

# Intellectual Property Rights (IPR)

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## Concept of Intellectual Property Rights (IPR)

**Intellectual Property (IP)** signifies the creations of the mind, encompassing **inventions, literary and artistic works, and symbols, names, images, and designs** utilised in commerce. **IPRs** are pivotal in fostering investment in research by providing protection. This protection is essential because, without it, investors and inventors might not reap benefits from their creative endeavours.

## Types of IPR

### 1. Patents

A **patent** is an exclusive right conferred for an invention. It empowers the patent owner with the authority to determine how or if the invention can be utilised by others.

### 2. Copyright

**Copyright** is a legal term designating the rights that creators hold over their literary and artistic works.

### 3. Trademarks

A **trademark** is a distinctive sign that differentiates the goods or services of one enterprise from those of others.

### 4. Industrial Designs

An **industrial design** refers to the ornamental or aesthetic aspect of an article. It safeguards the appearance or aesthetic style of the design.

### 5. Geographical Indications

**Geographical indications** are signs used on goods with a specific geographical origin, possessing qualities, a reputation, or characteristics essentially attributable to that origin.

### 6. Trade Secrets

A **trade secret** involves a formula, practice, process, design, or compilation of information used by a business to gain a competitive edge. Unauthorized acquisition, use, or disclosure of such information is considered an unfair practice.

## World Intellectual Property Organization (WIPO)

### About WIPO

The **World Intellectual Property Organization** is a dedicated agency of the United Nations, focusing on the use of **intellectual property (IP)** as a stimulant for innovation and creativity. Established in **1967** and headquartered in **Geneva, Switzerland**, WIPO has **193 member**

**states** with India joining in **1975**. The organization is known for publishing the **Global Innovation Index**, an annual ranking that measures the innovation capabilities and achievements of countries.

### Objectives

WIPO's primary objectives are:

- To promote the **protection of intellectual property** globally.
- To ensure **administrative cooperation** among the IP Unions under the treaties administered by WIPO.

### Decision-making Structures

The **WIPO Convention** outlines WIPO's mandate, functions, finances, and procedures. Key points include:

- Decisions regarding WIPO's strategic direction and activities are made by the **member states**.
- The **WIPO Secretariat** coordinates formal and informal meetings of the member state bodies and administers **26 treaties**, including the WIPO Convention.

### WIPO Convention

The WIPO Convention, established in **Stockholm on July 14, 1967**, defines intellectual property to include rights relating to:

- Literary, artistic, and scientific works.
- Performances, phonograms, and broadcasts.
- Inventions in all human endeavour fields.
- Scientific discoveries, industrial designs.
- Trademarks, service marks, commercial names.
- Protection against unfair competition and all rights resulting from industrial, scientific, literary, or artistic intellectual activity.

## Trade-Related Intellectual Property Rights (TRIPS)

### Introduction

The **TRIPS Agreement**, effective from **January 1, 1995**, is a comprehensive international agreement on IP rights. It was formulated during the **Uruguay Round trade negotiations** of the **GATT** from 1986 to 1994 and is binding for all **World Trade Organization (WTO)** Member States. It encompasses various forms of IP, including patents, copyright, related rights, industrial designs, trademarks, geographical indications, trade secrets, and rights over new plant varieties. The **TRIPS Council** oversees the agreement's administration and operation.

### Main Features of the Agreement

#### Standards

- The TRIPS Agreement establishes minimum standards of protection for each main IP area, requiring compliance with the latest versions of the **Paris Convention** and the **Berne Convention**.

### **Enforcement**

- The Agreement specifies general principles and detailed procedures for IP rights enforcement, including civil, administrative, and criminal procedures.

### **Dispute Settlement**

- Disputes regarding TRIPS obligations are subject to WTO's dispute settlement procedures. The Agreement applies equally to all members, with extended phase-in periods for developing countries.

### **Substantive Standards of Protection Under TRIPs**

#### **Copyright**

- Covers a range of materials, offering economic rights for control and moral rights for recognition and protection against distortion or mutilation.

#### **Related Rights**

- Protects performers, producers of phonograms, and broadcasting organizations, setting minimum protection durations.

