ANALYSIS: PARLIAMENTARY STANDING COMMITTEE'S 161ST REPORT ON 'IPR REGIME IN INDIA'

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The Parliamentary Standing Committee on Commerce released the 161st report on *'Review of the Intellectual Property Rights Regime in India'*. In this report, the Committee has observed and analyzed the overall scenario of the IPR regime in India and its contribution to promoting innovation and entrepreneurship in the country.

Detailed Analysis of the Report:

ISSUES	RECOMMENDATIONS	ANALYSIS
COUNTERFEITING AND PIRACY		
'Counterfeiting' and 'Piracy' – a menace in the world of IPR .	• A Central Coordination Body on IP Enforcement can be established for undertaking coordinative efforts by involving various Ministries, Departments, and Governmental agencies in the enforcement and adjudication of IP laws to check IP crimes in the country. • It should be ensured that there is an on-ground implementation of stringent IP legislations with a stronger Inter-Departmental collaboration on IP crimes. • Specific legislation to curb counterfeiting and piracy should be enacted to restrain the growing menace of such IP crimes in India. The Committee was of the opinion that a determinate method to estimate the revenue losses being incurred due to counterfeiting and piracy and the level of such crimes being committed in India should be devised. This would act as a significant tool in analyzing the adverse impact of Counterfeiting and Piracy on India's economy	Advancement in technology and the consumer fascination with branded goods has led to a widespread increase in counterfeiting & piracy. This has become a major concern globally as brands are desperate for relief from counterfeiters, who misuse their name by manufacturing and selling inferior quality products and passing them off as authentic and are thereby earning huge profits. Counterfeiting and Piracy are the rising threats to IPRs which should be regulated and adeptly handled by taking appropriate measures. As it is rightly noted in the report as well that separate legislation along with efforts for its effective implementation is the need of the hour. Counterfeiting and Piracy and rob the innovators in an economy of their intellectual property rights, and this creates significant harm, not only to the innovators but to consumers and the economy in general.[1] The quantum of loss due to Counterfeiting and Piracy is huge and until now there is no approved method of calculating the same.

[1] https://cdn.iccwbo.org/content/uploads/sites/3/2016/11/Counterfeiting-piracy-and-smuggling-in-India-Value-of-IP-in-india.pdf

	and for implementing corrective measures to curb the rising incidents of such crimes.	Devising a method to compute the loss coupled with the establishment of an IP Enforcement Agency regulated through dedicated legislation would facilitate combating limit the IP crimes and also limiting the same.
FAIR USE EXCEPTION AND PUBLISHING INDUSTRY		
Section 52 (1) of the Copyright Act, 1957 which stipulates widely-scoped exceptions to infringement of literary works is posing a detrimental impact on the publishing industry and authors who are mainly dependent on royalties	• It was noted that protecting copyrights of publishers and authors encourages enrichment of quality books and works which should be counterbalanced with public accessibility of such works at an affordable rate. • It was recommended that a fair and equitable ecosystem of literary culture should be facilitated by bringing in necessary changes in Section 51(1) of the Act such as permitting reprographic works in Government-owned educational institutions and storing them in libraries for their easy access to students as well as stipulating limitations to unrestricted commercial grants to copy books and literary works and storage of copied works in digital formats. • It was also recommended that the establishment of community libraries should be promoted and existing libraries should be upgraded for easy access to works of foreign publishers that are exorbitantly priced and difficult for the students and academics to access.	Section 52 of the Copyrights Act, 1957 provides for certain exceptions to infringement of copyright and the said provision allows '*limited use of copyrighted works* without the permission of the copyright holder. Such use of the copyrighted works is usually termed as fair use or fair dealing of such works and this does not amount to infringement. In 2012, the case of the *University of Oxford v. Rameshwari Photocopy*, popularly known as the Delhi University photocopy case, challenged Section 52(1) of the Copyright Act, 1957. The main issue in the case was that of photocopying the course materials by Rameshwari photocopy services, without the due permission of permission. The case was later settled in 2017. Since then, there has been a constant tussle between the publisher's right and the public's interest to get access to educational reading material which needs some clarity. It is important that the interpretation of the scope of Section 52(1), concerning photocopying of books, is made keeping in mind the standards of fairness. It is necessary to be pointed out that photocopying of books is helping the students by making the books accessible but at the same time it is commercially benefiting the photocopy shop owner as he/she is earning profits out of it which may affect the actual sale of the books which in turn leads to loss of the publisher. Hence, it is important to find a balance between the two i.e. publishers' interest and the interest of the students to get access to

