Marks Act of 1958, 'patents' under the Patents Act of 1970 and 'designs' under the Designs Act of 1911.

India, which is also a signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), started growing in the IPR regime too in order to meet the domestic and international demands.

After enactment, and humongous amendments, the following are the essential legislations relating to the Intellectual Property Rights in India:

**Patents Act, 1970**, as effectively amended in the year 1995, 1999, 2002 and 2005 to meet its obligations under the TRIPS agreement.

**Trade Mark Act, 1999**, as the consolidated term for the law of trademark is, after the enactment of the Act of 1999. The Trade Mark Bill, which was laid in the Parliament was an enactment of the Act of 1999. The Trade Mark Bill, was an updated version of the Trade and Merchandise Marks Act, 1958, to facilitate the trading and commercialization globally. Although it could not be passed but it served as inoculate for the next Act of 1999 that was passed with due review and deliberation.

### **The Designs Act, 2000**

For the protection of coming up industrial designs in science and technology, an effective judicial system had to be put up in place, and that is why this Act was brought into being. Under this Act only 'artistic part' is provided a legal remedy for.

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

This field is relatively new in India and grew as a result of outsiders patenting turmeric, neem, and basmati, which are essentially products of Indian soil.

To avoid any such incidents of conflict, this Act was passed to bar people from patenting goods based on geographical locations, indicating the goods were not from the Indian territory.

### **Copyright Act, 1957:**

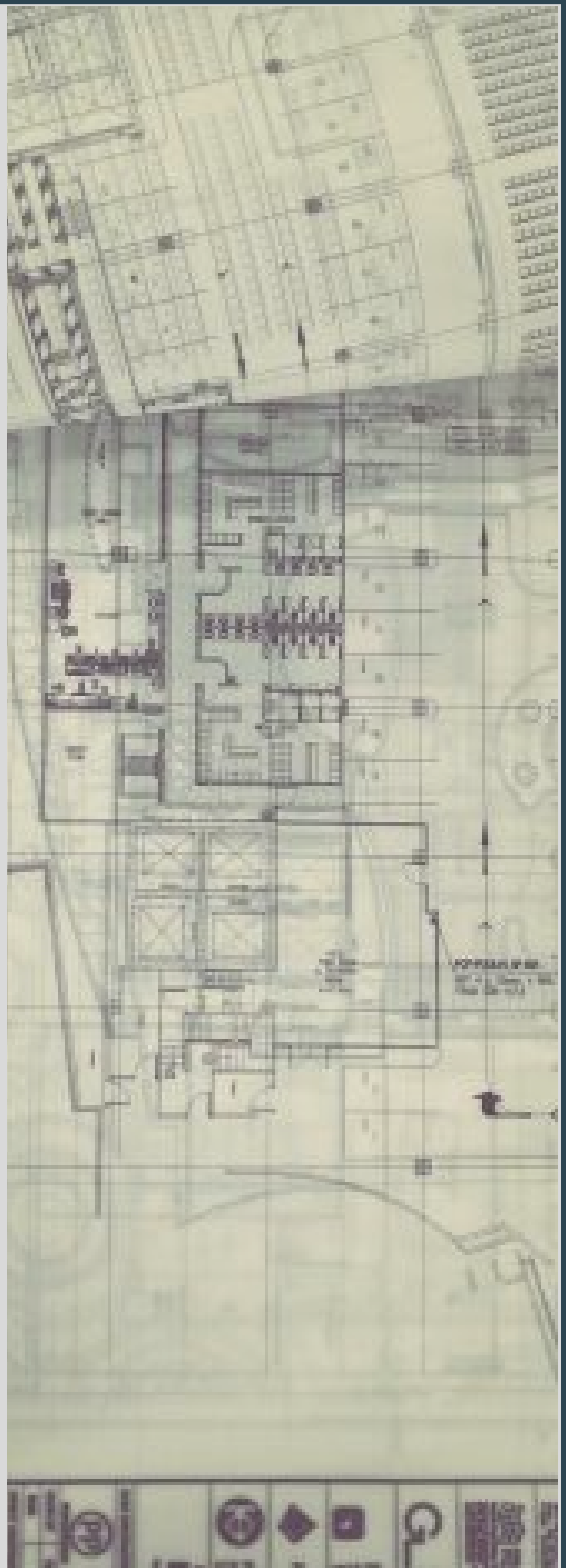
One of the oldest Acts in India in relation to the IPR, this Act aims to protect the right of literary, musical, artistic works, including cinematograph films and sound recordings of the owner until his lifetime and 60 years after his death.

### **The Protection of Plant Varieties and Farmers' Rights Act, 2001:**

Being an agrarian economy, India's R&D is vastly growing in the field of plant breeds, which made it pertinent for us to have an efficient system of protection of innovation in the agricultural process throughout. In accordance with Article 27 of the TRIPS Agreement, protection was given to the plant varieties or combinations thereof.

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

In the last three decades, due to information technology being one of the fastest growing sectors of this economy which also needed expertise knowledge and humongous efforts, the patenting option has been made available for the microelectronics sector too, which primarily concerns with the Integrated Circuits (ICs), ranging from the SSI (Small Scale Integration) to VLSI (Very Large Scale Integration).



