

## Intellectual Property Rights

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### Abstract

### Review Article

In this current rapidly evolving technological era, the fear and threat of theft, fraud and infringement looms large in the virtual Diasporas. The creativity of an inventor/creator is dependent on the originality quotient of his or her work. Greater the uniqueness greater is the value of the work. Hence, the need of protection arises. Intellectual Property Rights are the particular 'protection' that is provided by the law to all the inventors and creators for their work. These rights are of various types that specifically protect different categories of creative expressions and inventions. Enhanced discussion has been done in the current work to trace the history, mechanisms, impact and loopholes in the existing system of law with respect to IPR. It tries to understand the need of developing such a system and also how the laws have evolved to cater efficiently to the public. Major departments and organisations have been mentioned here that govern the entire system. Loopholes exist in this system of law but it helps to maintain the dignity and respect of each person working to put forward ideas that can help shape the future.

**Keywords:** IPR, BIPRI, WIPO, DPIIT, TRIPS, COVISHIELD.

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## INTRODUCTION [1]

Oscar Wildesaid, "Most people are other people. Their thoughts are someone else's opinions, their lives a mimicry, their passions a quotation" [1].

However, humans are tremendously capable of developing ideas that are unique and create drastic changes. These highly transformative ideas require mechanisms to protect their authenticity.

The article focuses on how the law has intervened to create such mechanisms. Intellectual Property Rights are the rights given to

inventors/writers/creators that provide them exclusive ownership of their work. It strives to trace the roots of Intellectual Property Rights understand their need & how they have evolved with time and their current scenario.

### Roots [2-5]

Every era has witnessed intense transformations. Brilliant minds like Einstein have dared to break the patterns of a lack mindset and create something highly extraordinary.

As such creators have existed for eons, so has the concept of protecting their rights. References of

several types of IPR were minimal during the pre-historic era.

Earliest traces can be found in the 6<sup>th</sup> century BCE in Sybaris and the royal systems of medieval Europe. The Greek state awarded the citizens patents for innovations in luxury.

Further clues found in the medieval European history are some legislations that were passed.

- 1) **Statute of Monopolies-** Major British industries were controlled by guilds. These guilds held immense power over the government in terms of the import, the production and sales of certain items and raw materials. This law changed this scenario giving the author or the inventor sole ownership over their work.
- 2) **Statute of Anne (1710)-** Promised a protection of 14 years with an option of renewal. Colonial US, post-independence established its IPR laws with the federal laws so that all the states follow a uniform system of rules and regulations.

After a major failure of the 'World of Exposition Event' was held in Vienna in 1873, the world felt a grave need for greater protection of inventive endeavours.

1883 witnessed the establishment of the Paris convention. The Paris convention safeguarded the work of inventors internationally. It was followed by the Berne Convention (1886) that provided protection to all categories of written expression including songs, drawings etc.

Trademarks gained wider protection due to the Madrid Agreement (1891). The Paris and the Berne convention later joined hands to form what later came to be known as WIPO.

Within India, first legislation of IPR was Act VI of 1856. Act XV of 1859 later provided 'exclusive privilege' to the inventors. In 1872, the act was renamed as 'Patents and Designs Protection Act.' It replaced the previous laws and the tenure of protection became 16 years.

Copyrights were introduced within India by the Brits. The tenure was nearly 49 years. In 1914, the Copyright laws involved criminal sanctions. In 1957, the Copyright Act, was introduced based on the Berne Convention.

Trademarks were introduced in 13<sup>th</sup> century England, for the English bakers. France introduced the first modern trademark in 1857. Later, the Merchandise Act was passed in 1862. The first act on trademarks was passed in 1940. The Trade and Merchandise Act, was enacted in 1958 & the current version is of 1999. In 1970,

BIPRI turned into WIPO & later became a part of the UN.

### Mechanisms [6-10]

Under WTO, the TRIPS agreement signified 'global property era'. It governs standardisation, enforcement and dispute settlement of IPR. TRIPS allow the government to grant licenses in the case of emergency.

The criteria of agreement are related to the Paris, Berne, Rome conventions, ICPP and the IPIC treaty. The general goals are written in the Preamble of the Agreement. These objectives reduce obstacles in the international trade. India signed this agreement in 1995, as it had to make the domestic laws compatible with the international laws.

The mentioned conventions come under WIPO. WIPO is a global forum for policy, services, cooperation, information and popularisation of IPR.

Within India, DPIIT recognises start ups provides tax exemptions, funds, and patents. It works along with FICCI and comes under the Ministry of Commerce and Industry. Patents, designs, trademarks etc. and Semiconductor Integrated Circuits Layout Design come under DPIIT. It offers various schemes like Start up India Scheme, IEM etc. to encourage startup culture.

