



Intellectual Property Rights

IPR REGIME IN INDIA
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SYLLABUS For PRE AND MAINS

1. Science and Technology- developments and their applications and effects in everyday life.
2. Achievements of Indians in science & technology; indigenization of technology and developing new technology.
3. Awareness in the fields of IT, Space, Computers, robotics, nano-technology, bio-technology and issues relating to intellectual property rights.
4. Conservation, environmental pollution and degradation, environmental impact assessment.

Syllabus Science and Technology

1. Space Technology
2. Defence Technology
3. IT and Computers
4. Biotechnology
5. Intellectual Property Rights
6. Alternative Energy
7. Food and Health
8. Awards
9. Research and Development
10. Miscellaneous

What is an Intellectual Property?

- The literal meaning of intellect is - Reasoning or Creativity or Objectivity or Mental Ability
- Intellectual Property means some innovation , invention or creation of mind.

INTELLECTUAL PROPERTY RIGHTS

- These are the *Rights* given to a person or any entity over the *creation of their minds*
- They provide an exclusive right over the use of his/her creation, for a period of time.

Origin of Intellectual Property Rights. A Brief History

- During the ancient times, Roman Brick-Makers used to put a distinctive stamp on the Bricks they made
- During the ancient Roman times, there is an instance that, the exclusive rights to cook a particular dish, were given to a particular person.
- The punch marked coins in Ancient India

More on Intellectual Property Rights

- Right over Intellectual Property is not a Natural Right.
- Rights over IPR requires recognition by a Statute
- Here the Role of government becomes important.
- Such rights provides security to the innovator, incentivises CREATIVITY and INNOVATION
- Intellectual Property day is celebrated on April 26.

What are natural rights?

- Natural rights are those that are not dependent on the laws, Customs; culture of an area or the government.
- They are universal, fundamental and inalienable
- While the legal rights are conferred on a person by a Legal system, so the legal rights can be modified, repealed by the government.

Role of IP Protection Regime

- Before making a decision on Investing in a country, a company scrutinizes the IPR regime of that destination Country.
- Rights have no meaning if there is no mechanism to enforce them
- A secure legal environment means, more security to the innovator and thereby more Foreign Investment.
- IP protection provides RECOGNITION & FINANCIAL BENEFITS to the innovator and also safeguards the public interest at the same time.

Who Handles IPR Issues in INDIA?

There is the **Office of Controller General of Patents, Design and Trade Marks**, with in the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry.



TYPES OF IPR

- Copyright and Rights Related to Copyright
- Industrial Property
 1. Trade Mark
 2. Geographical Indication
 3. Patents
 4. Industrial Designs
 5. Trade Secrets

COPYRIGHT

Copyright is generally granted for 2 types of work

- LITERARY WORK- like books, articles etc
- ARTISTIC WORK- like music, sculpture, paintings, maps and technical drawings, computer programs, databases and films etc

Copyrights provide protection to Literary and Artistic work for a minimum period of 50 years after the death of the author

Rights Related To Copyrights

- These are also known as Neighbouring Rights
- They provide protection to the Rights of Performers e.g. Actors, Singers, Musician, Sound Recording, Broadcasting Organisations etc.

IPR Relating To Industrial Property

TRADE MARK

- A Trade Mark is a distinctive Sign used by the creator. It can be any name, symbol, figure, letter, word or any marks by the manufacturer or merchant
- Example- The Golden Arch of McDonald's.

The tag line of NIKE- Just do it.

IPR Relating to Industrial Property

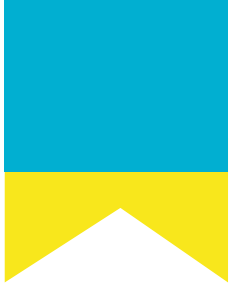
Geographical Indication-

- GI is granted to a good that is identified on the basis of its geographical origin
- The given characteristics/reputation of a product is attributable to its origin.
- GI protection may last indefinitely, if its distinctive quality continues
- Example- Darjeeling Tea (West Bengal); Blue Pottery of Jaipur (handicraft, Rajasthan)

IPR Relating to Industrial Property (relating to industrial design, innovation and technology)