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# IPR AND SUSTAINABLE DEVELOPMENT

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**SUNIDHI SINGH  
(3RD YEAR)**

“Intellectual property as a policy exists to create an enabling environment for – and to stimulate investment in – innovation; to create a framework in which new technologies can be traded around the world and shared. The economic imperative at the heart of innovation is fundamental to the process of societal transformation that the Sustainable Development Goals aim to achieve.”

-Francis Gurry  
WIPO Director General

A few hundred years ago, successful innovation was largely a matter of luck. Today, IPR has made innovation a systematic and reliable endeavor. It facilitates the growth of knowledge, provides an economic incentive to invest and seeks to balance competing interests.

Intellectual property includes all intangible and tangible creations of the human intelligence and Intellectual Property Rights are rights of the innovators over their ideas, plans and innovations so that the innovation can be encouraged without the fear of malpractices by

competitors.

The growing inter-connected populations need new ways to address the many social, economic and environmental challenges of the present day world. We are in great need of innovation to help us rethink how to overcome poverty, hunger, combat climate change, preserve our natural environment and use artificial intelligence and create an inhabitable environment for the coming generations. The value embedded in intellectual property rights supported by the global IP system provided by the WIPO (World Intellectual Property Organization) boosted the creativity that drives progress, helping us meet our greatest needs and aspirations in many ways to achieve sustainable development.

Education is both an important goal and a prerequisite for spurring economic growth, reducing inequalities and promoting peace, justice and strong institutions. The copyright system supports education by encouraging the creation and sharing of new knowledge and information products. The IP system also supports innovation in healthcare by encouraging investment in new drugs and technologies for our benefit. In addition to that, the IP system encourages in the growth of and investment in new sustainable inventions to protect the environment which will further help



in providing sustainable solutions to bigger problems like climate change.

From the beginning of growth of mankind, successive eras of development have witnessed a mutually reinforcing dynamic of technological breakthroughs, follow-on inventions and social change which have underpinned new efficient economic structures and more prosperous societies. The next generation of technologies in every field, from biotechnology, blockchain and digital connectivity to material science, many creations and innovations along with artificial intelligence promise to further reduce poverty and improve the lives of billions of people. Intellectual property is essential to nurture the innovation-transformation-progress cycle. Therefore, the development and diffusion of innovative technologies is critical to achieving all sustainable development goals.



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# CAN AI BE USED TO IMPROVE THE ADMINISTRATION OF IP?

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**SHIEKHAR PANWAR  
(2ND YEAR)**

“AI is clearly an area of rapid growth and immense opportunity for innovation. But the patent system will have to work very hard to ensure that it remains precisely that - an opportunity.”

-Grant Philpott, CEO ICT

## **Artificial Intelligence (AI) in improving the administration of IP**

AI systems will play an increasingly important role in IP administration in the future. Given the costs associated with gathering and cleaning large corpuses of data to feed AI-systems, we need to encourage the sharing of resources. I would hope that in deploying the AI-based systems of the future, the international IP community can work together to achieve high levels of inter-operability in a cost-effective manner. IP administrative tasks are one of the most time intensive and risky areas of IP. Law firms and corporate IP departments may, at any time, cover thousands of individual items of IP data, across hundreds of jurisdictions, dealing with thousands of different

products. Historically this has been a significantly manual and slow process. Even if one single patent is considered that a company has applied for protection for in many different countries. A network of agents, familiar with the specific processes required to gain protection in specific countries, will each help the company achieve their goal. Along the way, hundreds of items of paperwork will be generated, in multiple languages, each with their own challenges and opportunities. All of this information would currently be assessed manually and then input into an IP management system. Naturally enough this could easily result in many data processing errors. Now consider this across multiple patents. The opportunities for error are almost limitless. Yet for many companies IP remains its most valuable asset. A simple error in inputting a renewal date could risk losing an asset worth million to a company.

It is worth noting that the World Intellectual Property Organisation (WIPO) estimates around a quarter of patent information is wrong. The risks are therefore very evident.

In addition, considerable time and cost accrues from the manual labour involved in inputting data. This is activity that, if it can be automated, frees law firms and IP experts to focus on more strategic issues.

AI, which is highly adept at processing large sets of data quickly and accurately, can help both efficiency and accuracy. This also enables law firms and IP professionals to take on a more strategic role within the organisation, generating insight from data to help shape future company performance, whilst leaving the more mundane aspects of IP management to computers. By automating the submission of data and ensuring that every single item of IP has a unique identifier, correspondence from the various patent offices and agent networks can be simply sorted and searchable on demand. An AI engine can then be deployed to identify relevant information in correspondence, resulting in faster and more accurate outcomes.

