

# INTELLECTUAL PROPERTY RIGHTS



PATENT LAW  
COPYRIGHT LAW  
TRADEMARK LAWS



# PATENT LAW IN INDIA



- MEANING
- A Patent is a statutory right for an invention granted for a limited period to the patentee by the Government, in exchange of full disclosure of his invention for excluding others, from making, using, selling, importing the patented product or process for producing that product for those purposes without his consent.
- The patent system in India is governed by the Patents Act, 1970 which was amended in 2003 and 2005.
- The Patent Rules are regularly amended in consonance with the changing environment, the most recent being Patents (Amendment) Rules, 2024.



# HISTORY OF INDIAN PATENT ACT 1970

- Patents Act in India has undergone significant changes since its early days, shaping the country's modern intellectual property framework. The journey began with Act VI of 1856, the first legislation granting exclusive rights to inventors, though it was later repealed due to procedural issues.
- In 1911, the Indian Patents and Designs Act was introduced, expanding protections for both inventions and designs—an important milestone in the development of the Patents Act in India.
- The most transformative shift came with the Patents Act in India in the form of the Patent Act 1970, which established a structured approach to granting patents and defining patentable subject matter, replacing the earlier 1911 Act. The Patent Act 1970 created the framework for modern patent rights, aligning India's policies with international standards.
- Further amendments, notably in 2005, harmonized the Patents Act in India with global practices, especially under the WTO's Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement. These updates allowed India to recognize product patents in critical areas like pharmaceuticals and chemicals, expanding the impact and scope of the Patent Act 1970.
- A patent grants inventors exclusive rights to their innovations, protecting them from unauthorized use, manufacturing, or sale by others. The Patents Act in India is designed to uphold these rights, ensuring that inventors are fairly rewarded while maintaining a balance between innovation and public access to new technologies.



# THE PATENT LAW AMENDMENT ACT OF 2005

- The Patent Law Amendment Act of 2005 was a pivotal reform to the Patents Act in India, introducing product patents and replacing the earlier process-patent regime. This reform aligned India's patent laws with the WTO's TRIPS agreement, extending patent protection to key sectors like pharmaceuticals, chemicals, and biotechnology. These changes built upon the framework of the Patent Act 1970, marking a critical evolution in India's patent policy.
- The amendment was essential for India's global trade compliance and aimed to boost innovation across industries. By offering stronger protection for patented inventions, the new product patent system under the Patents Act in India encouraged both domestic and foreign investment in research and development, strengthened patent rights enforcement, and reinforced the country's intellectual property ecosystem.



# EFFECTS OF PATENT AMENDMENT ACT 2005

- After the 2005 amendment, there were immediate concerns that essential medicine prices might increase, as product patents replaced process patents in the pharmaceutical industry. To counter this, the Indian government introduced measures like compulsory licensing, which lets generic manufacturers produce patented medicines at affordable prices to meet public health needs.
- In the long run, the amendment helped the Indian pharmaceutical industry grow. Indian companies, especially those making generic drugs, adjusted to the new system and became competitive worldwide. The introduction of product patents also encouraged multinational corporations to set up research centers in India, boosting innovation and supporting industry growth.



# PATENTS IN PHARMACEUTICALS & BIOTECHNOLOGY

- Pharmaceutical and biotechnology patents in India undergo a rigorous examination process under the Patents Act in India to ensure that only true innovations receive protection. This scrutiny is particularly crucial in these sectors due to their direct impact on public health and the economy.
- A key provision in the Indian Patents Act is Section 3(d), which limits patents for new uses or minor modifications of existing substances unless they demonstrate significant improvements in efficacy. This clause helps prevent companies from extending monopolies on existing drugs through trivial changes, ensuring continued access to affordable medicines.
- These provisions strike a balance between fostering innovation and maintaining affordability. While they safeguard genuine innovations, they also prevent the misuse of patents to block affordable generics. This approach has supported the growth of India's generic drug industry, while ensuring that life-saving medicines remain accessible to the public.



