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# National Intellectual Property Rights Policy: A Critical Analysis

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## ABSTRACT

*Intellect, as a word, meaning perception. It is the faculty of knowing and reasoning the barometer of one's understanding of persons or things, of events and concept, individually and collectively. According to Salmond, the immaterial product of a man's brain may be as valuable as his lands or his goods. The law, therefore, gives hi proprietary rights in it.*

*Intellectual Property (IP) provides exclusive rights to the inventors or the manufacturers of the respective intellectual property which in turn enables them to reap out the commercial benefit from the innovative idea or design. Considering that invention in the 21st century had a tremendous impact on a country's outlook and development, the Government of India with an aim to create and exploit synergies between all form of intellectual property, concerned statutes and agencies had approved the National Intellectual Property Rights Policy in May 2016, to outline the future road map for IPR in India. It endeavours for a "Creative India; Innovative India". The policy is entirely n compliance with the WTO's agreement on TRIPS, which aims to push IPR's as a marketable financial asset, foster innovation and promote entrepreneurship while protecting public interest and boost the flagship scheme 'Make in India'.*

*The new IPR policy recognize the need to review of existing IP laws, to remove the anomalies in the existing legislative framework, awareness generation and to make balance between the private rights and public interest so that a stable, transparent and service oriented IPR administration in the country can be established.*

**Keywords:** *Intellectual, innovation, protection, public interest, policy, property rights*

## I. INTRODUCTION

The term "Intellectual Property"<sup>2</sup> has come to be internationally recognised as covering patents, industrial designs, copyright, trademarks, know-how and confidential information.

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<sup>2</sup> P. Narayanan, Intellectual Property Law 1 (3rd ed., 2001).

According to Salmond<sup>3</sup>, the immaterial product of a man's brains, may be as valuable as his lands or his goods. The law, therefore, gives him a proprietary right in it. In a generic sense every property, is synonymous with a proprietary right over a thing, which may be regarded as an intellectual property.

Intellectual property rights are jus in re propria<sup>4</sup> over immaterial things. In other words intellectual property rights may be looked upon as proprietary rights over things intangible. Hence an intellectual property rights over a material thing is certainly not the material thing itself because the intellectual property rights would still be there even if the material thing were not there. Intellectual property law creates property rights in a wide and diverse range of things from novels, computer programmes, paintings films, television broadcasts and performances, through to dress designs, pharmaceuticals, genetically modified animals and plants. The Intellectual property law also creates rights in various insignia which are applied to goods and services.

In this context, John Locke<sup>5</sup>, while discussing property successfully tried to base its theory on labour. According to him, the earth and everything on it, is common to all men, yet every man has as his property two things, namely, his person and what he has carved out of nature for him by dint of his labour and skill. Intellect is an integral part of one's personality and one's intellect plays an important role in deciding what sort of labour his body be engaged into as well as what work his hands take up, it may be safely assumed that one's intellect is one's property in the same way as is one's person or one's bodily labour or work of one's hands which means his skill. It is this proprietary right over the product of one's intellect, which has been termed as one's Intellectual Property Right.

The scope of intellectual property is expanding very fast and attempts are being made by persons who create new creative ideas to seek protection under the umbrella of intellectual property rights. There are many similarities in the law relating to the different species of intellectual property in regard to the nature of the property, the mode of its acquisition, the nature of rights conferred, the commercial exploitation of those rights, the enforcement of those rights and the remedies available against infringement of those rights.

Intellectual property includes Patents, Designs, Trade Marks, Copyright, Confidential Information and Industrial know-how. Patents relate to novel products or processes of manufacturing a product. Design relates to the non-functional appearance of a product which

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<sup>3</sup> Salmond, Jurisprudence 422.

<sup>4</sup> Mishra, supra, 42.