### **Analytics**

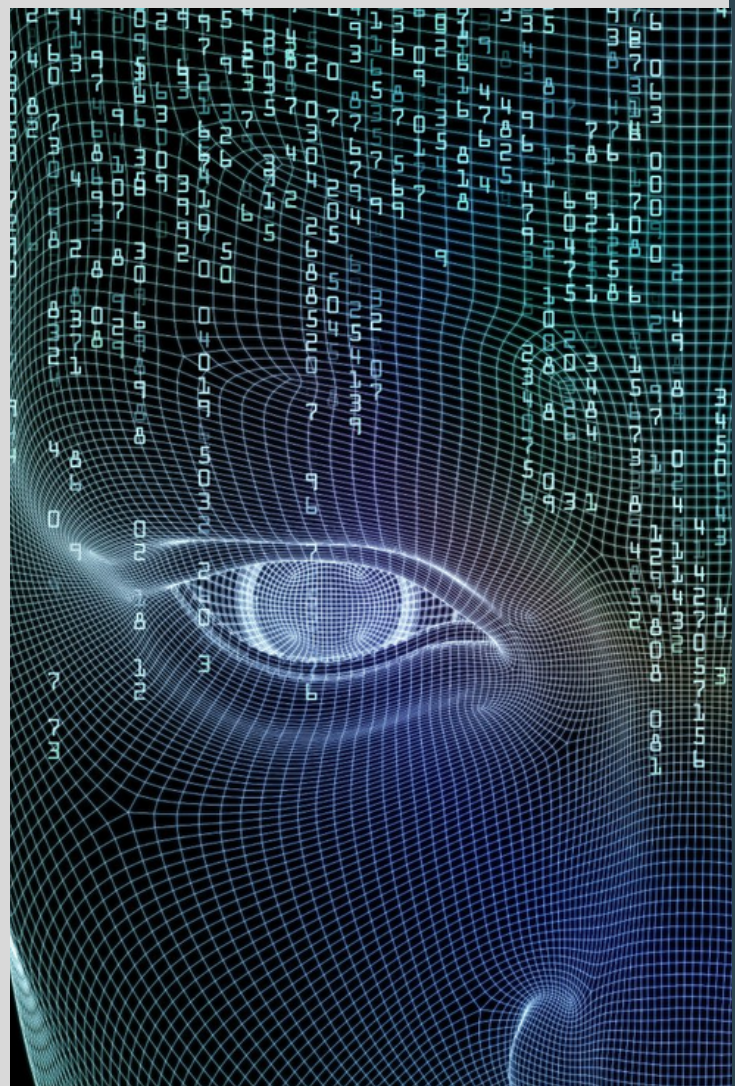
The number of IP assets globally is growing. According to the WIPO there was a 7.8% growth in patent filings between 2014 and 2015. This upward trend in filings has continued for at least 20 years. Therefore, IP documentation and resources are growing. Finding relevant information in this vast amount of data is becoming more difficult. Historically, searches have been carried out manually, with static search databases being the only support tools. AI and Machine Learning (ML) can not only automate

the process of searching huge databases but also store and use previously collected data to improve the accuracy of future searches. AI can also be used to provide insight into a geographical or vertical market. Consider a company looking to exploit IP in new regions. It may wish to consider the best countries to file for protection. Insight into the strengths and weaknesses of markets in certain countries could be cross referenced with competitive IP data to deliver an instant overview of the most beneficial geographies to apply for further protection. Research that would have previously taken months to achieve can be managed in minutes by deploying AI in an effective way.

### **Barriers to the widespread deployment of AI**

powered systems among IP offices Building AI capacity is a major challenge for all IP offices. While AI has been around for some time, only recently has it become an obvious technological solution. The number of professionals with the required training and knowledge is very limited. This makes developing in-house AI capacity difficult, particularly in the face of competition from better-resourced, higher-paying private enterprises. Smaller IP offices face some specific challenges. AI systems depend on

data (and algorithms) and smaller offices naturally have access to less data. That means the imperative of volume, which is forcing the development and deployment of AI applications in larger offices, is less strong in smaller offices, where the volume of applications remains manageable. That said, in the IP world, we do have a generally accepted policy of open access to data relating to IP registrations for patents, trademarks and designs. That will help the smaller IP offices, which, in principle, can access these data. Overcoming these challenges will require greater emphasis on collaboration and coordination.





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# INTELLECTUAL PROPERTY RIGHTS LAW: DEPLOYING BLOCKCHAIN AS AN AUXILIARY RESOURCE

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**AJAY PAL SINGH & RAHIL SETIA  
(3RD YEAR)**

The concept of Intellectual Property has its origin in the desire to protect the “intangible creations of human intellect”.

Black’s Law Dictionary defines the concept as a “category of intangible rights protecting commercially valuable products of the human intellect. The category thus comprises primarily of trademarks, copyrights, and patent rights, but also includes trade secret rights, publicity rights, moral rights, and rights against unfair competition”. Thus, the Intellectual Property Rights (IPR) law confers a catena of legal rights upon the owners of intangible property to acquire the monopoly to commercially utilize their proprietary intellectual creations. This domain makes a significant departure from the traditional legal conception of property. Therefore, its recognition hasn’t been without obstacles as it

was for long held that “knowledge, conceptions, and ideas after their voluntary communication to others, areas free as air to common use.” Nonetheless, the 20th century has witnessed gradual recognition of the concept of IPR by the majority of the world’s legal systems. However, while the IPR law has crystallized and developed, yet there is an immense scope for interplay of the IPR law, with new disruptive technologies of the 21st century.