# RIGHTS GRANTED BY A PATENT



- A patent holder enjoys several exclusive rights that allow them to control how their invention is used.
- These rights include the ability to prevent others from:
- Making: No one can manufacture the patented product without the patentee's permission.
- Using: Others cannot use the invention for commercial purposes.
- Selling: Selling or offering the patented product for sale without consent is prohibited.
- Importing: The patented invention cannot be imported into India without the patentee's approval.



# **PATENTS CAN BE CATEGORIZED INTO DIFFERENT TYPES BASED ON THEIR SCOPE OF PROTECTION:**

- 1. Product Patents: These protect the invention itself, meaning only the patent holder can manufacture, sell, or distribute the patented product, such as a drug, unless licensed to others.
- 2. Process Patents: These protect the method of creating a product. Even if the end product is identical, using the patented process without authorization is prohibited, like a specific method for producing a chemical.



# TERM OF PATENT

- In India, the term of patent protection under the Patents Act in India is 20 years from the date of filing the application, whether it is based on a provisional patent or complete specification.
- For patents filed under the Patent Cooperation Treaty (PCT), the 20-year term is calculated from the international filing date, not from the date of national phase entry in India. This ensures consistency in patent protection across jurisdictions, in line with the provisions of the Patents Act in India.
- This 20-year period is crucial for inventors and businesses, as it provides a period of market exclusivity to recover R&D investments and gain a competitive advantage. Such protection, as outlined in the Patent Act 1970, encourages innovation, ensuring that after this term, inventions enter the public domain, driving further advancements in technology and industry.



# WHAT CAN BE PATENTED?

- To qualify for a patent, an invention must meet the following requirements:

## 1. Novelty

- The invention must be new and not previously disclosed to the public. It should not be part of the existing body of knowledge.

## 2. Inventive Step

- The invention should involve a significant inventive step that is not obvious to a person skilled in the relevant field.

## 3. Industrial Applicability

- The invention must be capable of being used in some kind of industry. It should have practical utility and the ability to be manufactured or used in any industry.

## 4. Exclusions under Sections 3 and 4

- The invention must not fall under the categories that are explicitly excluded from patentability, such as abstract ideas, scientific theories, or methods of agriculture.



# **PATENT (AMENDMENT) RULES, 2024**

- The Department for Promotion of Industry and Internal Trade (DPIIT) notified the Patent (Amendment) Rules 2024 on March 15, 2024, after taking stakeholder comments into consideration. These amendments are certainly an impressive revamp of the Patent Rules and emphasize on simplifying processes for applicants and patentees, while expediting disposal.
- Provided below is a concise summary of the Draft (Amendment) Patent Rules 2024.



# KEY HIGHLIGHTS

- Form 3 must be submitted within three months from the date of issuance of FER, further extendable by three months.
- Request for examination timeline reduced to 31 months from the earliest priority date.
- Controller to first assess the maintainability of pregrant oppositions. Simplified Form 27 with objective response options for submission of working statement once every three financial year.
- Possibility of extension of critical deadlines up to six months upon payment of additional fees.



# FORM 3 – STATEMENT AND UNDERTAKING

- a. Applicants are required to file a
  - i. A Form-3 within six months from the date of filing the application.
  - ii. An updated Form 3 earlier was required to be filed (to keep the Controller informed of the details of foreign applications) within six months from the date of such filing. Under revised rule 12(2), the
- applicant is now required to submit such updated details within 3 months from the date of issuance of First statement of objection (or First examination report).



# INFORMATION UNDER SECTION 8(2)

- a. Under unamended rule 12 (3), the controller under sub-section (2) of Section 8, could ask the applicant to furnish information relating to objections, if any, in respect of novelty and patentability of the invention, claims of application allowed, etc., in respect of any foreign application. The said information was then required to be submitted within six months from the date of such communication by the Controller.
- b. Under revised rule 12(3), the “Controllers may use accessible and available databases for considering the information relating to applications filed in a country outside India”.
- c. Under Section 8(2), the Controller may also direct the applicant to furnish a fresh Form 3 within 2 months from the date of such communication under the new rule 12(4).
- d. Under the new rule 12(5), timeline for filing Form3 can be further extended by three months upon a request made in Form 4.