#### **Trademarks**

- Assists consumers in identifying products or services, granting exclusive usage rights to trademark owners.

#### **Patent**

- Protects new inventions, allowing legal actions against unauthorized use, and requires member countries to make patents available for all technology fields.

#### **Geographical Indication (GI)**

- A sign used on goods with a specific geographical origin, indicating unique qualities or characteristics attributable to that origin.

## **Indian Patent Act, 1970**

The **Indian Patent Act (IPA) 1970**, which became effective in 1972, marked a significant turning point in the history of the patent system in India. It brought about substantial changes, especially in the health sector, by prohibiting the grant of product patents and limiting the validity of process patents in these sectors to seven years from the date of filing or five years from the date of sealing, whichever was earlier.

This legislation played a crucial role in establishing India as a leader in the production of high-quality generic drugs, serving global markets. Post-1970, Indian companies began dominating the industry, occupying seven of the top ten positions.

### **Key provisions**

## **Section 2: Definitions**

- **Patentee:** Defined as the individual or entity registered as the proprietor of the patent.
- This section also clarifies other essential terms, ensuring uniform understanding and application throughout the Act.

## **Section 3: Non-patentable Inventions**

- Lists inventions that are not eligible for patents, including:
  - Inventions contrary to public order or morality.
  - Discoveries, scientific theories, and mathematical methods.
  - Plants and animals in whole or any part thereof other than microorganisms.
  - Essentially biological processes for the production of plants or animals.
  - Commercial exploitation which could be harmful to public health or environment.

## **Section 25: Opposition to the Grant of Patent**

- Allows for pre-grant and post-grant opposition to patents.
- Reasons for opposition can include lack of novelty, non-obviousness, or non-industrial applicability.

## **Section 48: Rights of a Patentee**

- Grants patentees exclusive rights, preventing others from making, using, or selling the patented invention without permission.
- Rights are subject to conditions and limitations as prescribed.

## **Sections 84-92: Compulsory Licensing**

- Provides for the issuance of compulsory licenses under certain conditions, such as:
  - Non-availability of the patented product.
  - Unaffordable prices of the patented product.
  - Non-exploitation of the patent in India.
- Aimed at ensuring that patents do not impede public health and access to technology.

## **Section 100: Government Use of Patented Inventions**

- Authorises the government to use a patented invention for its own purposes under certain conditions.

## **Sections 104-114: Penalties for Patent Infringement**

- Specifies penalties for infringement, which can include monetary fines or imprisonment.
- Also provides for judicial procedures and remedies in cases of infringement.

## **Section 159: Government's Rule-making Power**

- Empowers the Central Government to enact rules for implementing the Act's provisions.

## What Can Be Patented?

### Patent Subject

- **Section 3 and 4:** These sections of the **Indian Patents Act, 1970** outline the criteria for patentable subject matter.
- **Non-patentable Subject Matter:** Listed in these sections, excluding certain inventions from being patented.

### Novelty

- Defined under **Section 2(I)** as an invention that has not been published or part of the public domain anywhere before the patent application.
- The invention must be **new** and without prior similar or identical disclosures.

### Inventive Steps or Non-Obviousness

- Defined under **Section 2(ja)**, an inventive step must involve technological advancement or economic significance, and not be obvious to a person skilled in the relevant field.

### Capable of Industrial Application

- As per **Section 2(ac)**, the invention must be capable of being made or used in any industry, implying practical utility and not merely theoretical or abstract concepts.

## Rights and Obligations of the Patentee

### Rights of Patentee

- **Right to Exploit Patent:** Exclusive right to make, use, sell, or distribute the patented invention in India.
- **Right to Grant License:** Authority to transfer rights, grant licenses, or enter agreements. These must be registered with the Controller of Patents.
- **Right to Surrender:** Patentees can surrender their patents, subject to public notice and consideration of objections.
- **Right to Sue for Infringement:** Authority to initiate legal proceedings for patent infringement.

### Obligations of Patentee

- **Government Use of Patents:** The government may use or acquire a patented invention for public purposes without the patentee's consent or royalty payments.
- **Compulsory Licenses:** If the patent doesn't meet public requirements or is unreasonably priced, compulsory licenses can be issued.
- **Revocation of Patent:** Patents can be revoked if they do not satisfy public demand.
- **Invention for Defence Purposes:** Patents may be subject to secrecy provisions, with restricted publication and government use.