One such technology is the Blockchain. The technology in its fundamental sense, is an open ledger of information which is utilized for recording and tracking transactions, by exchanging and verifying them on a peer-to-peer network. The result is the creation of a chain of information which is secure, time stamped and incorruptible. There is a two-way relationship between IPR and blockchain.

On one hand, IPR laws protect the blockchain technology by regulating entities which have filed the patents over the technology using blockchain as a base and at the same time, blockchain technology can be utilized to strengthen the IP regime as well. While so far blockchain has witnessed only a limited deployment in fields such as Crypto currency and Fintech its vast potential in ensuring brand protection, enforcement and prosecution marketing & consumer

engagement has been recognised. For instance, it is being actively used for tracking goods in supply chains in pharmaceutical, automotive, luxury and consumer goods industries as these are IPR intensive sectors, which require traceability and prevention of counterfeits. Further blockchain offers possibilities for cost effective IPR protection such as evidence and authentication of intellectual property during registration, digital rights management through prompt synchronization and updates, licensing, preventing unauthorized distribution and counterfeits. Infact blockchain technology may be used for the next generation of "Smart Contracts", as these contain the terms which can be registered through digital ledgers that would provide an immutable record of events in the life of a registered IPR.

Finally, blockchain technology can be helpful in identifying the rightful inventor/creator/proprietor, which would minimize a significant number of litigations concerning these matters.

Unfortunately, though, the blockchain technology has certain technical drawbacks and legal limitations, which greatly increase the cost of the technology and render it economically infeasible to be utilized as an IPR data base. From a legal perspective the main obstacle is the reluctance of the statutory law to recognize the

validity of the system of encryption utilized under the blockchain technology. For instance, Section 88A of the Indian Evidence Act 1872 states that the Court shall not make any presumption as to the person by whom an electronic message was sent. Thus, it becomes extremely complex, to enforce a blockchain record if signature which is obtained through the blockchain encryption technology is used, and the same was not obtained under the Information Act, 2000.

Therefore, courts of varying jurisdictions in India have regularly refused to accept blockchain records as admissible evidence. At the same time, the regulatory authorities have adopted an attitude of hostility towards the technology. For instance, the Reserve Bank of India, through public notices on December 24, 2013, February 01, 2017, December 05, 2017 and April 6, 2018 has cautioned citizens not to use Crypto currency and in effect the blockchain technology. From a technological perspective blockchain faces several obstacles before it can witness a more widespread adoption.

In this regard, the first issue, is that of slow speed in handling transactions leading to poor performance and very high energy consumption.

Secondly, the presence of multiple

players in the blockchain industry means that there is a lack of requisite standardization or interoperability.

However, in spite of the apparent laxity on the part of the governments in dealing with the blockchain technology, few researches have taken place in the field. Thus, the NITI Aayog in India has explored the development of a platform called 'India Chain' which will serve provide blockchain-enabled infrastructure for Indian enterprise and governance.

It is hoped that necessary reforms and governmental participation will truly transform blockchain into a reliable and efficient technology which will provide full benefits of an auxiliary in the IPR life cycle.



# EMERGING TRENDS OF INTELLECTUAL PROPERTY RIGHTS IN DEFENCE SECTOR

JIVANTIKA GULATHI  
(5TH YEAR)

## INTRODUCTION

Intellectual Property Rights or IPRs are made up of the intellectual creations by humans and institutions. There are variety of IPRs such as Trademark, Patents, Copyrights, Geographical indications and Industrial designs.

As per the Defence Production Policy 2018, the Government of India under the flagship scheme of "Make in India" programme called for the need for the development of Defence production in our country with export to friendly countries. The annual turnover of this sector is approximately Rs 1,70,000 crores in the Aerospace industry. By 2025, further investment of Rs 70,000 Crores with employment generation of 2-3 million population. The Defence has the vision to reach the mark of Rs 35,000 crores in Defence products and services by the year 2025. The Government has come up with the MAKE-I and MAKE-II category processes along with

Strategic Partnership Models, enhancement of Foreign Direct Investment, restriction on licensing, denotifying of several goods and products earlier manufactured by Ordnance Factory Board, etc. However, going through the grass root levels,

it requires a good Research and Development (R&D) both in Government and private sectors. The advancement in the IT industry, nano-technology and biological sectors will have a deeper impact on the military operations and also at the same time requires effective and rapid Defence development in the wake of reduction predictability of futuristic needs.

The Intellectual Property Rights Facilitation Cell was established by the Department of Defence Production on 4th April, 2018 for advancement of IPRs in Defence sector.

The Government launched the "Mission Raksha Gyan Shakti" on 27th November where the Defence Public Sector Undertakings (DPSUs) and Ordnance Factory Board (OFB) shall promote self reliance and sufficiency in the defence sector. It is known that the state can have the ownership of the IPRs, joint ventures with the private sector which is signed between the Government and private developers, For example to jointly develop software applications and products in September 2018.

However, not much emphasis and contribution has been made in securing domestic IPRs.