		books. The Committee also rightfully noted that *the conflict arising between copyright holders and educational institutions due to exceptions contained in Section 52(1) which intends to ensure access to literary works for educational purposes does not bode well for the overall literary culture and image of the country. Protecting copyrights of publishers and authors encourages enrichment of quality books and works which should be counterbalanced with public accessibility of such works at an affordable rate.*
SECTION 31D AND COPYRIGHT		
Should 'Section 31D' include 'internet or digital broadcasters' under the benefit of statutory license along with traditional broadcasters?	• It was recommended that Section 31D should be amended to incorporate 'internet or digital broadcasters' under a statutory license in wake of the rise in digital or OTT platforms with a manifold increase in music as well as movie apps and its significant contribution to the economy. This would ensure a level playing field by making content accessible on similar terms to both traditional and internet broadcasters alike.	In 2012, Section 31D was introduced by an amendment to the Copyright Act, 1957. The section talks about the statutory license for broadcasting literary and musical works and sound recording. It lays down the mechanism in which any broadcasting organisation desirous of communicating to the public, by way of a broadcast or by way of performance of a literary or musical work and sound recording which has already been published, may do so by paying the royalties to the copyright owner at a rate fixed by the Copyright Board. Interestingly, ever since the introduction of this provision, the question of whether internet platforms would fall under the ambit of the term 'broadcasting organization' has become a never-ending issue. As per the recent statistics, the internet and online streaming platforms have become the dominant mode of communicating copyrighted work to the public, hence the need of the hour is to extend the interpretation of the term 'broadcasting organisation' under section 31D to include Internet Broadcasters. This will bring a level playing field across all mediums of communicating the work to the general public – be it TV, Radio or internet and online streaming platforms. As it was put forth before the Supreme Court in Entertainment Network (India) Limited v. Super Cassette Industries Limited,

		section 31D provides for a mechanism by which the work can be made available to the public by broadcast. The scheme of section 31D protects the private interests of an owner by recognizing the efforts put in by him in the form of royalty and ensures public interest by allowing the broadcasting of such work.[2] Including internet and online streaming platforms as Broadcasting Organisations for the purpose of Section, 31D would provide a level playing field for all the mediums of broadcasting a copyrighted work. The copyright owners would get what they deserve for the work created by them in the form of fixed royalty and the public will get access to copyrighted works. This step would make the licensing model for broadcasting organizations better structured and more transparent. A successful example of the inclusion of internet streaming services and statutory licensing in the realm of copyright law is the Music Modernization Act, 2018 of the USA which efficaciously managed to strike a reasonably perfect balance between protecting the rights of music composers and music publishers to incentivize them for their creative efforts while simultaneously simplifying licensing processes for on-demand interactive streaming services, thereby ensuring proper dissemination and easy access of musical works to the public.[3] While it is necessary and desirable to incentivize the creation of new music by ensuring that creator's right over their work is protected and creators obtain a monetary benefit for the use of their work, it is equally important to incentivize progress by encouraging more efficient ways of obtaining social benefit by developing more advanced methods of delivering recorded music.[4]

[2] https://indiacorplaw.in/2019/07/statutory-licensing-internet-broadcasting-legal-conundrum.html#:~:text=30%2C%20held%20that%20section%2031D,the%20broadcasting%20of%20such%20work.
[3] http://www.penacclaims.com/wp-content/uploads/2020/09/Akanksha-Dubey.pdf
[4] James H. Richardson, The Spotify Paradox: How the Creation of a Compulsory License Scheme for Streaming On-Demand Music Platforms Can Save the Music Industry, 22 UCLA ENT. LAW REV.46,57 (2014)