PATENTS

- A Patent is an exclusive right given to the inventor for his Invention
- Patent owner has the right to decide how or whether the invention can be used by others?
- In exchange of this right the owner makes public technical information about the invention in a published patent document



Patents

- Here, rights are granted typically for a period of 20 years
- Some limitation and exception can be imposed on these rights for the interest of the users. e.g. in case of Pharmaceuticals



Industrial Designs

- These are the Ornamental and Aesthetic aspect of an article or good
- A design may have 3D features, unique shape or distinctive 2-D features. Example- The unique shape of a motor vehicle, iphone

TRADE SECRETS

- These are the rights conferred over some secret information/confidential information.
- It includes formulas, practices, processes, instruments, patterns or compilations of information.
- Unauthorised acquisition, use or disclosure of information is regarded as an unfair practice

IPR Regime in India

- IPR issues are handled by- Office of the **Controller General of Patents, Design and Trade Marks**
- The Indian Govt provides protection to Intellectual Properties through various statutes
 1. Indian Patent Act of 1970
 2. The Trade Marks Act of 1999
 3. The Copyright Act 1957
 4. The Designs Act 2000
 5. The Geographical Indication of Goods (registration & protection) Act 1999

Dispute Resolution

In order for speedy resolution of disputes, the legislature, through an Act in 2015, **THE COMMERCIAL COURTS, COMMERCIAL DIVISION AND COMMERCIAL APPELLATE DIVISION OF HIGH COURTS ACT , 2015**, established Commercial Courts. The Act came into being on 1st January 2016.

- Through this Act Commercial Courts were established at the District level.
- There is a commercial Court division with the HC and a Commercial Appellate Division with the High Courts to be established by the Chief justice of that HC
- This Act Provides stringent Timelines for dispute resolution
- Last Year maximum number of suits are filed for Trade Marks > Copyrights>patents

Dispute Resolution

- For speedy trials Government has initiated training of judicial officers.
- Government has initiated training program for Judicial Officers.
- A sensitization and Training Program on IPRs for HC & Distt Courts judges is run by WIPO + Government + National Judicial Academy (Bhopal)
- WIPO- World Intellectual Property Organisation(HQ- Geneva, Switzerland)
- Government is represented by- CIPAM (Cell for IPR promotion and Management)
- The Government of India hopes to create a positive image of the Indian judiciary in the minds of foreign investors and aims at increasing the ease of doing business in India.

CIPAM (Cell for IPR Promotion and Management)

- It is a professional body under the aegis of DPIIT.
- India's Intellectual Property MASCOT is - IP NANI (Initiative of CIPAM)
- IP Nani was launched by the Ministry of Commerce in 2018.