## **DEVELOPMENTS IN DEFENCE IPRS**

Under the Make in India initiative two categories are made, i.e, MAKE-I Category where funding is predominantly made by the Government and the MAKE-II category where it relies on import substitution and major funding by private industry. It also focuses on developing the IPR Facilitation cell for providing regular advice on the trademarks,

Patents and Copyrights, organizing workshops with professionals like Engineers and Scientists and provision of IPR tracker in various arenas. The Hindustan Aeronautics Limited (HAL) has aligned with the Government of India for developments in the aerospace sector namely, Fuselage, Avionics and Engine. The Light Combat Aircraft (LCA) Tejas took more than 30 years for its induction in the Indian Air force (IAF) as it had to undergo several trials and completions. These factors are Fuselage (body of the airplane), Engine and Avionics like Radar, bombing and guidance system. Still the engine is imported from General Electric which is manufactured by U.S.A. Till now HAL has filed 148 IPR applications where applications have gone up to 1425.



In cases of shipping industries like the Garden Reach Shipbuilders (Kolkata) have patents for stiffened steel deck system and double lane portable steel bridges. Developments have also been made as a joint venture between the Government and private developers in computer applications and software.

In cases of dual technologies, the private developer can use it for civil purposes and the Government of India for military purposes. The Foreground information stays with the Government. In other cases, it can be jointly owned by the parties.

In Background information, it stays with both parties. The Developer however, has to take prior permission from government for disclosing it to third party.

## **LEGAL ISSUES AND RECOMMENDATIONS**

The legal issues involved are:

1. How much time will it take to get IPRs for supporting speedy disposal of applications?
2. Who will decide whether there is an invention or not? Conflict of interest will prop up between the Government and Developer? Do we need expertise organization for deciding the same?

In the wake of all these issues, some of the recommendations are as follows: 1. Requirement of a common

IPR policy and setting out the guidelines used with other countries.

2. Signing separate agreements between the Government and Developers will be difficult.

3. Public Private Partnership between the Government and private suppliers.

4. Focus on MAKE FOR INDIA rather than MAKE IN INDIA.



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# TRADEMARK VIS-À-VIS UNFAIR TRADE PRACTICES

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**MANNAT MEHTA  
(5TH YEAR)**

Protection against unfair competition has been recognized as one of the main objectives of Intellectual Property System, which prohibits any act of competition that is contrary to honest practices in industrial or commercial matters, referred to as “unfair competition”.

The acts of unfair competition not only adversely affect the competitors, which tend to lose their customers and market share; but also affect consumers as they are likely to be misinformed and misled and tend to suffer economic and personal prejudice.

Whatever form unfair competition may take, it is in the interest of honest and legitimate entrepreneur, the consumer and the public at large that they should be prevented from it as early and as effectively as possible. Free and fair competition between enterprises is considered to be the best means of satisfying supply and demand in the economy as well as serving the interests of consumers and economy as a whole. This stimulates innovation and productivity and leads to the

optimum allocation of resources in the economy; reduces costs and improves quality; as well as accelerates economic growth and development.

The aim of Trade Mark Law is not to hinder, rather promote fair competition in markets for products desirable by the customer. Any act of competition that is contrary to honest practices in industry or commerce is known as unfair competition. In other words, unfair trade practice means a trade practice, which, for the purpose of promoting any sale, use or supply of any goods or services, adopts unfair method, or unfair or deceptive practice. To be precise, competition becomes unfair when its effects on trade, consumers, and society as a whole are more detrimental than beneficial. Art. 10 of the Paris Convention for Protection of Industrial Property recognizes and upholds general principles of law that encourage honest business practices, discourage undesirable market behaviors, ensure fairness in competition and thereby, supplement the protection of all intellectual property.

The Law of Unfair Competition Serves Five Purposes.

First, the law seeks to protect the economic, intellectual, and creative investments made by businesses in distinguishing themselves and their products.

Second, the law seeks to preserve the goodwill that businesses have established with consumers.

Third, the law seeks to deter businesses from appropriating the good will of their competitors.

Fourth, the law seeks to promote clarity and stability by encouraging consumers to rely on a merchant's goodwill and reputation when evaluating the quality of rival products.

Fifth, the law seeks to increase competition by providing businesses with incentives to offer better goods and services than others in the same field.

Trademark Law is perhaps the oldest of the intellectual property laws which is solely based upon a merchant's right to identify its goods and services with a unique name, logo or symbol that alerts the public to the fact that the good or service comes from a particular source. At its core, Trademark Law is designed to protect consumers against confusion as to the source of goods or services and to protect a merchant's investment in trademarks that have earned goodwill and to prevent others from using or creating deceptively similar marks or names for goods or services that compete directly with the merchant. Economic competition is based on the premise that

consumers can distinguish between products offered in the marketplace. Competition is made difficult when rival products become indistinguishable or interchangeable. Part of a business's identity is the goodwill it has established with consumers, while part of a product's identity is the reputation it has earned for quality and value. As a result, businesses spend tremendous amounts of resources to identify their goods, distinguish their services, and cultivate good will.

When competitors share deceptively similar trade names, trademarks, service marks, or trade dress, a cause of action for infringement may exist.

The law of unfair competition forbids competitors from confusing consumers through the use of identifying trade devices that are indistinguishable or difficult to distinguish. Actual confusion need not be demonstrated to establish a claim for infringement, so long as there is likelihood that consumers will be confused by similar identifying trade devices.