<sup>5</sup> John Locke, The Labour Theory: Rational Basis of Legal Institutions 196.

appeals solely to the eye. Trademark consists of word, name, device or get-up used in relation to particular goods to indicate the source of manufacture or trade origin of the goods. Copyright relates to original literary, dramatic, musical and artistic works, cinematograph films and sound recordings. The statute law relating to intellectual property in India is undergoing changes to bring them to harmonize with the corresponding laws in the developed countries. This has become necessary after India signing the GATT and TRIPS and becoming a member of WTO.<sup>6</sup>

Global concerns for the protection of Intellectual Property Rights reflected themselves in two major conventions in the ninth decade of the nineteenth century; one was the Paris Convention for the Protection of Industrial Property, 1883 and the other the Berne Convention for the Protection of Literary and Artistic works, 1886. These conventions underwent several changes and were ultimately brought under the supervising authority of an agency of the United Nations known as the World Intellectual Property Organisation (WIPO). General Agreement on Tariffs and Trade (GATT), a new round of negotiations starting in 1986 and lasting for eight long years till 1993, which, among other things, focused on Trade Related Aspects of Intellectual Property Rights (TRIPS). Trade Related Aspects of Intellectual Property Rights is especially important for its detailed provisions for enforcement of Intellectual Property Rights which had been in the jurisdiction of the national laws only. Although the intellectual property instruments that have been developed at the international level have occasionally recognised the peculiar needs of the developing and least developed countries, little attention has been given to the question of whether western legal concepts are appropriate for these nations. In response, there are growing signs of resistance and calls for greater protection for traditional intellectual resources of the developing world, notably plant culture, medicinal products, and indigenous folklore.<sup>7</sup>

## **II. THE IMPORTANCE OF IPR IN THE CURRENT LEGAL SYSTEM**

Every human endeavour which promotes economic, social, scientific and cultural development of society must be encouraged and the creator must be suitably rewarded by affording legal protection to his intellectual creation. The intellectual property law regulate the creation, use and exploitation of mental or creative labour. It prevents third parties from becoming unjustly enriched by reaping what they have not sown. This is a branch of the law which protects some of the finer manifestations of human achievement.<sup>8</sup>

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<sup>6</sup> Narayanan, *supra*, 2.

<sup>7</sup> Mishra, *supra*, 49.

<sup>8</sup> Dr M.K.Bhandari, *Law Relating to Intellectual Property Rights* 8 (3<sup>rd</sup> ed., 2012).

The convention establishing World Intellectual Property Organization (WIPO) has given a wider definition of IPRs. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) consists of 73 Articles in VII parts. The Intellectual property rights are private rights, but there is a need for a ‘multilateral framework of principles, rules and disciplines dealing with intellectual property rights. For the first time, under the auspices of the GATT, 1994 the TRIPs have been negotiated under multilateral negotiations. The World Intellectual Property Organisation (WIPO) is a specialised agency of the United Nations for developing a balanced and accessible international intellectual property regime with an aim to reward creativity, stimulate innovation and contribute to economic development while at the same time safeguarding the public interest.<sup>9</sup>

Although WIPO has given a wider definition of IPRs, yet the scope of IPRs has been further expanded by Trade Related Intellectual Property Agreement of World Trade Organization. The Agreement of Trade Related Intellectual Property Rights (TRIPs), which came into force in 1995, the agreement, sets the minimum standards to be adopted by the members, though they free to exceed them. The TRIPs lays down precise provisions relating to the scope and terms of the IPR and the rights accruing to the right holder, as well as minimum standard and norms for the enforcement of those rights. India ratified the WTO agreement in December, 1994 and thus became a party to the TRIPs. In order to fulfil its commitment under the agreement, the Government of India in December 1999 introduced necessary bills for formulating and amending the laws in practically all fields of IPRs, which are covered under the TRIPs agreement and brought out the necessary changes in IP laws of the country.<sup>10</sup>

The importance of intellectual property in India is well established at all levels- statutory, administrative and judicial. India ratified the agreement establishing the World Trade Organization (WTO). The obligations under the TRIPS Agreement relate to provision of minimum standard of protection within the member countries legal systems and practices.<sup>11</sup>

The Agreement provides for norms and standards in respect of following areas of intellectual property:

- Copyrights and related rights
- Trade Marks

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<sup>9</sup> Bhandari, *supra*, 9.