- **Restored Patents:** Lapsed patents can be restored, but the patentee's rights are limited, particularly regarding infringement actions during the lapse period.

### **The Novartis Case**

The landmark case of **Novartis v. Union of India & Others** revolved around the issue of pharmaceutical patent evergreening. In 2013, the Supreme Court of India rejected Novartis's patent application for a beta crystalline form of imatinib mesylate, an effective drug against chronic myeloid leukaemia (CML). The Court determined that the substance did not meet the criteria of novelty and inventiveness as outlined in the Indian Patent Act. This decision was significant in curbing the practice of patent evergreening in the pharmaceutical industry.

### **Significance of the Judgment**

The Supreme Court's decision in the Novartis case upheld a regime with a higher threshold of inventiveness, restoring the connection between patents and innovation. It tested the validity and scope of section 3(d) of the Indian Patent Act, which prevents granting patents for new forms of known substances unless increased efficacy is demonstrated. This ruling ensured the continued availability of low-cost generic versions of life-saving drugs based on imatinib or its polymorphs.

### **Compulsory Licensing & The Nexavar Case**

#### **Compulsory License**

Compulsory licenses authorize a third party to use, make, or sell a patented invention without the patent owner's consent. In 2012, India's first Compulsory License (CL) was issued to Natco for Nexavar, an anti-cancer drug produced by Bayer, under the Patents Act, 1970.

#### **The Nexavar Case**

In 2013, the Intellectual Property Appellate Board (IPAB) upheld the grant of a compulsory license to Natco Pharma Limited for producing and marketing Sorafenib, a patented cancer drug by Bayer Corporation. This decision was pivotal in reducing the prices of costly life-saving drugs. The case highlighted the issue of drug availability and affordability in India, leading to a significant reduction in the price of Nexavar, from Bayer's exorbitant rates to Natco's more affordable version.

### **Patents (Amendment) Rules, 2021**

The Patents Rules, 2003, were amended in 2021 to reduce the patent filing and prosecution fees for educational institutions by 80 percent. This move aimed to boost innovation and creativity in the knowledge economy. The reduced fee structure for educational institutions is now equivalent to that for natural persons, startups, or small entities.

## **Copyright Act, 1957**

### **What is Copyright?**

- **Copyright** is a legal right granting creators control over their literary and artistic works.

- It covers a wide range of works, including **books, music, paintings, sculptures, films, computer programs, databases, advertisements, maps, and technical drawings.**

### **Copyright Law in India**

- Governed by the **Copyright Act, 1957** and the **Copyright Rules, 2013.**
- Grants authors economic rights to reproduce, issue copies, perform, communicate, adapt, or translate their work.
- The law has undergone six amendments, the most recent being in **2012.**

### **Sections of the Copyright Act, 1957**

- **Section 13:** Offers protection to various works, including computer programs as literary works.
- **Section 2:** Defines the scope of works eligible for copyright.
- **Section 14:** Provides a set of exclusive rights to the copyright owner, such as adaptation, reproduction, and publication.
- **Section 17:** Establishes the author as the first owner of copyright.
- **Section 19:** Details the modes of assignment of copyright in India.

### **Two Types of Rights**

#### **Economic Rights**

- Enable right owners to gain financial rewards from their works' usage by others.
- Enshrined under **Section 14**, focusing on rights concerning literary, dramatic, and musical works.

#### **Moral Rights**

- Allow authors to preserve and protect their link with their work.
- Found in **Section 57**, encompassing the right of paternity and the right of integrity.

### **Exceptions to Infringement**

- Specified under **Section 52**, detailing acts that do not constitute copyright infringement, such as:
  - Fair dealing for personal use, research, criticism, review, and reporting of current events.
  - Transient storage in electronic transmission.
  - Reproduction for judicial proceedings or legislative work.
  - Public reading or recitation of extracts from literary or dramatic works.
  - Publication for instructional use.