The law of unfair competition claims its origin from principles of equity and torts, law of unfair competition has been recognized as a necessary tool for protecting the goodwill of an enterprise and preventing competitors from misusing such goodwill.

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# EX-OFFICIO BORDER MEASURES FOR INTERCEPTING COUNTERFEIT GOODS IN INDIA

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**AKSHAY RATHAUR  
(5TH YEAR)**

In India, the market selling the fake and counterfeit products are widespread. The market for such fake products are available in almost every metropolitan cities and has been spreading like a spider's web. A recent report by the United States Trade Representative (USTR) has named Nehru Place and Palika Bazaar in New Delhi, Richie Street and Burma Bazaar in Chennai, Manish Market, Heera Panna, Lamington Road and Fort District in Mumbai, and Chandni Chowk in Kolkata as markets that need to be watched out for this high-volume trade. As per the Worlds News Report, nearly 30% of the automobile components in the market in India are counterfeit, about 21% of mobile phone sales in India are unauthorized or counterfeit, more than 10% of IT products in the market are counterfeit, fake luxury goods in India are likely to command a market of Rs6,000 crore in 2016[1].

In 2007, as a measure to prevent infringement of patents, trademarks and copyrights, the Indian Government introduced IP Enforcement Rules which allowed an IP holder to approach customs officers at the port where the infringing goods are suspected to arrive, and request for suspension of clearance of goods[2]. It should be noted that the process of getting this done involves giving a notice in writing to the Customs authorities for recordation of a valid IP right. This process may take at least a month and may be either accepted or rejected by the Customs officials. If the said notice is accepted, the rights of an IP holder are registered with records of the Customs Department.

At the time of registration, the IP holder would require to issue either a General Bond or a Centralised Bond. The IP holder may choose to submit a General Bond which shall be in the nature of an undertaking that the IP holder will submit specific consignment wise bond backed by a security at the time of interdiction of the infringing goods[3].

Alternatively, the registered IP holder may submit a Centralised Bond for a value that he considers sufficient and in tune with the value of the infringing goods, all over India. This bond is uploaded online and is applicable to all the ports in India and the amount of the same is



used against future interdiction of goods that infringe the IP holder's rights. A Centralised Bond is preferable in case there is large scale counterfeiting of the IP holder's goods because this bond can be recharged at any time without the worry of needing to produce a consignment specific bond in a short time when infringing goods are interdicted.

The said rules allows Customs officials to act on their own enterprise and to either suspend the clearance of or seize goods if they have reason to believe that the said goods are infringing IP rights of another and are thus liable for confiscation under the principal Customs legislation. In order to exercise this ex-officio measure, the Custom officials are empowered to seek assistance, in the form of technical expertise or facilities, from the IP holder so as to determine whether the suspected goods are counterfeits, pirated, or otherwise infringe an IP right. The Customs officials are then permitted to destroy or dispose the goods outside the normal channels of commerce if the same is in agreement with the IP holder. It is pertinent to note that the Customs officials shall not be liable for any failure in detecting goods infringing IP rights, any accidental release of such goods, or any other action in respect of such goods as long as they were acting in good faith. It should also be jotted down that the IP holder must report

to the Customs office for the proceedings within stipulated time, failure to do so may result in the goods being released.

In conclusion, it can be said that the Indian Customs law provides for ex officio action and allows Custom officials to suspend the clearance of imported goods if there is prima facie evidence or reasonable grounds to believe that the goods are infringing.

#### **FOOTNOTES:**

[1]<https://www.worldtrademarkreview.com/enforcement-and-litigation/liability-intermediaries-effective-anti-counterfeiting-tool>

[2]<http://www.cbic.gov.in/htdocs-cbec/customs/cs-act/formatted-htmls/ipr-enforcementrules>

[3]<http://www.cbic.gov.in/resources/htdocs-cbec/customs/ppt-ipr-border-measures.pdf;jsessionid=76D71A961EB8DAEFA8C33F7043C4C096>

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# A CLOUD ON THE HORIZON – CENSORSHIP OF CONTENT ON OVER-THE-TOP (OTT) STREAMING SERVICES

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**SURBHI OJHA  
(5TH YEAR)**

OTTs are services and applications which are accessible over the internet and ride on operators' networks offering internet access services. Netflix, Amazon Prime, Hotstar, Voot and Apple TV are some of the prominent and illustrious examples of OTT platforms. In general parlance, there are three types of OTTs- Communications, Video content and Application Eco System. These platforms do not constitute 'Broadcasting' as under the Indian Telecom laws/regulations, the question with regards to censorship of content remains fairly ambiguous.

Interestingly, dissipation of content via OTT streaming services comes under the ambit of the Section 2(dd) Copyright Act, 1956. As per the section, "broadcast" is defined as communication to the public by any means of wireless diffusion (whether in any one or more of the forms of signs, sounds or visual images; or by wire, and includes a re-broadcast.

Impliedly, an OTT service will have to comply with all the provisions as under the stated act. However, the Copyright Act deals only with the aspect of intellectual property and not anything with regards to censorship is contained within the Act.