<sup>10</sup> Bhandari, *supra*, 10.

<sup>11</sup> Peer Mohamed Ariff, S. Dhinesh Babu & S. Thambi Durai, *Introduction*, Intellectual Property Rights (IPR)- A Concepts and Issues ( July 15, 2018, 3.30 PM ), [http://www.indianmba.com/Faculty\\_Column/FC890/fc890.html](http://www.indianmba.com/Faculty_Column/FC890/fc890.html) .

- Geographical Indications
- Industrial Designs
- Lay out Designs of Integrated Circuits
- Protection of Undisclosed Information (Trade Secrets)
- Patents
- Plant varieties

India as a free nation has not only updated some earlier legislation (Patents and Designs Act, 1911) but has also enacted new laws aimed at protection of Intellectual Property Rights at the national as well as international level. India is one of the few countries in the world who has had a number of legislations on Intellectual Property Right protection. The Acts which have been enacted and are in force are:<sup>12</sup>

- The Copyright Act, 1957
- The Patents Act, 1970 (as amended in 2005)
- The Trademarks Act, 1999
- The Geographical Indications of Goods (Registration and Protection) Act, 1999
- The Designs Act, 2000
- The Protection of Plant Varieties and Farmer's Rights Act, 2001
- The Biological Diversity Act, 2002.

In the year 2008, India has come out with Traditional Knowledge Digital Library (TKDL) in an effort to protect her traditional knowledge and traditional cultural expressions. Also, the facility of electronic filing (in short, e-filing) of applications has been introduced since July 2007 to bring the Indian Intellectual Property Regime in line with international requirements. To this end, Trade Marks (Amendment) Bill, 2008 has been passed by the Lok Sabha on February 25, 2009. It makes amendments in the trademark law necessary for providing the facility of international filing of applications for registration, as required by Madrid Protocol, 1989.

The objectives of the protection and enforcement of intellectual property rights are the promotion of technological innovation and the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner

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<sup>12</sup> Mishra, *supra*, 60.

conducive to social and economic welfare and to a balance of rights and obligations. Only such protection can stimulate research, creativity and technological innovations by giving freedom to individual inventors and companies to gain the benefits of their creative efforts.<sup>13</sup> The legal framework for IPR is in a stage of dynamic adjustments and changes to accommodate the challenges and new situations that result from convergence of technology<sup>14</sup>.

### **III. NEED FOR THE NATIONAL POLICY ON INTELLECTUAL PROPERTY RIGHTS**

#### **(IPR)**

The policy comes in the backdrop of the US Trade Representatives (USTR), in its annual (2016) edition Special 301 Report on the Global State of IPR protection and Enforcement, retaining India on the 'Priority Watch List' for "lack of sufficient measurable improvements to its IPR framework". India's IPR Policy comes at a time when developed economies are trying to force it to put in place even stronger IPR framework through mega regional trade agreements, including the WTO's agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).<sup>15</sup> The IPR policy states that "India shall remain committed to the Doha Declaration on (WTO's), TRIPS ". India will continue to utilise the legislative space and flexibilities available in the international IP regime to address its developmental concerns. The flexibilities include the sovereign rights of the countries to use provision such as section 3 (d) of the Patents Act and Compulsory Licensing (CL) for ensuring the availability of essential and life saving drugs at affordable prices. The US has raised concerns over India issuing the CL. As per the WTO norms, a CL can be invoked by the government in public interest. In India under the Indian Patents Act, a CL can be issued for a drug if the medicine is unaffordable, and the government grants permission to qualified generic drug makers to manufacture it. As per the section 3(d) of the Indian Patent Act, 1970 marginal alterations would not entitle a company to a new patent. According to the policy, India will retain the right to issue so called compulsory licenses to its drug firms under emergency conditions. Also the government has indicated that there is no need to change the patent laws that are WTO compliant.<sup>16</sup> However brushing aside US concerns on India's IPR regime, the

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<sup>13</sup> Bhandari, *supra*, 10.