### **Berne Convention and Copyright Act, 1957**

- India's adherence to the **Berne Convention** requires equal protection for works from contracting states.
- Emphasizes that registration of copyright is not mandatory for protection under the law.

### **Copyright (Amendment) Rules, 2021**

- Aims to align with other relevant legislations and promote electronic communication in the Copyright Office.
- Introduces provisions for undistributed royalty amounts and electronic payment methods for royalty collection and distribution.
- Mandates copyright societies to publish an Annual Transparency Report.
- Simplifies the compliance requirements for software work registration.
- Extends the time limit for government response to applications for copyright society registration.

### **The Delhi University Photocopy Case**

The **Delhi University Photocopy case**, also known as the **Rameshwari Photocopy Service case**, was a significant copyright law court case in India.

#### **The Accusation**

In 2012, academic publishers such as **Oxford University Press**, **Cambridge University Press**, and **Taylor & Francis** accused **Rameshwari Photocopy Service**, a shop licensed to operate within the Delhi School of Economics, and the **University of Delhi** of infringing their copyrights. The defendants were alleged to have photocopied, reproduced, and distributed copyrighted materials on a large scale, providing them to students and teachers of the university.

The publishers sought to restrain the photocopy shop from supplying photocopied course packs to students, claiming it violated the **Indian Copyright Act, 1957**. They also asked for compensation amounting to Rs.60,01200 and Rs.65000 for court fees.

#### **The Defense**

However, under the **Indian Copyright Act, 1957, Section 52 (1) (a)** allows any fair use and dealing with copyrighted matters like in a literary, dramatic, musical, or artistic work. This provision permits scholars and students to photocopy required data from books for research and private study.

#### **The Outcome**

The case sparked a significant debate about the balance between copyright protection and the public interest in accessing educational materials.

Ultimately, the **Delhi High Court** ruled in favor of the defendants, interpreting **Section 52 (1) (i)** of the Copyright Act as permitting photocopying of copyrighted works for the preparation of course packs.

The case was then remanded to the single bench for a fact-specific determination on whether the copyrighted materials included in the course packs in this case were necessary for the purpose of instructional use by the teacher to the class.

## Geographical Indication

### What is Geographical Indication (GI)?

- A **geographical indication** is a sign used on products with a specific geographical origin, embodying qualities, reputation, or characteristics essentially attributable to that origin, such as a town, region, or country.
- The use of a GI acts as a certification that the product possesses certain qualities, is made according to traditional methods, or enjoys a reputation due to its geographical origin.

### Why Does the GI Need to be Recognized?

- Every region has unique products that become their claim to fame, resulting from a blend of human skill and natural attributes, preserved and handed down through generations.
- The GI tag was developed to celebrate and recognise this unique identity linking products to their places of origin.
- In many countries, the legal protection for GIs is akin to that for trademarks, particularly certification marks.
- GI laws require that the use of GIs is restricted to products genuinely originating from the specified area and meeting certain standards.
- These laws may also mandate quality tests administered by an association with the exclusive right to license or allow the use of the GI.

### Legal Position Globally

- The **WTO Agreement on TRIPS** defines geographical indications as markers identifying goods as originating in a territory where their quality, reputation, or other characteristics are essentially attributable to their geographic origin.
- In 1994, WTO member countries agreed to set basic standards for GI protection.
- **Article 22** of the TRIPS Agreement mandates governments to provide legal means to prevent the misleading use of GIs.
- **Article 23** requires governments to protect GIs identifying wines not originating in the indicated place.
- The importance of protecting industrial property and GIs is emphasised in Articles 1(2) and 10 of the Paris Convention.

### Legal Position in India

- The **Geographical Indications of Goods (Registration and Protection) Act** was passed in 1999 and became effective in 2003, aiming to register and protect Indian GIs.
- Administered by the **Controller General of Patents, Designs and TradeMarks (CGPDTM)**.
- Any established organisation or authority can apply for a GI tag.
- Under the Act, producers dealing with region-specific agricultural, natural, handicraft, or industrial goods can apply.
- GI registration in India is valid for 10 years and can be renewed. Non-renewed GIs are removed from the register.
- A registered GI is public property, belonging to the goods' producers. It cannot be used for licensing or mortgage. The rights can be passed on to successors upon the demise of the authorised dealer.