It is to be noted that the at present there is no regulatory body in India that monitors the distribution of content via OTT services. It is only in the cases of broadcast through Third Party Linear Channels (In case a streaming platform such as Netflix desires to broadcast (original) content on cable TV/Set top boxes) that the Telecom Regulatory Authority of India (TRAI) and the Indian Broadcasting Foundation (IBF) will monitor the distribution of content.

Seeing the steep rise of cases against the content offered on such media platforms, it has become indispensable to address the elephant in the room. Some of the widely publicized lawsuits faced by the companies include:

In July of 2018, a Congress party politician from the city of Kolkata lodged a complaint against Netflix and actor Nawazuddin Siddiqui over two particularly contentious scenes in Sacred Games that allegedly insult former Indian Prime Minister Rajiv Gandhi.

In December 2018, an organization

by the name of 'Justice for Rights Foundation', filed a case against Hotstar, Amazon Prime Video and Netflix for showing 'obscene and salacious' content and additionally demanded a regulator for the content shown online.

In absence of pertinent rules and regulations and taking into account the intolerant attitude of a majority of Indian audiences, these Online Curated Content Providers (OCCPs) have voluntarily signed a self-regulatory code for Best Practices under the aegis of the Internet and Mobile Association of India (IAMAI). Leading companies including Netflix, Hotstar, Voot, Arre, SonyLIV and ALT Balaji have assented and signed the said code.

While this code will sanction the OTTS to self-regulate, it will also give the audience a redressal mechanism, it further secures that any outside regulation is avoided and creative freedom is protected. Under the code, the providers will

classify their content into separate and distinct categories according to the age groups.

Interestingly, the government has seemed to have chosen to relent on self-regulation in OTT platforms, as in November last year, Amit Khare, Secretary at I&B, at an event in Delhi said that the government recognizes the need for self-regulation in OTTs but the video streaming platforms must strive to sign a common code. Moreover, in an affidavit to the HC, the Ministry of Electronics and Information Technology said: "The liberty of thought and expression is a cardinal value that is of paramount significance under our Constitutional scheme."

The Ministry also said that it was not empowered by the IT Act to issue any "certification with respect to broadcasting, publishing and/or transmission of any content whether in the form of streaming media/video, or any other digital form of the Internet."

## Examples of OTT



### SERVICES

Robinhood,  
Uber, Venmo



### CONTENT AND MESSAGES

Netflix, Skype, WhatsApp



### DEVICES

AppleTV, Roku,  
Solar Panels

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# DEVELOPMENTS IN IPR THAT YOU MUST KNOW ABOUT

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**OMVIR SINGH  
(4TH YEAR)**

Top IPR Policy and Legislative Developments made in last 3 years

## **1. Draft National E-Commerce Policy**

The Government released the Draft National E-Commerce Policy which recommends that e-commerce platforms (intermediaries) be mandated to undertake certain anti-counterfeiting and anti-piracy measures. Some of these proposals include:

(a) obligation on platforms to take TM owners' permission for high value goods;

(b) directly liability to refund customers and delist 'counterfeit goods' upon receiving complaints from individuals;

(c) return to the notice and takedown approach for copyrighted content;

(d) allowing an 'industry body' to identify so-called 'rogue websites' which host pirated content, and

forward such a list to intermediaries including ISPs, search engines and payment gateways, which will have a legal obligation to block access to such websites.

## **2. Patent Office's Publication of A New List of Scientific Advisors after 9 years**

The Patent Office released a list of 37 newly enrolled/ retained scientific advisors, who the courts have the power to appoint for assisting them in any proceedings, or report upon any questions of fact or opinion which do not involve a question of interpretation of law.

## **3. Introduction of Certain Guidelines and Amendments**

The Central Government introduced certain guidelines and amendments such as Draft Access and Benefit Sharing (ABS) Guidelines, 2019, Draft Guidelines for permitting the use of Geographical Indication (GI) Logo and Tagline, Draft Copyright (Amendment) Rules, 2019, Draft Amendment to Form 27 (Statement on Working of Patents) in the Draft Patent (Amendment) Rules, 2019.

## **4. Cinematograph Act (Amendment) Bill, 2019**

The Cinematograph (Amendment) Bill, 2019 was introduced in the Rajya Sabha with the objective of countering film piracy. The Bill proposed to criminalise



unauthorised use of an audio-visual recording device for making or transmitting a copy of a film or any part of it, with a punishment of three years of imprisonment or a fine of 10 lakh rupees or both. It proposes to mandate the same punishment for even attempting or abetting the same. The amendment disproportionately criminalises the mere act of making a copy of a film or any part thereof, which would include even making a short clip of a film on your phone for any purpose. It does not provide any exception even when it comes to transmission, thereby criminalizing even acts such as that of sending a short clip to a friend over WhatsApp. By overriding the provisions of the Copyright Act, the amendment fails to consider users' rights under Section 52 of the Copyright Act, which permits unauthorised use of copyrighted works for certain purposes, such as for private use, criticism or review.

### **5. Indian IPR Administrative offices opening up to new technologies**

Indian IPR administrative offices have taken several steps to introduce new, exciting technologies such as:

(1) Copyright Office has introduced Video-Conferencing for Hearing Applicants

(2) Proposal by the Controller General of Patents, Designs and Trademarks to Introduce AI

Blockchain and Internet of Things in IP Enforcement.