<sup>14</sup> A. Peer Mohamed Ariff, S. Dhinesh Babu & S. Thambi Durai, *Conclusion*, Intellectual Property Rights (IPR)- Concepts and Issues (July 15, 2018, 3:40 PM), [http://www.indianmba.com/Faculty\\_Column/FC890/fc890.html](http://www.indianmba.com/Faculty_Column/FC890/fc890.html).

<sup>15</sup> Anil Sasi, Intellectual Property Rights: New Policy may Power RD, National growth (July.15, 2018, 12:40 PM), <https://www.google.com/amps/indianexpress.com/article/business/businesss-others/intellectual-property-rights-new-policy-may-power-rd-national-growth-2804419/lite/>.

<sup>16</sup> Dr. Gursharan Singh Kainth, *Encouraging IPR filings*, National policy on Intellectual Property Rights (July.15, 2018, 1:00 PM), [www.thehansindia.com/posts/index/News-Analysis/2016-05-25/National-policy-on-intellectual-property-rights-know-more/230360](http://www.thehansindia.com/posts/index/News-Analysis/2016-05-25/National-policy-on-intellectual-property-rights-know-more/230360).

government stated that its IPR laws are legal –equitable and WTO compliant. Thus the government has not yielded to pressure from the United States to amend India’s patent laws. Also an IPR policy acts as a catalyst to encourage research and development (R&D) and give a lift to economy.<sup>17</sup> It is critical to strengthen the Make In India, Start up and Digital India schemes. And thus the National IPR policy has been announced by the government with a tagline of “Creative India, Innovative India’ to provide opportunities and encouragement to entrepreneurship, creativity and innovation and to further enhance the robustness of India’s IPR regime. It is expected to lay the future roadmap for IP in India; the idea is to incorporate global best practices in the Indian context.

#### **IV. ANALYSIS OF THE NATIONAL POLICY ON INTELLECTUAL PROPERTY RIGHTS (IPR)**

On May 2016, NDA government unveiled the all encompassing National IPR Policy which aims to sustain entrepreneurship and boost the scheme ‘Make in India’, with a view to promoting creativity, innovation and entrepreneurship. It seeks to encourage innovation and improve access to healthcare, food security and environmental protection.<sup>18</sup> It lays the roadmap for the future of IPR’s in India. The National IPR Policy seeks to reinforce the IPR framework in the country that will create public awareness about social, economic, cultural benefits of IPR’s, stimulate IPR generation and commercialization, modernize and service oriented IPR administration as well the enforcement and adjudicatory mechanisms for combating IPR infringement, protecting and utilizing IPR’s which would contribute to wealth creation, employment opportunities and business development. The policy aims to create and exploit synergies between all forms of intellectual property (IP), statutes concerned and agencies. It aims to incorporate and adapt global best practices to the Indian scenario.<sup>19</sup>

The evolution of the film and music industry; the contribution of the Indian pharmaceutical sector in enabling access to affordable medicines globally and its transformation to being the pharmacy of the world; a strong and dynamic software industry; the advances made in the Indian space programme and the pioneering role of our scientists in keeping it cost effective; these are but a few examples of these energies.<sup>20</sup>

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<sup>17</sup>Anubhav Pandey, Features of the National IPR Policy, National Intellectual Property Rights (IPR) Policy 2016 (July.16, 2018, 4:00 PM), <https://www.google.com/amps/blog.ipleaders.in/national-ipr-policy/amp/>.