The Farmer's and Plant Varieties Act, 2001 protects plant varieties. However, without authentic data and research the protection isn't provided. The National IPR policy was passed in 2016.

IPR filing first requires deep research of prior work/art and competitive art to check the originality of a work. Novelty and Inventive step are an important criterion for patentability.

For patents, prior arts can be found in patent databases like Espacenet. IPR laws are territorial in nature. Hence, beyond the sovereign state, it runs as per the principle. Global protection is provided by conventions and the TRIPS agreement.

The India Copyrights act 1857 safeguards the creators from infringement at an international level through the Berne convention. The tenure is 60 years except for Broadcasts. The Trademarks Act 1999 protects trademarks within the country. Trademarks can be of various types like product mark, service mark etc. Infringement of any kind of IPR leads to the imposition of a large fine.

A recent example of IPR filing is that of the COVISHIELD vaccine produced by SII and AstraZeneca. The vaccine earned a trademark and compulsory license. SII and AstraZeneca signed a

licensing agreement with Oxford for sharing the technology to produce COVISHIELD. Hence, Oxford gave a voluntary license.

## CONCLUSION

The IPR system and laws exist to protect novel creations across the world. They can be of various types like patents, copyrights, trademarks, geographical indications etc. With time, the laws have been amended several times but some loopholes still exist. The commercial courts have several cases pending because of which immediate responses are lacking. Pirated content surged during the pandemic. With the rise of AI, authenticity faces a major threat. Public awareness needs to match its pace with that of technology and so does dispute settlement.

AI poses the threat of workforce reduction. However, creators are important to maintain the human touch. Hence, IP laws need to be strengthened to protect such irreplaceable workers.

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## REFERENCES

- Hanrott R. Originality, by Oscar Wilde, *Epicurus Today*, 30 November 2007, <https://epicurus.today/originality-by-oscar-wilde/>
- WTO, Overview: the TRIPS Agreement, TRIPS: A MORE DETAILED OVERVIEW OF THE TRIPS AGREEMENT, accessed on: 16 April 2024, (WTO, 16 April 2024), [https://www.wto.org/english/tratop\\_e/trips\\_e/intel2\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm)
- Jain Yash (Yashjain\_660), IPR Law-History, *Legal Service India E- Journal*, [https://www.legalserviceindia.com/legal/article-3581-ipr-law-history.html#google\\_vignette](https://www.legalserviceindia.com/legal/article-3581-ipr-law-history.html#google_vignette)
- NAJA ABOU, History and Evolution of Intellectual Property, *Intellectual Property*, 17 August 2020. <https://www.abounaja.com/blogs/history-of-intellectual-property>
- Williams J. The Evolution of Intellectual Property, *The History of Intellectual Property*, accessed on 17 April 2024. <https://www.txpatentattorney.com/blog/the-history-of-intellectual-property/>
- EPO, What is prior art?, Novelty and Prior Art accessed on 17 April 2024, <https://www.epo.org/en/learning/learning-resources-profile/business-and-ip-managers/inventors-handbook/novelty-and-prior-art/what-prior-art#:~:text=Summary,very%20similar%20to%20your%20invention>
- TeamSetindiabiz, What is DPIIT And How to Get Recognition Under it?, January 20 2024, <https://www.setindiabiz.com/learning/what-is-dpiit>
- SII, Health FAQs, COVISHIELD FAQs, 5 July 2021, [https://www.seruminstitute.com/health\\_faq\\_covishield.php#:~:text=Both%20COVISHIELDTM\(manufactured%20by,Corona%20Virus%20Vaccines%20\(Recombinant\).](https://www.seruminstitute.com/health_faq_covishield.php#:~:text=Both%20COVISHIELDTM(manufactured%20by,Corona%20Virus%20Vaccines%20(Recombinant).)
- Khimani P. India needs stronger copyright and IP laws, August 11 2022. <https://www.hindustantimes.com/ht-insight/economy/india-needs-stronger-copyright-and-ip-laws-101660202940185.html>
- Drabos, P. University of London, THE UNIVERSALITY OF INTELLECTUAL PROPERTY RIGHTS: ORIGINS AND DEVELOPMENT. [https://www.wipo.int/edocs/mdocs/tk/en/wipo\\_unhchr\\_ip\\_pnl\\_98/wipo\\_unhchr\\_ip\\_pnl\\_98\\_1.doc#:~:text=The%20territorial%20period%20is%20dominated,righ%20in%20the%20first%20place](https://www.wipo.int/edocs/mdocs/tk/en/wipo_unhchr_ip_pnl_98/wipo_unhchr_ip_pnl_98_1.doc#:~:text=The%20territorial%20period%20is%20dominated,righ%20in%20the%20first%20place)