### **6. India Signed up to Internet Copyright Treaties**

A proposal to accede to the WIPO Copyright Treaty, 1996 ('WCT') and the WIPO Performance and Phonograms Treaty, 1996 ('WPPT') has been passed by the Union Cabinet. WCT sets out a framework for the protection of authors' rights in the digital environment and also makes the protection of computer programs and databases mandatory. The WPPT pertains to the rights of performers and producers of phonograms. It protects the rights of actors, musicians, singers and producers of soundtracks in the digital environment.

### **7. Intellectual Property Rights (Imported Goods) Enforcement Amendment Rules, Notified**

The Central Government amended the Intellectual Property Rights (Imported Goods) Enforcement Rules, thereby revoking the power of customs officers to seize imports on the basis of mere complaints of patent infringement. This amendment will, presumably, render the **Telefonaktiebolaget Lm Ericsson ... vs Union Of India & Ors.** judgment (wherein they had held that customs officers could suspend clearance of good if they had "reason to believe" patent infringement claims) invalid.

## **8. New Law to Hardcode Public Interest into Injunction Jurisprudence**

The Specific Relief (Amendment) Bill, 2017, which inter alia amends the law pertaining to the power of courts to grant interim reliefs in the context of infrastructure projects, was passed. A new Section 20A is to be inserted, along with Section 41(ha), which strips the power of the court to grant injunctions in contracts pertaining to infrastructure projects that would impede the progress of infrastructure projects. With respect to patents, the amendment would mean that no injunctions can be granted to patentees against the government or private contractors in cases involving contracts pertaining to electricity generation and distribution, and railways.

## **9. Copyright (Amendment) Act, 1999 and Copyright (Amendment) Act, 2012 repealed**

The Copyright (Amendment) Act, 1999, Copyright (Amendment) Act, 2012 and the Competition (Amendment) Act, 2007 was repealed by the government. While one interpretation of this action might have resulted in the conclusion that the substantive provisions of these amendments have been repealed, another would have suggested that post-amendment, the original

statute exists only as amended, and therefore repealing the amending act would not affect it. This latter interpretation has been backed by precedent from the Supreme Court of India.

## **10. Policy to Encourage Intellectual Property Awareness Amongst Youth**

The All India Council for Technical Education (AICTE) had released a circular announcing the 'Intellectual Property Talent Search Examination 2018'. This was launched jointly by the Associated Chambers of Commerce and Industry (ASSOCHAM) and Ericsson. The talent search will reward high school students (Class 9-12) and undergraduate students who score well on the online examination. This is in furtherance of the objectives laid down in the National IPR Policy 2016, one of which is "IPR Awareness: Outreach and Promotion".

## **11. Copyright Board Merged with Intellectual Property Appellate Board**

The Finance Act, 2017 passed by the Parliament merged the Copyright Board with the Intellectual Property Appellate Board. The Finance Act also provided for the promulgation of Rules, which laid down conditions related to the appointment and service terms of the members of various tribunals

including the IPAB.

## **12. Formation of Inter-Ministerial Group to Review Royalty Payment Outflows**

The Government formed an inter-ministerial group to check if its removal of restrictions on royalty payments by Indian companies to foreign collaborators is being misused by the foreign parent companies.

## **13. DIPP Signed a Deal with WIPO to Establish Technology and Innovation Support Centres in India**

Department of Industrial Policy and Promotion (DIPP) signed a deal with the World Intellectual Property Organisation to establish Technology and Innovation Support Centres (TISC) in India. 10. Revision of Guidelines for Computer Related Inventions Published The Indian Patent Office revised the guidelines relating to Computer Related Inventions. The omission of the requirement that patents for software could only be claimed in conjunction with novel hardware is considered to be the most important one.

## **14. Notification of Trademark Rules, 2017**

The Trademark Rules, 2002 were replaced by the Trademark Rules, 2017. The new rules, provide for fewer forms for applications,

incentivise e-filing as against physical filing, extend concessions to start-ups and individuals and lay down a process for determination of well-known marks.



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Contact the student conveners

or

E-mail us at:

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# EVENTS

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## **Past Events:**

- Intra-Institute Essay Writing Competition
- Guest Lecture on the Insolvency and Bankruptcy Code, 2016, by Mr. Siddharth Srivastava, Partner, Link Legal on September 19, 2019
- Legislative Drafting Competition

## **Forthcoming Events:**

- Sessions and Seminars
- Workshops

## **Events and Competitions to Look Out For:**

- Bill Analysis Competition and Seminar on "Nuclear Power for Future India" being conducted by the Deccan Education Society.
- Call for Recommendations: National Consultation on Personal Data Protection Bill, 2019 in Delhi  
No Fee; Submit by February 10th
- Colloquium on Goods and Services Tax Law at RGNUL, Patiala on February 27th  
Submit the abstracts by February 7th
- International Conference on "Arbitration in the Era of Globalization" - The Third Edition on Feb 08, 2020, New Delhi



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# MEET THE TEAM

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LAW AND GOVERNANCE

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