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- Reduced timeline for filing a Request for Examination (RFE): The timeline for filing the RFE is now reduced from 48 months to 31 months from the priority date. The reduced timeline for filing a Request for Examination (RFE) will accelerate the patent examination process.
- Simplified Submission of Form 3: Applicants can simply file a single updated Form 3 after receiving the First Examination Report (FER). The Patent office issues an examination report to the applicant which is generally known as FER.
- Introduction of 'Certificate of Inventorship': To recognise inventors' contributions to patented inventions. As the Indian patent certificate does not identify the inventors, this provision will allow inventors to be identified for their inventions.



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- Frequency of filing statements: The frequency of filing working patents was reduced from once in a financial year to once in every three financial years.
- Amendments in Pre-grant and Post-grant Opposition Procedures: The time frame for submission of recommendations by an Opposition Board and the response time for applicants have been adjusted.
- A divisional application can be filed in respect of an invention disclosed in the provisional or complete application or a further divisional application.
- This amendment is in alignment with the recent decision of the Delhi High Court in **Syngenta Limited v. Controller of Patents and Designs Case, 2023**. In this the court clarified that divisional applications may be filed in respect of parent applications where the complete or provisional specification (and not necessarily the claims) of the parent application disclose a plurality of inventions.



# TERM OF A PATENT:

- The term of every patent granted is 20 years from the date of filing of the application.
- However, for applications filed under the national phase of the Patent Cooperation Treaty (PCT), the accorded term will be 20 years from the international filing date.
- PCT is an international treaty with more than 150 contracting states, making it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing an international patent application.
- Such an application may be filed by anyone who is a national or resident of a PCT contracting State, and generally be filed with the national patent office of the contracting State with the International Bureau of World Intellectual Property Organisation (WIPO) in Geneva.



# COPYRIGHT LAWS IN INDIA





# DEVELOPMENT OF COPYRIGHTS IN INDIA

- The development of copyright law in India reflects a journey from informal practices in ancient times to a robust, modern legal framework. In ancient India, while there was no formal legal system for copyright, scribes played an essential role in preserving and copying manuscripts, ensuring the survival of literary and scholarly works. The first formal copyright law was introduced during the British colonial era with the Copyright Act of 1847, modeled on the UK Copyright Act of 1842. This legislation primarily aimed to protect British authors' works in India, required mandatory registration for enforcement, and set the copyright term as the author's lifetime plus seven years, not exceeding 42 years.
- In 1914, the Indian Copyright Act replaced the 1847 Act, closely following the UK Copyright Act of 1911. This act introduced criminal sanctions for infringement, extended protection to photographs, and provided a 50-year term from the creation of the original negative. The 1914 Act remained in force for works created before 1958.
- Post-independence, India established its first indigenous copyright law with the Copyright Act, 1957, effective from 21 January 1958. This marked a significant departure from colonial statutes, offering comprehensive protection for literary, dramatic, musical, and artistic works, as well as cinematograph films and sound recordings. The Act also established the Copyright Office and Copyright Board, introduced mechanisms for registration, and provided both civil and criminal remedies for infringement.



## CONTINUE..

- Over time, the Act has been amended to address new challenges and align with international standards. Notable amendments include the 1992 extension of the copyright term for most works from 50 to 60 years, and the Copyright (Amendment) Act, 2012, which enhanced protection for authors and performers, addressed digital rights, and ensured compliance with international treaties such as the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. The 2012 amendment also made the Copyright Board a permanent body, which was later merged into the Intellectual Property Appellate Board and eventually transferred its powers to the Commercial Benches of High Courts after tribunal reforms.
- India's integration with the global copyright regime is evidenced by its accession to major international conventions, including the Berne Convention, Universal Copyright Convention, Rome Convention, and the TRIPS Agreement. In 2013, India joined the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, further aligning its laws with global standards. This evolution underscores India's commitment to protecting creators' rights and fostering innovation and creativity in an increasingly digital and interconnected world.



