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India's patent regime

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Why is in news? Indian court turns down PepsiCo's appeal against revocation of FC5 potato patent

An Indian court rejected PepsiCo Inc.'s appeal against an order that revoked a patent for a potato variety grown exclusively for the New York-based company's popular Lay's potato chips.

The Protection of Plant Varieties and Farmers' Rights (PPVFR) Authority in 2021 **revoked intellectual protection granted to PepsiCo's FC5 potato variety**, saying that India's rules do not allow a patent on seed varieties.

The U.S. snacks and drinks maker, which set up its first potato chip plant in India in 1989, supplies the FC5 seed variety to a group of farmers who in turn sell their produce to the company at a fixed price.

PepsiCo has maintained that it **exclusively developed the FC5 variety and registered the trait in 2016**. The FC5 variety has a lower moisture content required to make snacks such as potato chips.

In 2019, **PepsiCo sued some Indian farmers for cultivating the FC5 potato variety**, accusing growers of infringing its patent. The company also sought more than ₹1 crore each for alleged patent infringement.

Within months, PepsiCo withdrew lawsuits against farmers. In its order, the **Delhi High Court did not uphold accusations of any public interest violation by PepsiCo**. PepsiCo is the second large U.S. company to face patent infringement issues in India.

Patent regime:

A patent is an exclusive set of rights granted for an invention, which may be a product or process that provides a new way of doing something or offers a new technical solution to a problem.

Indian patents are governed by the **Indian Patent Act of 1970**.

Under the act, patents are granted if the invention **fulfils the following criteria**:

It should be novel

It should have inventive step/s or it must be non-obvious

It should be capable of Industrial application

It should not attract the provisions of sections 3 and 4 of the Patents Act 1970.

India has **gradually aligned itself with international regimes** pertaining to intellectual property rights.

It became a party to the **Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement** following its membership to the World Trade Organisation on January 1, 1995.

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It amended its internal patent laws to comply with TRIPS, most notably in 2005, when it **introduced pharmaceutical product patents** into the legislation.

The **original Indian Patents Act did not grant patent protection to pharmaceutical products** to ensure that medicines were available to the masses at a low price.

India is **also a signatory to several IPR related conventions** including:

The Berne Convention which governs copyright,

The Budapest Treaty,

The Paris Convention for the Protection of Industrial Property

The Patent Cooperation Treaty (PCT) all of which govern various patent-related matters.

Acts and measures Dealing with Intellectual Property Rights in India:

The Copyright Act, 1957

The Patents Act, 1970

The Trade Marks Act, 1999

The Geographical Indications of Goods (Registration and Protection) Act, 1999

India adopted the **National Intellectual Property Rights (IPR) Policy** as a **vision document** to guide the future development of IPRs in the country.

The **Department of Industrial Policy & Promotion (DIPP)** under the Ministry of Commerce has been appointed as the nodal department to coordinate, guide, and oversee the implementation and future development of IPRs in India.

The **‘Cell for IPR Promotion & Management (CIPAM)’**, set up under DIPP, is to be the single point of reference for the implementation of the objectives of the National IPR Policy.

The **campaign ‘KAPILA’**, which stands for **Kalam Program for Intellectual Property Literacy and Awareness campaign**, was launched on 15th October 2020. The day was launched in honour of the 89th birth anniversary of former President Dr. APJ Abdul Kalam.

National IPR Policy:

The National Intellectual Property Rights (IPR) Policy 2016 was **adopted in May 2016** as a vision document to guide future development of IPRs in the country.

It's clarion call is **“Creative India; Innovative India”**.

It encompasses and **brings to a single platform all IPRs**, taking into account all inter-linkages and thus aims to create and exploit synergies between all forms of intellectual property (IP), concerned statutes and agencies.

It sets in place an institutional mechanism for implementation, monitoring and review. It aims to incorporate and adapt global best practices to the Indian scenario.

Significance Intellectual Property Rights for India:

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Intellectual Property Rights actually translates into India's progress in real-time and **extends Intellectual Property Right to India's Prosperity Right**.

Like geographical boundaries guard our country's interests, Intellectual Property is the guardian of our country's prospects. Powered by Intellectual Property, **India can be the "Innovation Powerhouse" of the world**.

Intellectual property is the cornerstone of a nation's progress & showcases the ingenuity of our youth. The IP has the **power and potential to change lives and create livelihoods for billions**.

More proficient IP regimes **contribute to making India an innovation hub**. It is the key for success of Start-up India, Make in India & Design in India.

A strong IPR regime will empower the expansion & energise the industry in challenging times. It is one of the most valuable assets in **India's ability to compete in the global economy**.

These initiatives are **bringing transparency & ease of access for IPR seekers**.

Issues in India's IPR regime:

Section 3(d) of the Indian Patent Act 1970 (as amended in 2005) **does not allow evergreening of patents**. This has been a cause of concern to the pharma companies. Section 3(d) was instrumental in the Indian Patent Office (IPO) rejecting the patent for Novartis' drug Glivec (imatinib mesylate).

Issue of Compulsory licencing (CL): CL is **problematic for foreign investors** who bring technology as they are concerned about the misuse of CL to replicate their products. It has been impacting India-EU FTA negotiations.

CL is the grant of permission by the government to entities to use, manufacture, import or sell a patented invention without the patent-owner's consent. Patents Act in India deals with CL.

India continues to **remain on the United States Trade Representative's (USTR's) 'Priority Watch List'** for alleged violations of intellectual property rights (IPR).

Data Exclusivity: Foreign investors and MNCs allege that **Indian law does not protect against unfair commercial use of test data or other data submitted to the government** during the application for market approval of pharmaceutical or agro-chemical products. For this they demand a Data Exclusivity law.

Enforcement of the Copyright act is weak, and piracy of copyrighted materials is widespread.

Way Forward:

Promoting an environment of innovations in schools. The academic curricula need to be rebooted.

A proper resolution mechanism for resolving IPR related issues is needed.

India will be unable to take full advantage of the transformative benefits of a strong IP system unless and until it addresses gaps in its IP laws and regulations.

Success of India's flagship programmes - Make in India and Start up India - depends on the boost of innovation ecosystem with better IPR safeguardings.

More awareness is needed about the creation, protection and enforcement of IPRs to encourage the Indian industry not only to innovate but also to protect and enforce their innovations.

Advantages of IPR:

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Safeguards creators rights

Promotes innovation and creativity

Facilitates ease of doing business

Enhances economic value

Expands the export regime

Disadvantages of IPR:

Expensive for first IPR filing for nay process of the product.

Pirating has still not stopped after IPR protection.

Quality is compromised with the aging of IPR.

IPR was considered a hindrance during the COVID-19 vaccine distribution system initially as IPR restrictions made low and middle-income countries unable to manufacture vaccines domestically.