

Post globalization IPRS protection in India and its role in economic growth

¹ Urooj Ahmad Siddiqui, ² Dr. MS Khan

¹ Ph.D. Research Scholar, Babasaheb Bhimrao Ambedkar University (A Central University), Lucknow, Uttar Pradesh, India

² Head/Coordinator, MBA Program, Babasaheb Bhimrao Ambedkar University (A Central University), Lucknow Uttar Pradesh, India

Abstract

Intellectual property (IP) is the creation of human intellect. It refers to the ideas, knowledge, invention, innovation, creativity, and research etc., all being the product of human mind and is similar to any property, whether movable or immovable, wherein the proprietor or the owner may exclusively use his property at will and has the right to prevent others from using it, without his permission. The rights relating to intellectual property are known as 'Intellectual Property Rights' (IPRs). The significance of IPRs could not be denied in any growing economy that is in need of investment and seeking continuous inflow of foreign funds (FDI) for development and growth. To provide conducive and trustworthy environment to the investors, the protection of IPRs thus become imperative for any government. The term IPR denotes the specific legal rights which are to be protected and enforced and not the intellectual work itself. The proper protection of IPRs prevents any unauthorized use of Intellectual Properties and curbs unfair trade practices so that investors fetch adequate commercial value for their efforts and gain confidence for profitable recovery of their investments. This article touches the concepts of Intellectual Properties and reviews the present status of IPRs protection in post Globalised India in relation to the international standards, specifically WTO. This article also tries to bring out the role of strong and enforceable protection of IPRs in attracting FDIs and hence economic growth in India.

Keywords: Intellectual Property Rights, Economic Growth, FDI

1. Introduction to IPRs

Intellectual property is the creation of human intellect. It refers to the ideas, knowledge, invention, innovation, creativity and research etc., all being the product of human mind and is similar to any property, whether movable or immovable, wherein the proprietor or the owner may exclusively use his property at will and has the right to prevent others from using it, without his permission. The rights relating to intellectual property are known as 'Intellectual Property Rights'.

Intellectual Property Rights (henceforth IPRs), by providing exclusive rights to the inventor or creator, encourages more and more people to invest time, efforts and money in such innovations and creations. Intellectual property rights are customarily divided into two main areas:-

i) Copyright and rights related to copyright

The rights of authors of literary and artistic works (such as books and other writings, musical compositions, paintings, sculpture, computer programs and films) are protected by copyright. Also, protection is granted to related or neighbouring rights like the rights of performers (e.g. actors, singers and musicians), producers of phonograms (sound recordings) and broadcasting organizations.

ii) Industrial property rights

Which is divided into two main areas

a) One area can be characterized as the protection of distinctive signs, in particular trademarks (which distinguish the goods or services of one undertaking from those of other undertakings) and geographical indications (which identify a good as originating in a place where a given characteristic of the good is essentially attributable to its geographical origin).

b) Other types of industrial property are protected primarily to stimulate innovation, design and the creation of technology. This category includes inventions (protected by patents), industrial designs and trade secrets.

The issue of Intellectual Property Rights was brought on an international platform of negotiation by World Trade Organization (WTO) through its Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). This agreement narrowed down the differences existing in the extent of protection and enforcement of the Intellectual Property rights (IPRs) around the world by bringing them under a common minimum internationally agreed trade standards. The member countries are required to abide by these standards within stipulated time-frame. India, being a signatory of TRIPS has evolved an elaborate administrative and legislative framework for protection of its intellectual property.

2. IPR and WTO

World Trade Organization (WTO) is an international organization set up with the objective of ensuring smooth and free trade flow across nations. For this purpose, it provides a platform for negotiating agreements between the member countries. These agreements deal with agriculture, textiles and clothing, banking, telecommunications, industrial standards and product safety, food sanitation regulations and much more and are the foundation of the multilateral trading system.

One such important agreement is the 'Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)'. It for the first time brought laws relating to intellectual property into the international trading system. It was a result of the Uruguay Round of the multilateral trade negotiations. This agreement narrowed down the differences existing in the

extent of protection and enforcement of the Intellectual Property rights (IPRs) around the world by bringing them under a common minimum internationally agreed trade standards. The member countries are required to abide by these standards within stipulated time-frame and promote effective protection of IPRs in order to reduce distortions and impediments to international trade. There are three obligations of member countries under TRIPS:-

- To provide minimum intellectual property rights protection through domestic laws.
- To ensure effective enforcement of these rights.
- To agree to submit disputes to the WTO Dispute Settlement System.