# MEANING OF COPYRIGHT

- Copyright in India is a legal right granted to the creator of original works such as literary, dramatic, musical, and artistic works, as well as cinematograph films and sound recordings. It gives the creator exclusive rights to reproduce, distribute, perform, adapt, translate, and communicate their work to the public. Copyright does not protect the underlying ideas but the specific expression of those ideas in a tangible form, such as writing, music, or film. In India, copyright protection is automatic upon the creation and fixation of the work in a material form; registration is not mandatory but is recommended for evidentiary purposes.



# NEEDS AND IMPORTANCE OF COPYRIGHT

- **Protection of Creators' Rights:** It ensures that authors, artists, musicians, filmmakers, and other creators have control over how their original works are used, distributed, and commercially exploited.
- **Encouragement of Creativity and Innovation:** By granting exclusive rights and the potential for economic reward, copyright motivates individuals to create new works, contributing to cultural and technological advancement.
- **Legal Remedies Against Infringement:** Copyright provides creators with legal recourse in cases of unauthorized use, copying, or distribution of their works, including the ability to seek injunctions, damages, and even criminal penalties.
- **Balance Between Public and Private Interests:** Copyright law aims to strike a balance between protecting the rights of creators and allowing the public to access knowledge and build upon existing works through exceptions like fair use.
- **Economic Benefits:** Copyright enables creators to earn income from their works, supporting the creative industries and contributing to the national economy.
- **Public Record and Ownership:** Registration (though not mandatory) creates a public record of ownership, making it easier to prove rights in legal disputes and to prevent importation of infringing copies.



# WHAT IS THE COPYRIGHT ACT 1957?

- Copyright is a legal right that protects original works of literature, art, music, films, and computer programs, among others, in India.
- It safeguards expressions of ideas rather than the ideas themselves. The owner of a copyright has exclusive rights to adapt, reproduce, publish, translate, and communicate the work to the public.
- The act has undergone several revisions since it was first passed in 1958. The most recent amendment was in 2012.
- **Key Sections:**
  - Section 2: Deals with various definitions of the work which can be covered under the definition of copyright. For example, Section 2(o) deals with literary works, Section 2(h) includes all dramatic works under the definition of copyright protection.
  - Section 13: Provides copyright protection to literary works, musical works, dramatic works, cinematographic films and sound recordings among others.



# COPYRIGHT (AMENDMENT) RULES 2021

- In addition to the act, the **Copyright (Amendment) Rules 2021**, were brought into effect to bring the copyrights in line with other relevant laws. Under the rules:
- Provisions have been introduced to ensure accountability and transparency in the collection and distribution of royalties.
- The Copyright Board has been merged with the Appellate Board, and the compliance requirements for software registration have been reduced.
- The applicant has the option to file the first 10 and last 10 pages of the source code, or the entire source code if it's less than 20 pages, with no blocked or redacted portions.
- The Central Government has 180 days to respond to an application for registration as a copyright society.



# EXCLUSIVE RIGHTS GRANTED TO A COPYRIGHT OWNER IN INDIA

- Under the Copyright Act, 1957, a copyright owner in India enjoys several exclusive rights over their original works. These rights enable the owner to control how their work is used, distributed, and monetized. The main exclusive rights include:
  - **Right of Reproduction:** The owner has the exclusive right to reproduce the work in any material form, including electronic storage and copying. No one else can make copies or reproduce the work without permission.
  - **Right of Distribution (Issue of Copies):** The copyright owner can distribute the work to the public by selling, renting, leasing, or lending copies. This right prevents unauthorized distribution in both physical and digital formats.
  - **Right to Create Derivative Works (Adaptation):** The owner can create adaptations, translations, or other derivative works based on the original. This includes converting a novel into a screenplay or translating a book into another language.
  - **Right of Public Performance:** For works such as plays, music, and films, the owner has the exclusive right to perform or display the work publicly. This covers live performances, broadcasts, and exhibitions.
  - **Right of Communication to the Public:** The owner can control the communication of their work to the public, including broadcasting, streaming, or making it available online.
  - **Right of Storage in Electronic Form:** The copyright owner has the exclusive right to store the work in electronic media, which is especially relevant for digital content.
- These rights are subject to certain limitations and exceptions, such as fair use for research, criticism, review, and educational purposes. Unauthorized use of any of these rights constitutes copyright infringement, for which the owner can seek legal remedies. In summary, the exclusive rights give copyright owners comprehensive control over the use, dissemination, and adaptation of their creative works in India.