Dispute Resolution

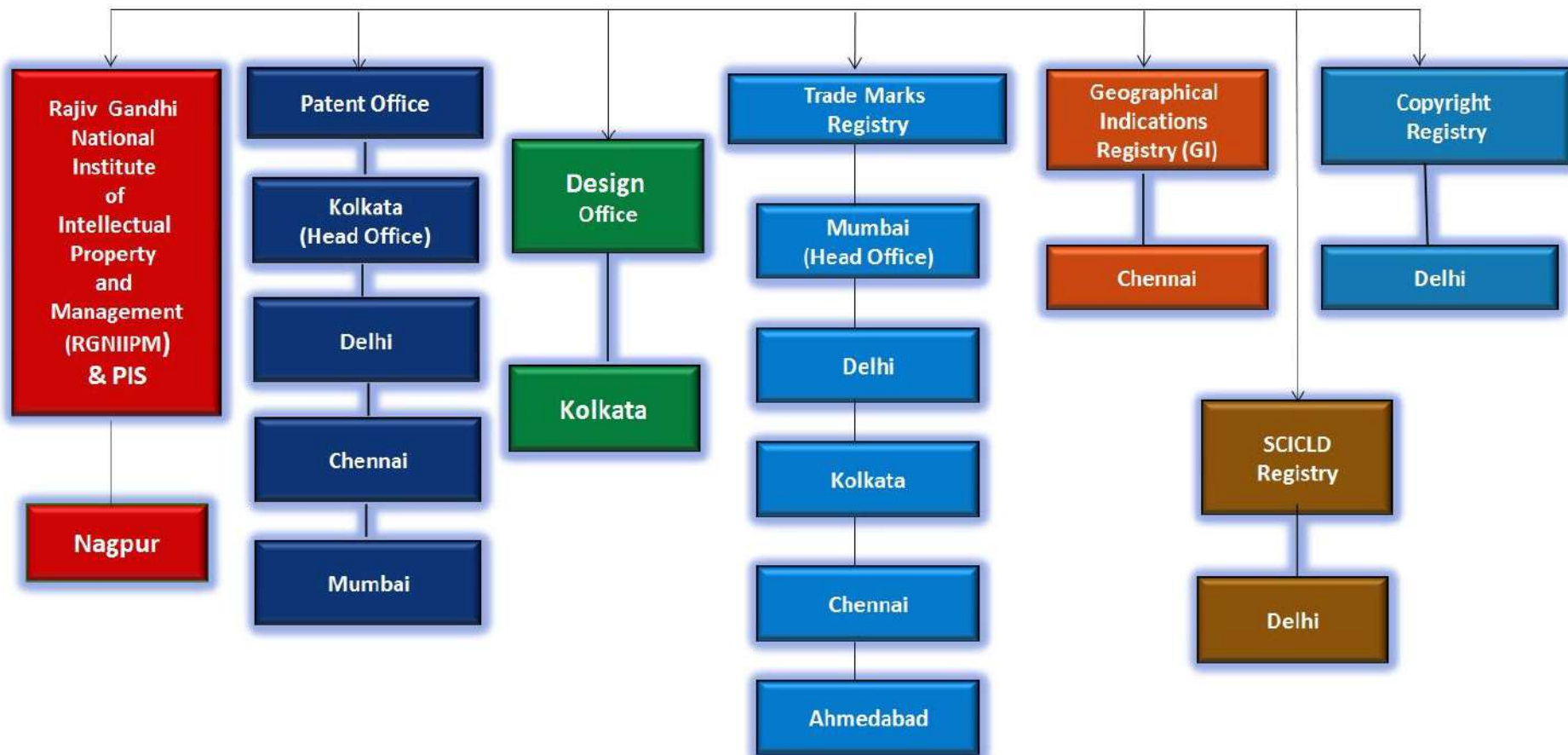
On the basis of Proper legal Framework + No discrimination on the basis
of Nationality

Instills confidence of investors on Indian IP Regime

Leading to more Investment

But, IPR Protection should be balanced with General Public Interest

Office of Controller General of Patents, Designs & Trade Marks
(O/o CGPDTM)



EVERGREENING OF PATENTS

- Inventing something new is very tough
- However, tweaking something old and call it a new invention is easier
- Evergreening offers NO therapeutic advantage, however it is economically advantageous for the company.

Anti-evergreening Law

- Section 3(d) of the Indian Patent Act 1970, as amended in 2005, was an innovation in its own right.
- Many developing countries have since emulated it
- Section 3(d) requires the innovator to submit evidence of the therapeutic efficacy of the drug.
- This Act safeguarded the access to Public Health.
- The **quality of the patents** granted is linked to the **ACCESS TO MEDICINES**

CASE STUDY

- The cancer drug GLIVEC by the drug maker NOVARTIS (Pharma company based in BASEL)
- The IPO rejected the patent for NOVARTIS drug GLIVEC
- This decision was upheld by the MADRAS HIGH COURT
- Later IPAB also upheld this view.
- Finally **SC of India** upheld the constitutional validity of section 3(d)

IPAB(Intellectual Property Appellate Board)

- Section 83 of the Trade Marks Act 1999, provides for the establishment of IPAB.
- It was established by the Central Govt Notification by the Ministry of Commerce, on 15 sep 2003
- Appeals against the decisions are filed before it.
- It hears the appeals for TM, COPYRIGHT, PATENT and GI

Argument given by the Companies

- Protecting their market is a necessity, as that allows Investment in R&D.
- Companies argued that doctors are free and can still prescribe the generic version of older product.
- But they put a lot of money into the marketing of new product, designed primarily to affect the doctors, what they prescribe