The TRIPS Agreement covers following categories of intellectual property:-

- i. Copyrights and related rights** - are the rights given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. It is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. The agreement says performers must also have the right to prevent unauthorized recording, reproduction and broadcast of live performances.
- ii. Trade Marks** - Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services. Thus, the agreement defines the types of signs eligible for protection as trademarks and the minimum rights that must be conferred on their owners. It says that service marks must be protected in the same way as trademarks used for goods. Also, the marks that have become well-known in a particular country must enjoy additional protection.
- iii. Geographical Indications** - are the indications which identify a good as originating in the territory of a member country, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. Under the agreement, the members shall provide the legal means for interested parties to prevent:- (i) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good; (ii) any use which constitutes an act of unfair competition within the meaning of the agreement.
- iv. Patents**- are the exclusive rights granted by a country to the inventor to make, use, manufacture and market the

invention that satisfies the conditions of novelty, innovativeness and usefulness. Patents shall be available for any such inventions, whether products or processes, in all fields of technology. The members may exclude from patentability:- (i) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; (ii) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. A patent shall confer on its owner the following exclusive rights:-

- Where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of making, using, offering for sale, selling, or importing such those products.
 - Where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.
- v. Industrial Designs** - refer to creative activity, which result in the ornamental or formal appearance of a product. But it does not include any mode or principle or construction or anything which is in substance a mere mechanical device. Under the agreement, members shall provide for the protection of independently created industrial designs that are new or original. The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.
 - vi. Lay out Designs of Integrated Circuits** - Under the agreement, members provide protection to the layout-designs (topographies) of integrated circuits. Members shall consider unlawful the following acts if performed without the authorization of the right holder:- importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit only in so far as it continues to contain an unlawfully reproduced layout-design.
 - vii. Protection of Undisclosed Information (Trade Secrets)** - A trade secret or undisclosed information is any information that has been intentionally treated as secret and is capable of commercial application with an economic interest. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices so long as such information:-
 - Is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question.
 - Has commercial value because it is secret; and
 - Has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

viii. Plant varieties - Members shall provide for the protection of plant varieties either by patents or by an effective 'sui generis' system or by any combination thereof.

3. India and IPR

In today's globalised scenario of expanding multilateral trade and commerce, it has become inevitable for any country to protect its intellectual property by providing statutory rights to the creators and inventors and thus help them fetch adequate commercial value for their efforts in the world market.

As discussed above this innovative and creative capacity is protected under the intellectual property system of WTO. Recognizing this fact, India as a founder member of WTO has ratified the Agreement on Trade Related Intellectual Property Rights (TRIPS). As per the agreement, all member countries including India are to abide by the mutually negotiated norms and standards within the stipulated timeframe. Accordingly, India has set up an Intellectual Property Right (IPR) regime, which is WTO compatible and is well established at all levels whether statutory, administrative or judicial.

The Government has taken a comprehensive set of initiatives to streamline the intellectual property administration in the country in view of its strategic significance. In the Ministry of Commerce and Industry, the office of the 'Controller General of Patents, Designs and Trade Marks (CGPDTM)' has been set up under the Department of Industrial Policy and Promotion.

It administers all matters relating to patents, designs, trademarks and geographical indications and also directs and supervises the functioning of:-

- The Patent Office (including Designs Wing)
- The Patent Information System (PIS)
- The Trade Marks Registry (TMR), and
- The Geographical Indications Registry (GIR)

Besides, a 'Copyright Office' has been set up in the Department of Education of the Ministry of Human Resource Development, to provide all facilities including registration of copyrights and its neighbouring rights.

As far as issues relating to layout design of integrated circuits are concerned, 'Department of Information Technology' in the Ministry of Information Technology is the nodal organisation. While, 'Protection of Plant Varieties and Farmers' Rights Authority' in Ministry of Agriculture administers all measures and policies relating to plant varieties.

For complementing the administrative set up, several legislative initiatives have been taken. It includes, the Trade Marks Act, 1999; the Geographical Indications of Goods (Registration and Protection) Act 1999; the Designs Act, 2000; the Patents Act, 1970 and its subsequent amendments in 2002 and 2005; Indian Copyright Act, 1957 and its amendment Copyright (Amendment) Act, 1999; Semiconductor Integrated Circuit Layout Design Act, 2000; as well as the Protection of Plant varieties and Farmer's Rights Act, 2001.