### Significance of Geographical Indications

- GIs are specific to geographical territories and used for agricultural, natural, and manufactured goods.
- A GI tag necessitates that the goods are produced, processed, or prepared in the specific region and possess special qualities or reputation.
- GI tags offer legal protection in India, helping prevent misuse of registered GIs.
- Legal protection of GIs enhances exports and promotes the economic prosperity of producers, benefiting both the country's export market and the producers themselves.

### Some examples from India

State	Product
Andhra Pradesh	Araku Valley Arabica Coffee, Tirupati Laddu, Etikoppaka Toys, Udayagiri Wooden Carving
Arunachal Pradesh	Arunachal Orange, Idu Mishmi Textiles
Assam	Muga Silk, Karbi Anglong Ginger, Joha Rice
Bihar	Shahi Litchi, Madhubani Paintings, Sikki Grass Products, Maghai Paan
Chhattisgarh	Bastar Dhokra, Bastar Iron Craft
Goa	Feni
Gujarat	Sankheda Furniture, Agates of Cambay, Gir Kesar Mango, Kachchh Shawls

State	Product
Himachal Pradesh	Kullu Shawl, Kangra Tea, Kangra Paintings, Himachali Kala Zeera
Karnataka	Mysore Silk, Channapatna Toys & Dolls, Mysore Rosewood Inlay, Udupi Sarees, Coorg Arabica Coffee, Mysore Sandalwood oil
Kerala	Alleppey Coir, Navara Rice, Alleppey Green Cardamom, Kasaragod sarees, Nilambur Teak, Screw Pine Craft
Madhya Pradesh	Chanderi sarees, Jhabua Kadaknath Black Chicken, Ratlami Sev
Maharashtra	Solapur Chaddar, Nashik Valley Wine, Paithani Sarees and fabrics, Kolhapur Jaggery, Sindhudurg and Ratnagiri Kokum, Alphonso
Manipur	Chak-Hao, Kachai Lemon
Mizoram	Mizo Chilli, Pawndum
Nagaland	Naga Mircha
Odisha	Kotpad Handloom Fabric, Konark Stone Carving, Odisha Rasagola, Habaspuri Saree and fabrics
Rajasthan	Kora Doria, Molela Clay Work, Bikaneri Bhujia
Tamil Nadu	Salem Fabric, Arumbavur Wood Carvings, Mahabalipuram Stone Sculpture, Thanjavur Art Plate, Madurai Malli, Kancheepuram Silk
Tripura	Tripura Queen pineapple
Telangana	Nirmal Toys and Craft, Adilabad Dokra, Cheriya Paintings
Uttar Pradesh	Lucknow Chikan Craft, Malihabadi Dussehri Mango, Banaras Brocades and Sarees, Kalanamak Rice, Kannauj Perfume, Chunar Balua Patthar
West Bengal	Darjeeling Tea, Dhaniakhali Saree, Banglar Rasogolla, Wooden Mask of Kushmandi

# Farmers' and Plant Breeder's Rights

## Introduction to Plant Breeder's Rights

- **Emergence:** Plant breeder's rights arose in the 1960s with the advent of the Green Revolution.
- **Purpose:** These rights provide legal protection for the investment made by plant breeders in developing new plant varieties, applicable to all plant species.
- **Nature:** Plant Breeders' Rights are a form of intellectual property specifically for plant varieties.

## Why Grant Plant Breeder's Rights?

- **Incentivisation:** These rights incentivise the development of new plant varieties, crucial for sustainable progress in agriculture and forestry.
- **Investment Recovery:** Breeding new plant varieties involves significant investment. These rights enable breeders to recover costs and fund further research.
- **Exclusive Rights:** Without these rights, breeders face risks of their varieties being commercially exploited by others.

## UPOV – International Union for the Protection of New Varieties of Plants

- **Establishment:** UPOV, formed in 1961 and effective since 1968, is headquartered in Geneva.
- **Revisions:** The convention has been revised in 1972, 1978, and 1991, with the 1991 Act being the current standard.
- **Mission:** UPOV promotes the development of new plant varieties by providing an effective protection system.
- **Eligibility Criteria:** For protection, varieties must be distinct, uniform, stable, and new.
- **Principles:** The UPOV Convention aims to acknowledge breeders' achievements by granting intellectual property rights.