		It is the right time to accept internet and online streaming platforms as 'broadcasting organizations' under Section 31D so that the Indian Copyright Law walks hand in hand with the digital and technological advancements being witnessed in India.
COMPULSORY LICENSING UNDER THE PATENTS ACT		
Issuing of Compulsory License under Section 92 of the Patent Act, 1970.	• It was noticed that prudency has been shown by India in invoking the provision of Compulsory Licensing. • It was recommended that the Government should delve into the prospect of temporarily wavering patents rights and issuing Compulsory Licensing to tackle the inadequacy in availability and accessibility of Covid-19 vaccines and drugs during an emergency-like situation induced by the pandemic.	Compulsory Licensing can be understood *as a license issued without the consent of the patent owner by the government to produce a patented product*. In India, Compulsory Licensing has been issued only once when the patent was for the generic production of a life-saving drug of Nexavar at an affordable cost. The intent behind the issuing of Compulsory Licensing is to strike a balance in situations where the public interest outweighs the exclusive rights granted to the owner of a patent. The recent national emergency due to the COVID 19 pandemic that the country has faced has made it clear that in situations like these Compulsory Licensing can play a vital role. In situations like these, the availability of drugs, vaccines, etc is less and a large population to protect. Sometimes the focus should not be on the investment that has gone into inventing a patentable subject matter but on the larger public interest involved. Even the Committee recognized in the report the importance of issuing Compulsory Licenses for utilizing the patents to serve public needs during circumstances of emergency and crisis. The Committee also took note of the fact that issuing a Compulsory License at the time of a national health emergency can lead to the removal of supply constraints in the availability of affordable drugs, medicines, and vaccines. But at the same time, it is important to understand that issuance of Compulsory Licensing should be done only after careful scrutiny into the public need and a careful stance shall be adopted.

ARTIFICIAL INTELLIGENCE AND PATENTS		
No regulation to protect 'Artificial Intelligence.	• It was noted that neither the Indian Patents Act, 1970 nor the Copyright Act, 1957 are well equipped to facilitate inventorship, authorship, and ownership by Artificial Intelligence. • It was recommended that a separate category of rights for AI and AI-related inventions and solutions should be created for their protection as IPRs. • It was also recommended that the existing legislation of The Patents Act, 1970 and Copyright Act, 1957 should be revisited to incorporate the emerging technologies of AI and AI-related inventions in their ambit. • It was also noticed that there is the absence of a framework for patenting algorithms by associating their use with a tangible result. It was recommended in this regard that the approach in linking the mathematical methods or algorithms to a tangible technical device or a practical application should be adopted in India for facilitating their patents as being done in E.U. and U.S. Hence, the conversion of mathematical methods and algorithms to a process in this way would make it easier to protect them as patents.	Artificial intelligence (AI) has emerged in the domains of creativity and invention, and it is likely to become more prevalent in the future. *AI means when a machine performs tasks that usually require human intelligence*. This incorporates, for instance, identifying images, making decisions or engaging in dialogue like you have ever asked Alexa to order your food or browse prime movies suggestions then you are interacting without even realizing it. According to the March 2021 CSET report on 'Mapping India's AI potential, there were 10 times as many AI-relevant patent applications in 2018 as compared to 2012. This trend aligns with global AI patent production activity, which saw roughly similar growth during this period. Also, an Accenture research report had estimated that the benefits from AI-related innovations, if drawn optimally, would add USD 957 billion by 2035 to the Indian economy. As of now, what needs to be understood is that currently, the Patentability of AI inventions is questionable due to unresolved legal difficulties and the unpredictable nature of the art. The patentability of AI-related ideas, proprietary difficulties around inventorship, and a lack of suitable laws and standards have all raised some unanswered questions. On one hand, there are countries like USA and EU who have rejected giving patents to an AI and on the other, there are South Africa & Australis who have recognized and issued a patent for an invention that lists an artificial intelligence (AI) as the inventor and the AI's owner as of the owner of the patent. It is important to understand and note that the issue of patent protection for AI-generated inventions is a complicated and contentious one. However, looking at the future there is a great need to revisit the existing IP legislation and make provisions for