<sup>18</sup> Dr Gursharan Singh Kainth, National Policy on Intellectual Property Rights (July.15, 2018, 12:30 PM), [www.thehansindia.com/posts/index/News-Analysis/2016-05-25/National-policy-on-Intellectual-property-rights-Know-more/230360](http://www.thehansindia.com/posts/index/News-Analysis/2016-05-25/National-policy-on-Intellectual-property-rights-Know-more/230360).

<sup>19</sup> Brief about the policy, National IPR Policy (July.16, 2018, 12:00 PM), [dipp.nic.in/policies-rules-and-acts/policies/national-ipr-policy](http://dipp.nic.in/policies-rules-and-acts/policies/national-ipr-policy).

<sup>20</sup> National IPR Policy, 12 May 2016, Government of India, Ministry of Commerce and Industry, Department of

This policy shall weave in the strengths of the Government, research and development organizations, educational institutions, corporate entities including MSMEs, start-ups and other stakeholders in the creation of an innovation- conducive environment. In conformity with international treaties, conventions and agreements the Government has established a TRIPS compliant, robust, equitable and dynamic IPR regime.

VISION STATEMENT- An India where creativity and innovation are stimulated by Intellectual Property for the benefit of all; an India where intellectual property promotes advancement in science and technology, arts and culture, traditional knowledge and biodiversity resources; an India where knowledge is the main driver of development, and knowledge owned is transformed into knowledge shared.<sup>21</sup>

**The policy lays down seven objectives <sup>22</sup>:::**

(1) Creating Awareness--- The policy aims to create awareness about the social, economical, cultural benefits of IPR's to modernize and strengthen the service oriented IPR administration. The steps to be taken towards attaining this objective are to adopt the national slogan "Creative India; Innovative India" and launch an associated campaign on electronic, print and social media, including by linking the campaign with other national initiatives such as "Make in India", "Digital India", "Skill India", "Start Up India" to create a systematic campaign for promotion of India's IP strengths by conveying to all stakeholders the value and benefits of IP, creating materials for IP promotion in multiple languages and pictorial form for those who cannot read; including IPRs in school curriculum at appropriate level, to engage with the media to sensitize them regarding IP related issues.

(2) Generation of IPR's--- The main thrust of the government is to provide an environment and opportunity to entrepreneurs to generate innovation which will ultimately lead to economic upliftment of the country.

(3) Legal and Legislative framework--- India has robust IP laws and a strong IP jurisprudence. The legal framework does reflect the underlying policy orientation and national priorities, which have evolved over time, taking into account development needs and international commitments.

(4) Administration and Management--- To modernize and strengthen service oriented IPR administration The Offices that administer the different Intellectual Property Rights (IPOs) is the cornerstone of an efficient and balanced IPR system. IPOs now have the twin challenges

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Policy and Promotion.

<sup>21</sup> id.

<sup>22</sup> "id. At 6".

of making their operations more efficient and cost effective, and to provide value added services to the user community on the other.

(5) Conceptualization of IPR--- Through commercialization, the owners of the IP rights could receive the value of their innovation. Efforts should be made to connect creators to potential users, financial institutions.

(6) Enforcement and Adjudication--- To sensitize the IP innovators, to facilitate the effective adjudication of IPR dispute, to combat IPR infringement, it is necessary to strengthen the IPR cells in state police forces and enforcement agencies.

(7) Human Capital development--- It is essential to develop an increasing pool of IPR professionals, institutions and capacities for teaching, training, research and skill building in IPRs which will facilitate in increasing generation of IP assets in the country and their utilization for development purposes.