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

### Introduction

- **Enactment:** The Government of India introduced the PPV&FR Act in 2001, aligning with UPOV 1978 and supporting the TRIPS agreement.
- **Purpose:** The Act acknowledges the contributions of both commercial breeders and farmers in plant breeding.

### Objectives of PPV & FR Act, 2001

- **Stimulation of R&D:** The Act aims to stimulate research investments in both public and private sectors.
- **Seed Industry Growth:** It seeks to grow the seed industry and ensure the availability of quality seeds to farmers.

- **Recognition of Farmers' Roles:** The Act recognises farmers as key contributors to agro-biodiversity and rewards them accordingly.

#### Varieties Registered under PPV & FR Act, 2001

- **Criteria for New Varieties:** Novelty, distinctiveness, uniformity, and stability.
- **Criteria for Extant Varieties:** Distinctiveness, uniformity, and stability.

#### Rights under PPV & FR Act, 2001

- **Breeders' Rights:** Exclusive rights to produce, sell, market, import, or export the variety.
- **Researchers' Rights:** Rights to use registered varieties for research.
- **Farmers' Rights:** Rights to register, save, use, sow, and sell their produce. Includes eligibility for recognition, rewards, and compensation.

#### Implementation of PPV & FR Act, 2001

- **Establishment of Authority:** The Protection of Plant Varieties and Farmers' Rights Authority was established in 2005.
- **Objectives:** To protect plant varieties, rights of farmers and breeders, encourage new plant variety development, and stimulate the seed industry growth.
- **Role of the Authority:** Ensuring effective system implementation, encouraging agricultural development, and promoting R&D investments.

## National Intellectual Property Rights (IPR) Policy 2016

### Introduction

The **National Intellectual Property Rights (IPR) Policy 2016**, adopted on May 12, 2016, serves as a vision document guiding the future development of IPRs in India. The Policy acknowledges the abundance of **creative and innovative energies** in India and emphasizes the need to channel these energies towards a better future for all. It covers all forms of **IP**, aims to create synergies among them and other agencies, and establishes an institutional mechanism for implementation and review.

### Mission of the Policy

The mission is to stimulate a dynamic, vibrant, and balanced intellectual property rights system in India to:

- Foster **creativity and innovation**, thereby promoting entrepreneurship and enhancing socio-economic and cultural development.
- Focus on enhancing access to healthcare, food security, and environmental protection, among other sectors of vital social, economic, and technological importance.

### Implementation

The **Department for Promotion of Industry and Internal Trade (DPIIT)**, under the Ministry of Commerce, is the nodal department for IPR development in India. The **Cell for IPR**

**Promotion and Management (CIPAM)** under DPIIT serves as the single point of reference for implementing the policy.

### **Objectives of the Policy**

- **IPR Awareness-Outreach and Promotion:** To create public awareness about the economic, social, and cultural benefits of IPRs among all sections of society.
- **Generation of IPRs:** To stimulate the generation of IPRs.
- **Legal and Legislative Framework:** To have strong and effective IPR laws that balance the interests of rights owners with the larger public interest.
- **Administration and Management:** To modernize and strengthen service-oriented IPR administration.
- **Commercialization of IPR:** To derive value from IPRs through commercialization.
- **Enforcement and Adjudication:** To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements.
- **Human Capital Development:** To strengthen and expand human resources, institutions, and capacities for teaching, training, research, and skill-building in IPRs.

### **Scheme for IPR Awareness – Creative India; Innovative India**

In line with the National IPR Policy 2016, a '**Scheme for IPR Awareness – Creative India; Innovative India**' was launched by CIPAM.

The scheme ran for three years (April 2017 – March 2020). The scheme aimed to conduct IP awareness workshops/seminars in collaboration with industry organizations, academic institutions, and other stakeholders across the country.

It also undertook training programs to create a resource pool of trainers who would conduct the IP Awareness workshops/seminars for the public, enforcement agencies, and judiciary.