		AI-generated works and solutions as it would incentivize innovation and R&D thereby significantly contributing to the creativity and economic growth of the country. Artificial Intelligence (AI) has been ingrained in our daily lives. Data can be updated or collected in a far more efficient and time-efficient manner using AI. With the introduction of new technological tools, their use has also increased significantly. As a result, it becomes imperative to enact appropriate legislation. AI is a rapidly evolving technology that necessitates careful examination and analysis.
IMPORTANCE IP ASSET VALUATION		
Lack of awareness related to IP based financing despite favorable provisions	• It was noticed that the utility of IPRs as intangible assets in the financial sphere is a way forward in improving the finances of a country and in enhancing financial innovation, easy availability of credit, and increasing capital base. • It also specified that Government vide its National IPR Policy, 2016 has slated the objective of boosting IP commercialization in India, yet it has been lackadaisical in executing it on the ground. • It was recommended that committed measures should be undertaken in generating awareness and a better understanding of IP financing, value and monetization of intangible assets in the country by inculcating management of IP portfolio of businesses, thereby enhancing its economic worth and making the business community aware of the compliances. • It was also recommended that the IP Department in close coordination with financial institutions/stakeholders or banks, should encourage adaptation to non-traditional forms of collateralization and securitization by conducting training and workshops on scrutinizing and regulating IP	The Report defines IP Financing as '*the act of using Intellectual Property to gain access to financial benefits, credit and generating revenue*'. It further defines IP financing transactions as '*the use of IP as collateral in business transactions*'. Currently, security interest over IP is governed by the SARFAESI Act, 2002. Under the Act, "Property" has been defined under Section 2(1)(t)(v) to include intangible assets, being know-how, patent, copyright, trademark, license, franchise or any other business or commercial right of any nature, and the Act facilitates the creation of security rights on intangible "properties". The benefits of allowing financing over IP assets are: • IP Assets are more valuable than any other asset of the company • Easier funding avenues for cash-strapped start-ups that have valuable IP; • More scope for appreciation in the value of IP Assets and therefore, great scope for increased Return on Investment for investors and lenders; • R&D costs can quickly be recovered by financing the IP that is created out of such R&D

	financing and extending necessary support to the business community. • It was urged that the Government should explore plausible ways to devise a uniform system of valuation of IP as an intangible asset in the country which would ensure a better evaluation of assets by financial institutions. A mechanism also needs to be put in place to recognize and appoint IP evaluators in the country. The Committee also recommends that the Insurance sector may be involved in covering/protecting against the rise of financial losses faced by an IP to minimize monetary risks by suitable amendments in the Insurance Act. • It was further recommended the Government of India consider the facilitative measures and policies being taken by countries of Singapore and China in successfully endorsing IP financing in their financial spheres through active participation such as sharing the risks involved in IP financing transactions, the extension of subsidies to financial institutions to adjust to higher costs of invaluable IP assets, etc. It recommends that necessary initiatives on similar lines and as per the country's requirements should be undertaken in India to boost IP financing.	The findings in the report mention that IP financing in India is still in a nascent stage. Several reasons for which it is still not a very prevalent choice is that: • lack of clarity and uniformity in the methods adopted for IP valuation • lack of IP awareness & IP infrastructure • validity of an IPR could be challenged at any point in time which makes it vulnerable as an asset in finance