### **Features of the National Policy of IPR**

The policy aims to facilitate a stable, transparent and service oriented IPR administration in the country. It reiterates India's commitment to the Doha Development Agenda and the TRIPS agreement. An IPR Think Tank was constituted regarding an in-depth study on the IPR scenario in the country and prepares a draft National IPR Policy.<sup>23</sup> The features are as follows-

- (a) The policy aims to push IPR's as a marketable financial asset, promote innovation and entrepreneurship, while protecting public interest.<sup>24</sup>
- (b) The main thrust of the government is to generate awareness regarding protection of IP rights, enforcement of IPR's, modernization and commercialisation of IP for the economic growth and public welfare.<sup>25</sup>
- (c) The plan will be reviewed every five year.
- (d) Department of industrial policy and promotion (DIPP) is regarded as the nodal agency for all IPR issues. Copyright issues will come under the ambit of DIPP.
- (e) Films, music and industrial drawings will all be covered by copyright.<sup>26</sup>

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<sup>23</sup> Brief about the policy, National IPR Policy (July.14, 2018, 10:00 AM), [dipp.nic.in/policies-rules-and-acts/policies/national-ipr-policy](http://dipp.nic.in/policies-rules-and-acts/policies/national-ipr-policy).

<sup>24</sup> All you need to know about the new IPR policy (July.14, 2018, 10:00 AM), <https://www.google.com/amp/s/www.thehindu.com/business/all-you-need-to-know-about-the-intellectual-property-rights-policy/article8600530.ece/amp/>.

<sup>25</sup> id.

<sup>26</sup> "id. At 10".

- (f) It seeks to facilitate domestic IPR fillings and aims to promote research and development through tax benefits.
- (g) Loan guarantee scheme to encourage start ups.
- (h) India will continue to utilise the legislative space and flexibilities, which includes the sovereign right of the countries to use provisions such as Section 3(d) of the Patents Act and Compulsory Licensing (CL) for ensuring the availability of essential life saving drugs at affordable price.
- (i) A Cell for IPR Promotion and Management (CIPAM) shall be created to address the 7 objectives of the policy. It will coordinate with agencies at state level and with various Ministries/ Departments of the Union Government.
- (j) Traditional Knowledge Digital Library (TKDL) ambit is to be expanded to include other fields besides Ayurveda, Yoga, Unnani and Siddha. The possibility of using TKDL for furthering research and development by public research institutions and private sector will be explored.<sup>27</sup>
- (k) India too faces a challenge regarding access to affordable medicines and as such the policy aims to enhance this by encouraging cross sector partnership between public sector, private sector, NGO's, by promoting novel licensing models.
- (l) The new policy reduces the time taken by the government to approve a trademark to a month by 2017. Currently, the process takes more than 12 months on an average. The unclogging of the pendency and examination are necessary for improving the IPR system of India.<sup>28</sup> Pendency in patent examination is targeted to be brought down from the present 5 years to 18 months of workload by March 2018.
- (m) Offline and online piracy needs to be addressed through effective legal and enforcement mechanisms.

## **V. OPERATIONAL ISSUES**

In the 21<sup>st</sup> century it is the need of the hour to have more innovation, research and development, modernisation and commercialisation of IPR's, and the new progressive policy put forward various opportunities to enhance the robustness of India's IPR regime. India has a well established TRIPS compliant legislative, administrative and judicial framework to

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<sup>27</sup> Traditional Knowledge Digital Library (TKDL), National IPR Policy (July.15, 2018, 12:00 PM), [dipp.nic.in/policies-rules-and-acts/policies/national-ipr-policy](http://dipp.nic.in/policies-rules-and-acts/policies/national-ipr-policy).

