PATENT LAWS IN INDIA: A CRITICAL ANALYSIS

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ABSTRACT

The patent system has been a cornerstone of civilization ever since it was first introduced in the 19th century. It is universally recognized as being essential to the creation of newfound information in both private enterprise and public research, and it is extremely important for the progress and well-being of society. The patent system has served as an embodiment of a challenging political balance between creators of new information and those who utilize it, as well as between immediate (cheap pricing for current users) and long-term interests (new technological development). A patent is an instrument of government influence that unequivocally calls for more attention from the general public. The invention should be balanced in the patent system to fulfil societal goals, costs to society, and benefits. Particularly, the advantages of improved technical innovation must outweigh the costs to society of giving a patent or an exclusive right to commercialize a product. As a result, a robust legal framework and a knowledgeable judicial system are necessary to balance the system.

In this paper, the author will study the meaning, background and laws governing patents in India. Additionally, an attempt has been made to comprehend the significant modifications made by the 2005 amendment to the Indian Patent Act.

Keywords: Commercialize, Invention, Innovation, Technological, Patent system.

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1. INTRODUCTION

As per the current trend, patent rights are continuously strengthened and extended. Patents are being applied for by an increasing number of people, and they are covering an increasing number of goods and procedures. The TRIPs Agreement authorised the full implementation of patent controls in India. The term of patent protection has been stretched, product patents have been formed, unique marketing rights have been eliminated, the clause of a patent's gaskets has been excluded, and makers now have access to a mandatory license for the export of patents on pharmaceuticals to developing nations under certain unusual conditions. Additionally, the administrative burdens associated with filing and examining patents have been lessened, and the protection and enforcement of patent laws have been strengthened. Given the speed at which technology is developing, modifications to the Patent Act of 1970[1] made in 2005 marked a turning point in the formation of the rights of an inventor to receive protection for a certain amount of time. The prior Act's imbalances may have resulted from a discrepancy between the system benefits provided and the social benefits obtained, which was rectified by the current updated Act[2].

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2. WHAT IS A PATENT?

A patent is a legal instrument issued by a State for its jurisdiction that provides the owner with temporary protection from the use of their invention by third parties. The term "patent" refers to a "utility patent" more specifically[3]. This legal instrument serves as a contract between both the innovator or patent holder and the public at large, as embodied by the State. The State ensures exclusivity, and the innovator made his idea available by outlining it in such detail that it might be repeated by a person trained in the relevant field.

The government grants the originator of an invention a patent, which gives them the legal right to prevent others from producing, utilizing, or exporting the innovation without their consent for

[1] Patents Act, 1970, No. 39, Acts of Parliament, 1970 (India).
[2] Khushi Shankar & Akansha Bhatt, *A General Look at Patent Rights with Special Reference to the Indian Patent Cases*, 3 INT'L J. L. MGMT. & HUMAN. 926, 927-929 (2020)

[3] G Krishna Tulasi & Bayya Subba rao, *A Detailed Study of Patent System for Protection of Inventions,* 70 INDIAN J. PHARMACEUTICAL SCI. 547, 548-550 (2008)

a set amount of time. The innovation then becomes the property of the inventor upon issuance of the patent, and as with any other type of property or commercial asset, it may be purchased, sold, rented, or employed.

A novel and improved product, procedure, technique, or method of the manufacturing process, as well as any computer, apparatus, or other article produced by a manufacturer, are all considered to be patentable inventions[4]. This definition also includes any new and useful improvement or any of them, as well as an alleged invention. The owner has the option to sell all or a portion of his property. For business uses, these rights may be licensed.

The patent is therefore described as a legal grant of exclusivity to an inventor for the duration of the grant period for his innovation[5].

3. HISTORY OF PATENT LAW IN INDIA

Justice Rajagopala Ayyanagar was chosen by the government to evaluate the country's patent system, assess it, and recommend any modifications that might be made. Justice Avyanagar made some observations stating that certain sorts of patent laws will be operated differently in industrial nations and undeveloped countries due to differing technology and advancement in some of the patent laws[6].