# HOW CAN COPYRIGHT BE TRANSFERRED OR LICENSED IN INDIA

- Copyright in India can be transferred or licensed through several formal legal mechanisms as provided under the Copyright Act, 1957. The main methods are assignment, licensing, transmission, and relinquishment.

## 1. Copyright Assignment

- Definition: Assignment refers to the transfer of ownership rights of a copyrighted work from the original owner (assignor) to another person or entity (assignee). The assignee then enjoys all the rights associated with the copyright, including the right to use, reproduce, distribute, and license the work.
- Process: The assignment must be in writing, signed by the assignor, and should clearly specify the work, rights assigned, duration, territorial extent, and royalty (if any). If the duration or territory is not specified, the law presumes a 5-year term and Indian territory by default. Legal Effect: After assignment, the assignee becomes the copyright owner for the assigned rights and period.



# CONTINUE..

- Copyright Licensing
- Definition: Licensing allows the copyright owner to permit a third party (licensee) to use the work in specified ways, without transferring ownership. The owner retains copyright, but the licensee can exploit the work as per the agreement. Types:
  - Voluntary License (by mutual agreement)
  - Compulsory License (granted by authorities under specific circumstances, e.g., public interest)
- Process: Requires a written agreement specifying the rights licensed, territory, duration, and royalty terms. The license must be signed by both parties.
- Legal Effect: The licensee can use the work as per the license, but the copyright owner remains the legal owner.



# CONTINUE..

- Copyright Transmission
- Definition: Transmission refers to the transfer of copyright by operation of law, such as inheritance or bequest. If the copyright owner dies, rights pass to the person named in the will or, if there is no will, to legal heirs.
- Copyright Relinquishment
- Definition: The copyright owner can voluntarily relinquish (surrender) all or specific rights by notifying the Registrar of Copyrights. From the date of notice, the relinquished rights cease to exist and are published in the Official Gazette.



# **CAN A COPYRIGHT OWNER TRANSFER ONLY SPECIFIC RIGHTS TO A THIRD PARTY**

- Yes, a copyright owner in India can transfer only specific rights to a third party. The Copyright Act, 1957 explicitly allows the owner to assign their copyright either wholly or partially, and either generally or subject to limitations, for the whole term of the copyright or for any part thereof. This means that the owner may choose to transfer only certain rights-such as publishing, broadcasting, or adaptation rights-while retaining others, like reproduction or translation rights.
- Such partial assignments or licenses must be clearly specified in a written agreement, detailing the exact rights being transferred, the duration, and the territorial extent of the transfer. This flexibility enables copyright owners to maximize the value of their works by granting different rights to different parties, or by retaining some rights for themselves.



# HOW DOES THE DURATION OF A COPYRIGHT TRANSFER IMPACT ITS VALIDITY

- The duration specified in a copyright transfer or assignment agreement directly impacts its validity and the extent of rights enjoyed by the transferee. In India, the Copyright Act, 1957 requires that every assignment or license of copyright clearly state the duration (term) for which the rights are being transferred. If the agreement does not specify a duration, the law presumes the transfer to be valid for five years from the date of assignment. After this period, the rights automatically revert to the original owner unless otherwise agreed.
- If the duration specified in the transfer exceeds the statutory term of copyright protection (for example, the author's lifetime plus sixty years for most works in India), the transfer is valid only up to the expiry of the copyright itself. Once the copyright term expires, the work enters the public domain, and any exclusive rights previously transferred become unenforceable.
- Therefore, the validity of a copyright transfer is limited by both the period agreed upon in the contract and the maximum statutory duration of copyright protection. Clear specification of duration in the transfer agreement is essential for legal certainty and to avoid disputes over the extent and validity of the transferred rights.