4. IPR and Economic Growth

Arguments based on theoretical reasoning state that there should be positive relationship between IPR protection in a country and its economic growth. Recent theories of economic growth highlight the significance of R&D and innovation for growth. If the business firms are allowed profitable recovery

of their investments on their R&D and innovations through strong IPR protection then it should encourage further investment, innovations and in turn economic growth. In addition, strong IPR protection ought to stimulate the acquisition and dissemination of knowledge, since the information in patent claims is made publicly available, which by lowering the cost of future innovation would encourage growth. We will discuss this in the light of studies conducted by different researchers.

Existing evidence suggests that IPR protection has a positive impact on growth, which is often significant. Both Gould and Gruben (1996) and Thompson and Rushing (1996) estimate cross-section growth regressions and find positive and significant coefficients on the IPR variable. Gould and Gruben go on to show that the impact of IPR protection on growth can be slightly larger in more open economies though the difference tends not to be significant. Thompson and Rushing find a positive and significant relationship between IPR protection and growth only when countries reach a certain level of development as measured by initial GDP. For countries below this level no significant relationship between IPR protection and growth exists.

However, despite these arguments Rod Falvey, Neil Foster and David Greenaway (2004) explored empirically the relationship between IPR protection and growth and they found that IPR protection has an ambiguous impact on growth. They argue that the impact of IPR protection on growth is likely to depend upon the country in question and in particular a countries level of development, as reflected in its ability to innovate and imitate. Innovative activity tends to be concentrated in a small number of advanced countries. In these countries stronger IPR protection would be expected to encourage innovation and subsequent growth. For many other countries however, and for middle-income countries in particular, imitation can be an important source of technological development and growth. In these countries, providing stronger IPR protection to foreign firms could cripple domestic industry previously relying on pirated technologies.

Moreover, according to Rod Falvey, Neil Foster and David Greenaway (2004) strong IPR protection can also limit the spread of new ideas and encourage monopoly. Entry by rivals may be impeded, and successful innovators may have reduced incentives for developing and exploiting subsequent innovations. IPR protection can also have an ambiguous impact on other factors considered important for growth. In particular stronger IPR protection can have different and often opposing influences on the relationship between growth and trade, foreign direct investment, licensing, imitation and piracy. Their results suggest that the relationship between IPR protection and growth depends upon the level of development, as proxied by initial GDP per capita. For low- and high-income countries we find that stronger IPR protection significantly improves growth, but for middle-income countries no such relationship is found.

The results for high-income countries are largely as expected; these countries undertake the vast majority of innovation and where strong IPR protection should encourage further innovation by allowing innovators to profit from their inventions. For low-income countries the positive relationship between IPR protection and growth clearly doesn't reflect a relationship between IPR protection and innovation, but more

likely that strong IPR protection in these countries encourages imports and inward FDI that encourage growth without adversely affecting domestic imitative activities. Middle-income countries also do not engage in innovative activities to any extent, but may well rely on imitative activities. The lack of a relationship between IPR protection and growth in these countries is likely to reflect two opposing forces. The positive impact of IPR protection on growth that works indirectly through trade and FDI is being offset by a negative impact slowing knowledge diffusion and discouraging imitation. Despite the lack of evidence for a significant relationship between IPR protection and growth for middle-income countries in no case do they found evidence of a negative relationship between IPR protection and growth?

Furthermore the strength of IPR protection may also impact upon the levels of trade, inward foreign investment and technology licensing, all of which affect productivity and output growth through technology transfer. Maskus and Penubarti (1995) argue that IPR protection has an indeterminate effect on trade. While firms should be encouraged to export their patented goods into foreign markets with strong IPR protection, since such protection reduces the risk of imitation or piracy, they may choose to reduce their export sales in a foreign market in response to stronger IPR protection, because their market power increases as the ability of local rivals to imitate the firm's product is curtailed. Empirical findings by Peter Nunnenkamp and Julius Spatz (2004) support the hypothesis that the threat of an unauthorized use of intellectual-property-related assets and, thus, FDI depends on industry as well as host-country characteristics and not only on IPR protection.

5. Discussion and Conclusions

The objective of the study is to explore conceptually the relationship between IPR protection and growth. Drawing the conclusion in the light of above discussions we can assume that the relationship between IPR protection and economic growth is vague. There are no strong empirical evidences to believe that stronger IPR protection leads to more growth, at least if only the impact of IPR protection is considered on growth. There are several other factors that are needed to be analysed along with IPR protection. The relationship between IPR protection and growth depends upon the level of development of the country in question and the characteristics of industry. To establish a prominent relationship between IPR protection and economic growth more studies are required backed with strong empirical evidences.

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