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In September 1959, Justice Ayyanagar provided a thorough study on patent law revision, which served as the foundation for the Patents Bill of 1965. The Bill, which was tabled in the Lok Sabha in 1965, had a few more modifications regarding patents for foods, medications, and medicines. The Bill was sent to a Joint Parliamentary committee, which, after giving it significant thought, accepted several modifications. In 1966, the modified bill was introduced in the Lok Sabha. Regrettably, because of a lack of time, it was unable to be completed and finally

[4] Kriti Singh, *Critical analysis of section 3(d) of Indian patent act, 1970*, 3 INT'L J. MULTIDISC. TRENDS, 72, 73-77 (2021)

[5] Ms. Sheetal & M.Parakh, *Analysis of Patent Law in India*, 5 J. EMERGING TECH. & INNOVATIVE RES. (2018)

[6] Palak Ratwani, From the Age of Antiquity to the Age of Modernization: An Overview of Patent History in India, 4 INT'L J. L. MGMT. & HUMAN. 5811, 5813-5815 (2021)

expired in 1967 with the dissolution of the Lok Sabha. In 1970, the Patents Bill was reintroduced to the legislature and approved by both Houses. On April 20, 1972, the Act became operative.

Following this, certain revisions to the Indian Patent Act, 1770 were made in 2005 to comply with the TRIPS, and since then, we have been using the Indian Patent Act, 2005.

4. THE INDIAN PATENT ACT, 1970: A CRITICAL ANALYSIS

The Patents Act of 1970,[7] which served as model legislation, was praised for striking a fair balance between the national good and the rights of patent holders. The Act's salient characteristics were:

1. The Act replaced well-known objectives of granting the patent holder rights and market exclusivity with unambiguous "Guidelines Applied to Functioning of Patented Inventions." Additionally, "Working of Patents, Compulsory Licenses, Licenses of Right, and Revocation" was addressed in Chapter XVI;

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2. The Act permitted process patents but not product patent applications for goods like food, medicines, agrochemicals, etc;

3. There's an enlarged list of things that weren't regarded to be the subject of patents, in line with the social and public interest goals of the laws;

4. The Act shielded the interests of the public through processes like compulsory licenses, licenses of rights, and abrogation.

India, a member of TRIPS, has embraced the three criteria outlined therein to determine an invention's patentability. Thus, an invention must meet the following requirements to be patentable:

(1) it must be novel;

(2) it must include an inventive step; and

(3) it must be useful in the industry.

[7] Patents Act, 1970, § 3, No. 39, Acts of Parliament, 1970 (India).

In addition to meeting these requirements, the invention must also not violate Section 3[8] of the Indian Patent Act, which prohibits the use of nonpatentable subject matter in patent applications[9].

4.1 Important Debatable Aspects of the Indian Patent Act, 1970

(1) Mere Discovery

Contrary to "innovation," which is defined in S. 2(1) (j)[10] of the modified Indian Patent Act, 1970, the term "discovery" has still not been defined by the Indian Patent Act in any part or by any of its tenets. In this way, one of the resounding conclusions drawn about the Act's use of the word "discovery" is that it's been used in the meaning that is typical of regular, everyday English speech. The word "discovery" refers to "the proof, technique, or an opportunity of trying to pick up knowing about or finding the existence of something previously unclear or unacknowledged," according to Webster's Third International Dictionary of the English Language. Thus, "discovery" simply refers to learning about something that has always been in nature but was previously unknown or opaque. Similar to this, a certain innovation would have to be associated with anything (such as a chemical substance, an organic grouping, etc.) that in some way existed in the usual environment to be considered a disclosure. Paracetamol, for instance, has antipyretic qualities. Paracetamol's newly discovered ability to relieve pain cannot be patented[11].

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(2) A well-known substance in a new form

The reading of S. 3(d) and the clarification thereof will make it evident that a complaint under S. 3(d) can be legitimately brought in instances where the patentability of another kind of absolutely known chemical compound is mentioned. The explanation of S. 3(d) explains the expansiveness of the term "new shape" and lists many groups of components that might be

[8] The Indian Patent Act, 1970, §3 (act number 39 of 1970)
[9] Ms. Sheetal & M.Parakh, *Analysis of Patent Law in India*, 5 J. EMERGING TECH. & INNOVATIVE RES. (2018)

[10] Patents Act, 1970, § 2(1)(j), No. 39, Acts of Parliament, 1970 (India).
[11] Kriti Singh, *Critical analysis of section 3(d) of Indian patent act, 1970*, 3 INT'L J. MULTIDISC. TRENDS, 72, 73-77 (2021)

interpreted as belonging to the "same substance."[12] It's true that the phrase "other derivatives of known material" used in the explanation is overly broad in scope and includes all potential subsidiaries of the known substance. The phrase "until they differ totally in attributes as to viability" is used to further limit the circumstances of the new kind of referenced substances that should be deemed to be the same material in this explanation. For instance, it is not patentable to use aspirin in a new way to treat cardiovascular disease when it was previously used to relieve pain. In any event, there are additional preparation methods for aspirin that are patented.