<sup>28</sup> Anil Sasi, Intellectual Property Rights: New policy may power research and development and national growth (July.14, 2018, 11:00 AM), <https://indianexpress.com/article/business/business-others/intellectual-property-rights-new-policy-may-power-rd-national-growth-2804419/lite/>.

safeguard IPR's, to address its developmental concerns by utilizing the flexibilities provided in the international regime. These flexibilities include the sovereign rights of the countries to use provision such as section 3(d) of the Patent Act and Compulsory Licensing (CL) for ensuring the availability of essential and life saving drugs at affordable prices. The new policy give a big boost to research and development through tax benefits, steps are being taken to cut the waiting period for trademark and patent registration, responsible for making life saving drugs available at reasonable cost in India compared to the rest of the world, inclusion of music, cinema and industrial drawing under the ambit of copyright law, to revisit the IP laws to improve them and to remove the anomalies and inconsistencies, to enhance access to health care, food security and environmental protection. The model adopted seems to be both legal, equitable and WTO compliant. It is driven by the agenda of IP maximalism where IP owners' rights will be maximised at the cost of public interest. The policy envisaged large government funding for protecting and promoting foreign IP in India. Lots of steps for Start-ups had been recommended in the policy. A lot depends on how the government implements the policy. It is very essential to recognise the need of IPR's as a marketable financial asset and economic tool, there is need to increase the awareness on IPR's in India, be it regarding the IPR's owned by oneself or respect for others IPR's.<sup>29</sup>

## **VI. CRITICAL ANALYSIS OF THE POLICY**

India has robust intellectual property (IP) laws and a strong IP jurisprudence. The legal framework does reflect the underlying policy orientation and national priorities, which have evolved over time, taking into account development needs and international commitments. An all-encompassing IP Policy will promote a holistic and conducive ecosystem to catalyze the full potential of intellectual property for India's economic growth and socio-cultural development while promoting public interest. Such a Policy will nurture the IP culture and address all facets of the IP system including legal, administrative and enforcement infrastructure, human resources, institutional support system and international dimensions. The National IP Policy envisages IP as an integral part of India's overall development policy. The Policy recognizes that IP will sub-serve the current and future national priorities. It will integrate and create synergies with IP related aspects of various sector specific policies. It will provide a roadmap for holistic, effective and balanced development of the IP system in

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<sup>29</sup> Dr Gursharan Singh Kainth, Operational Issues, National Policy on Intellectual Property Rights (July.15, 2018, 12:30 PM), [www.thehansindia.com/posts/index/News-Analysis/2016-05-25/National-policy-on-Intellectual-property-rights-Know-more/230360](http://www.thehansindia.com/posts/index/News-Analysis/2016-05-25/National-policy-on-Intellectual-property-rights-Know-more/230360).

India.<sup>30</sup>

IP rights are essentially private rights. The primary obligation of protecting IP rights is on the IP owners who can seek legal remedies for enforcement of their rights. Along with effective enforcement of IP rights, it is equally important to balance the rights of the public to prevent misuse or excess of IP rights. Piracy and counterfeiting result in loss to the IP owners and to the exchequer, besides causing harm to the consumers. These violations often have links with organized crime and ramifications for security. Indian creative industries are estimated to suffer significant loss due to piracy in India and other countries. Similarly, there is considerable loss to Indian industry and business on account of counterfeiting. Online piracy has assumed increasing significance and by its very nature blurs geographical borders, which creates difficulties in enforcement. It is in India's interest to further strengthen the enforcement authorities and step up enforcement measures so that IP violations including online piracy can be curbed effectively, efficiently and swiftly. In order to check piracy and counterfeiting on a voluntary basis, efforts shall be made to sensitize society to the value of IP and create respect for IP rights.

Some critics of intellectual property, such as those in the free culture movement, characterize it as intellectual protectionism or intellectual monopoly, and argue the public interest is harmed by protectionist legislation such as copyright extension, software patents and business method patents. Although the term is in wide use, some critics reject the term “intellectual property” altogether. Richard Stallman argues that it “systematically distorts and confuses these issues, and its use was and is promoted by those who gain from this confusion.” He suggests the term “operates as a catch all to lump together disparate laws which originated separately, evolved differently, cover different activities, have different rules, and raise different public policy issues.” These critics advocate referring to copyrights, patents and trademarks in the singular, and warn against abstracting disparate laws into a collective team.<sup>31</sup>

Even though the efforts put in by high powered committees to formulate the document are commendable, the basic thrust in it raises more doubts than it seeks to resolve. For instance, it specifies that all “knowledge” should be “transformed into IP assets.” It suggests that national policy should “spread the importance of IP rights” by using “eminent personalities as ambassadors”. But it betrays an imbalance in the IPR regime that can tilt the balance away

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<sup>30</sup> National IPR Policy, Confidential Final Draft , April 18, 2015, IP Think Tank constituted by DIPP, Ministry of Commerce and Industry, Government of India.