TRADE SECRET & LAW		
No clarity in the current trade secrets protection regime.	• It was underlined that securing data and maintaining its confidentiality in business and trade is of paramount importance for companies possessing secret formulas, business strategies, algorithms, etc. • It was recommended that enact separate legislation or a framework for trade secret protection in India in wake of rising frauds and misappropriation in the digital world. • It was also recommended that the relevant and best practices being followed in statutes of various countries can be examined for their implementation in India.	Trade Secret can be understood as any information that is commercially valuable for a business and is a secret known only to a very limited number of people. Currently, in India, there is no regulation to protect the trade secret. The legal regime around trade secrets in India is limited to judicial pronouncements based on common law principles and the Indian Contract Act. Businesses deserve comprehensive legislation that deals exclusively deals with trade secrets, such as regimes in the USA and EU, especially when the Indian business environment is booming and Indian businesses are doing significant levels of business worldwide. An enactment of trade secrets would help India to protect its business environment along with becoming an attractive investment destination for trade in the world. In the absence of legislation, trade secrets will still be under the mercy of Court judgments and minimal contractual protection. Dedicated legislation around trade secrets must clearly define "trade secrets" and provide for events/acts that lead to misappropriation of trade secrets. The owners of trade secrets must be entitled to adequate civil and if need be, even criminal remedies in case of such misappropriation of trade secrets. Such dedicated legislation will impart trust into the Indian business environment, and thereby provide the required impetus for businesses to innovate and safely scale themselves without the fear of losing their competitive advantage.

TRADITIONAL KNOWLEDGE & LAW PATENTS		
Need for Inclusion of Traditional Knowledge in IPR Regime	• It was recommended that Section 3(p) of the Patents Act should be reviewed for including traditional knowledge under patents ensuring the growth of an inclusive IPR regime in India. In this regard, provisions to investigate claims of patents misuse should be incorporated to prevent the misuse or exploitation of enriched traditional knowledge of the country. • It was envisaged that the absence of any proper mechanism for the documentation of traditional knowledge and inefficiency in executing the Traditional Knowledge Digital Library (TKDL) has resulted in the neglect of traditional knowledge. It was thus recommended that the structural issues in implementing a systematic mechanism of documentation and preservation of traditional knowledge should be addressed along with taking measures to strengthen TKDL as an effective database. • It was urged that the creators and holders of traditional knowledge, especially tribal communities, forest dwellers, artisans and craftsmen, should be made aware of the novelty or inventive steps involved in traditional expressions or work to facilitate a fair IPR regime in the country. The creators or communities practicing traditional knowledge should be mobilized in claiming IPRs wherein the Government should play the role of joint owner thereby restricting their misappropriation and exploitation.	World Intellectual Property Organisation defines Traditional Knowledge as 'the *knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity.*' The report correctly notices that traditional knowledge is an asset to our community and but there are no sufficient means to protect it from getting exploited due to the absence of a statutory provision under the Patents Act, 1970. It was pointed out that individuals, communities and manufacturers exhibiting traditional knowledge and indigenous inventions in their creations should not be bereft of benefits or royalties due to their exclusion from the IPR regime. In addition to what is recommended by the Committee in the report, another suggestion for protecting our rich cultural and traditional knowledge that can be considered is having dedicated legislation for the protection of Traditional Knowledge just like Trade Secret.