(3) Does not enhance the effectiveness

Because the new varieties of existing drugs don't show any "improved efficacy" or, as it was, don't differ entirely in attributes as to the efficacy, they should be considered unpatentable in this way. The bolded portion of S.3 (clarification) makes it very clear that new kinds of known compounds are permitted only when such new kinds of known compounds differ completely in terms of effectiveness. In ***Biswanath Prasad Radhe Shyam V. Hindustan Metal Industries***[13], it was stated by the court that it is crucial to maintain personality as a top priority, for an advancement on something already known or a combination of different things known to be patentable, it must be more than just a basic workshop enhancement and must freely satisfy. the evaluation of a creative step or invention. The combination of enhancements must yield a different outcome than before to be patentable. Old, well-known whole numbers can be blended to the point where, through linkages, they provide a new procedure or an improved outcome.

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5. INVENTIVE STEP CRITERIA

The innovation becomes "non-obvious to a person versed in the art" through an "inventive step." In other terms, it cannot be claimed that an invention involved an inventive step if it is evident to a person experienced in the field.

[12] Patents Act, 1970, § 3(d), No. 39, Acts of Parliament, 1970 (India).
[13] Biswanath Prasad Radhe Shyam V. Hindustan Metal Industries, AIR 192 SC 1444

According to section 2(l) of the Patents Act[14], a new invention is defined as any innovation or new tech that has not yet been used throughout the country or anywhere else in the globe, or predicted by publishing in any report, as well as any innovation or new tech that has not yet entered the public realm or become part of the state of the art.

In 2005, India defined "inventive step" for the first time by adding a new clause to the Patents Act's definition section. "Inventive step" is defined as "a characteristic of an invention that entails technological advance as compared to existing information or having economic relevance or both and that renders the innovation not obvious to a person knowledgeable in the art" under Section 2(1)(a) of the Act[15].

If an innovation does not contain an innovative step, this is a legitimate reason to oppose the grant of a patent under sections 25 (1)(e) and 25 (2)(e) of the Act, as well as to revoke the patent under section 64 (1)(f) of the Act[16].

The construction of obviousness in India is left to the discretion of the Indian Patent Office due to the absence of a ruling on the topic by the Supreme Court of India. In the lack of authority, the interpretation is subjective and relies on the Examiner's judgment. The number of actions related to enforcing patents has increased in India. Future techniques for evaluating the presence of creative steps in innovations can be expected to be substantially more precise.

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6. PATENT (AMENDMENT) ACT, 2005

The 2005 Amendment made several revisions to the Act's provisions, which can be summed up as follows[17]:

a) The 2005 Amendment adds a new item for "Pharmaceutical Substances" to the defining clause and modifies the definitions of "New Invention" and "Inventive Step."

b) The "approval of specification" provision and related advertising have been removed.

[14] Patents Act, 1970, § 2(1), No. 39, Acts of Parliament, 1970 (India).
[15] Patents Act, 1970, § 2(1)(a), No. 39, Acts of Parliament, 1970 (India).
[16] Patents Act, 1970, § 64(1)(f), No. 39, Acts of Parliament, 1970 (India).
[17] Patents (Amendment) Act, 2005, No. 15, Acts of Parliament, 2005 (India).

c) The Patent Office's opposition policies were changed to allow for both pre-grant and post-grant objections, which streamlined the processes.

d) The Official Journal will publish the patent application. At that point, limited reasons for opposition may be raised, but a hearing is not required.

e) A patent objection may be filed within a year after the patent's issuance.

f) A lawsuit for patent infringement cannot be filed before the application's publication date.

g) Significantly increased penalties.

h) Strengthening the clauses relevant to national security to prevent dual-use technology patenting overseas.

7. CONCLUSION

The strict framework, adjudication, and implementation of particular intellectual property known as patent rights are under the purview of the area of law known as patent law[18]. A patent is a legally recognized right that is given to people or organizations to prevent others from making, using, or selling their original ideas without their consent for a predetermined amount of time. While it is possible to secure a patent lawfully without the assistance of a lawyer, a lawyer with expertise in patent law may help guarantee that their client's invention is legally enforceable. Since patent law relates to intellectual property, which, like all property, can be legally sold, transferred, traded, or abandoned, the specifics of patent law are constantly changing with the advancement in technology. This is yet another reason why a patent law specialist can be very helpful to those looking to obtain a patent[19].

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[18] G Krishna Tulasi & Bayya Subba rao, *A Detailed Study of Patent System for Protection of Inventions,* 70 INDIAN J. PHARMACEUTICAL SCI. 547, 548-550 (2008)

[19] Khushi Shankar & Akansha Bhatt, *A General Look at Patent Rights with Special Reference to the Indian Patent Cases*, 3 INT'L J. L. MGMT. & HUMAN. 926, 928-930 (2020)