<sup>31</sup> A. Peer Mohamed Ariff , S. Dhinesh Babu & S. Thambi Durai, Criticism, Intellectual Property Rights (IPR)- Concepts and Issues (July 15, 2018, 3.40 PM), [http://www.indianmba.com/Faculty\\_Column/FC890/fc890.html](http://www.indianmba.com/Faculty_Column/FC890/fc890.html).

from access to important public goods. There is by and large agreement among economists and the scientific community that IPR in itself has limited ability to promote innovation.<sup>32</sup>

The policy further lays undue emphasis on publicly funded research institutions such as those under the Council of Scientific & Industrial Research (CSIR) to generate more property rights through IPR. India needs a clear vision and guidelines on how scientists' work using public money can be commercialised and covered through IPRs. The policy in its current form fails to take note that an IPR policy has to balance the concerns of all stakeholders in a reasonable manner and may not be seen as an instrument offering absolute protection for products in the market.

The need to strengthen the management of IP offices is necessary. But, without a proper cost benefit analysis, the well-intended suggestion loses its relevance. It suggests that IP disputes should be adjudicated through "commercial courts, set up at the appropriate level." But the document fails to note the fate of the Intellectual Property Appellate Board, which has now been an orphaned child, was established under external pressure. Promoting and creating IP is not an exercise but it requires broader understanding of the competing issues. The policy document is right in its emphasis and the pride it takes in India as a creative hub.

## **VII. CONCLUSION**

Intellectual property rights (IPRs) will become an important pillar in India's future growth story. By providing an impetus to local research and innovation, IPR could provide a boost to economic activity in all sectors of the economy. But equally importantly, a national IPR regime needs to balance the interests of foreign manufacturers and innovators with those of indigenous innovators— particularly budding entrepreneurs and small and medium enterprises.

The policy does seek to balance the goals of economic growth and social justice, and makes important recommendations towards the same, as noted in this brief. However, there are some areas where the document could have made more comprehensive recommendations. In particular, it would be important to ensure that India's rich repository of traditional knowledge – particularly in areas like medicine – is offered the same level of intellectual property protection as other products and processes. The policy suggests some measures in this regard, such as expanding the ambit of the Traditional Knowledge Digital Library (TKDL) to also include fields other than Ayurveda, Yoga, and a generic suggestion to promote India's rich traditional knowledge, something more specific would have been more

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<sup>32</sup> Srividhya Ragavan & K. Subramanian, National intellectual property policy suffers from a lack of conceptual clarity (June 11, 2018, 10:00 AM), <https://indianexpress.com/article/opinion/columns/intellectual-property-right-india-ipr-law-copyright-a-question-of-ownership-2846216/>.

impactful.

It is equally important for state governments to play the role of constructive partners in creating and maintaining a robust, equitable and predictable IPR regime. They need to do this by establishing State Level Innovation Councils and strengthen them through financial and other support. They also need to organize awareness drives to sensitize their people about the importance of IPR. In this, higher education institutions will need to play a pivotal role. The Policy does mention that the Union should work closely with the state governments for curbing IP offences, and to include them in the broad consultation process, it falls short of suggesting anything concrete for a more active involvement of the states in the proposed IPR roadmap. Overall, this policy document is a significant, though not entirely adequate, step forward towards evolving a holistic, just and fair IPR policy regime.

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