ABOLITION OF IPAB		
Abolition of Intellectual Property Appellate Board (IPAB)	• It was noticed that undue delay in appointment of members and experts at all levels of IPAB has affected its optimal performance causing disruptions in the adjudication of IPR cases. • It was stated that the abolition of a prominent appellate body of IPAB under the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 should be reconsidered in wake of its pivotal role in the adjudication of IPR appeals and cases. The overall scrapping of IPAB, which efficiently had been dealing with proceedings involving complex IPR issues, may create a void in the appellate resolution of cases leading to their shift to Commercial or High Courts thereby increasing the pendency of cases. • It was further recommended that IPAB should be re-established, rather than being abolished and should be empowered and strengthened with more structural autonomy, infrastructural and administrative reforms, as well as ensuring the timely appointment of officials and experienced manpower. • It was also recommended strongly that the Government, before scrapping significant tribunals through an ordinance, should undertake a Judicial Impact Assessment along with wide consultations with relevant stakeholders to ensure building a systemic perspective on abolishing an established system in the country.	Intellectual Property Appellate Board (IPAB) was an appellate body to hear the appeals and applications against the decisions of Controller of Patents under the Patents Act, 1970, the decisions of the Registrars under the three Acts, namely, Trade Marks Act, 1999, the Geographical Indications of Goods (Registration and Protection) Act, 1999 and the Copyright Act,1957 as well as the decisions of Plant Varieties Protection Authority under the Protection of Plant Varieties and Farmers Right Act 2001. The Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 abolished the IPAB. It was highlighted in the report that undue delay in appointment of members plagued the proper functioning of IPAB in speedy disposal of IPR appeals and rectification applications. It was further highlighted that transferring the IP cases would have a negative impact on their speedy disposal and may further increase pendency. This would have an adverse effect on Commercial Courts and High Courts which are already overburdened with pending cases. The existence of a separate and Independent IP Tribunal is the need of the hour due to the growth in the IPR Regime and the rising cases in this field. Also, it must be remembered that the natural forum for IP disputes are District Courts, with only a few High Courts having original jurisdiction. To expect the district judiciary to deal with the issues before the IPAB seems contrarian to the general prevailing consensus on having Benches with specialized IP knowledge.[5]

[5] https://spicyip.com/2020/04/the-case-for-keeping-the-ipab-open-part-ii.html

EVERGREENING OF PATENTS		
Preventing 'evergreening of patents under Section 3(d) by prohibiting patents of incremental inventions involving only minor or slight improvements that extend the life of patents that are about to expire.	• It was agreed that that Section 3(d) in India's patent regime has acted as a protector against any attempt of repetitive patenting or extending the term of patents on spurious grounds. The provision is a catalyst for genuine innovations since it guards against frivolous successive patents intended to make an invention 'evergreen'. • It was stated that India must not compromise on the patentability criteria under Section 3(d) since India as a sovereign nation has the flexibility to stipulate limitations on grants of patents in consistence with its prevailing socio-economic conditions. It emphasizes that being a developing country, the provision has secured India's interests especially in the pharmaceutical sector against rampant secondary patenting by foreign pharmaceutical companies for increasing their profitability. Thus, it ensures the growth of generic drug makers and the access of the public to affordable medicines. The Committee also observes the concerns flagged in the USTR Report pertaining to disqualification of incremental inventions under Indian Patents law and recommends resolving the issue through bilateral dialogues with the US. • It was also recommended that in order to avert any misinterpretation of the provision, it should examine the aspect of giving an expansive meaning to Section 3(d) for giving further clarity.	"Patent evergreening" is a potentially pejorative term that generally refers to *the strategy of obtaining multiple patents that cover different aspects of the same product, typically by obtaining patents on improved versions of existing products*.[6] Through this, the innovators try to increase the lifespan of the patents to have a monopoly in the respective market. Evergreening of patents is a social practice practiced by patent owners. The patents are granted for a period of 20 years in India and once this period of 20 years ends, this invention comes out in the public domain for others to manufacture, sell, or import. However, certain pharmaceutical companies try to extend the period of their patents by making minor or incremental changes to the already existing patents to gain royalties from them. This concept of Evergreening is a growing concern and the provision of Section 3(d) rightly serves to curb this issue. The restriction imposed in this particular section preserves the interest of the generic drug makers and helps in providing medicines at affordable prices to the public.

[6] https://www.everycrsreport.com/reports/R40917.html

CONCLUSION

The Parliamentary Committee report has categorically covered many latest issues, which are a part of constant conversation in the Indian IPR regime like artificial intelligence, patent working statement, mathematical patterns & algorithms, abolition of IPAB, etc. The recommendation has given the mandatory push to the legislators to think in the direction of strengthening the Indian IP regime having better-equipped IP regulations to deal with the constant innovations and technological advancements. However, at places the report has stated the obvious and has missed out on dealing with the nuances of the issue involved, still it has started the conversations in the right directions.

It would be interesting to see how the IPR regime of the country reacts to the recommendations by the Parliamentary Committee.