# HOW DO INTERNATIONAL COPYRIGHT AGREEMENTS AFFECT THE DURATION OF COPYRIGHT PROTECTION

- International copyright agreements, such as the Berne Convention, the TRIPS Agreement, and the WIPO Copyright Treaty, set minimum standards for the duration of copyright protection that member countries must follow. For example, the Berne Convention requires that member countries provide copyright protection for at least the life of the author plus 50 years for most works. Countries are free to offer longer terms, and many—including the United States and most of the European Union—have extended this duration to the life of the author plus 70 years.
- Other agreements, like the Universal Copyright Convention (UCC), set a lower minimum (life of the author plus 25 years), but these standards are now less influential since most countries have adopted the Berne Convention or TRIPS standards.
- These international treaties do not override national laws but require each member country to incorporate the minimum duration into their own legislation. As a result, the duration of copyright protection in a particular country is shaped by both its national law and its obligations under these international agreements. Countries may also adjust their copyright terms to align with trading partners or global best practices, sometimes resulting in longer protection periods than the minimum required.



# TRADEMARK LAWS IN INDIA





# WHAT IS A TRADEMARK?

- Trademark law in India is primarily governed by the Trade Marks Act, 1999 and the Trade Marks Rules, as amended. The law provides comprehensive protection for trademarks, including registration, enforcement, assignment, and licensing of marks.
- A trademark is any sign, symbol, word, logo, phrase, design, or combination thereof that distinguishes the goods or services of one entity from those of others. Trademarks are essential for brand recognition and consumer trust.



# KEY ELEMENTS OF INDIAN TRADEMARK LAW

- **Distinctiveness:** The mark must be capable of distinguishing the applicant's goods or services from others.
- **Registration:** Registration is not mandatory but provides statutory rights and legal remedies in case of infringement. Registered trademarks can use the ® symbol, while unregistered marks may use.
- **Term and Renewal:** Registration is valid for 10 years from the date of application and can be renewed indefinitely for successive 10-year periods by paying the prescribed fee.
- **Infringement:** Unauthorized use of a mark that is identical or deceptively similar to a registered trademark constitutes infringement, subject to civil and criminal remedies.
- **Well-Known Trademarks:** Famous marks receive enhanced protection, even for unrelated goods or services.
- **Assignment and Licensing:** Trademarks can be transferred or licensed to others, subject to statutory requirements.



# TRADEMARK REGISTRATION PROCESS

- Trademark Search: Check for existing similar marks to avoid conflicts.
- Filing Application: Submit Form TM-A with required documents and fees, either online or offline.
- Formalities Check: The Registry verifies compliance with filing requirements.
- Examination: The application is examined for distinctiveness and compliance. Objections, if any, must be addressed by the applicant.
- Publication: Accepted applications are published in the Trademark Journal for public opposition.
- Opposition Period: Third parties can file oppositions within four months of publication.
- Registration: If no opposition is filed or successfully defended, the mark is registered and a certificate is issued. The owner can now use the ® symbol.



# RECENT AND EMERGING TRENDS (2025)

- **Digitization:** The trademark process is increasingly digital, with online filing, AI-driven search, and examination tools to streamline registration and reduce errors.
- **Non-Traditional Trademarks:** India is moving towards recognizing non-traditional marks such as color, sound, scent, and motion marks, with clearer guidelines expected soon.
- **Stricter Enforcement:** Reforms are anticipated to introduce higher penalties, specialized IP courts, and better coordination with enforcement agencies to combat counterfeiting and infringement.
- **Support for Startups and MSMEs:** The government is streamlining and subsidizing trademark registration for startups and MSMEs to promote innovation and brand protection.



# CONCLUSION

- India's intellectual property rights (IPR) regime has evolved significantly, providing robust protection for creators and innovators across various domains, including patents, copyrights, and trademarks. Copyright law, rooted in colonial-era statutes, has developed into a comprehensive system under the Copyright Act, 1957, granting creators exclusive rights over their original works and adapting to the digital age through regular amendments and international alignment. Patents in India are governed by the Patents Act, 1970, with recent amendments streamlining procedures and fostering innovation, while trademark law, under the Trade Marks Act, 1999, ensures brand identity and consumer trust through efficient registration and enforcement mechanisms. All these laws allow for the transfer and licensing of rights, support economic growth, and balance the interests of creators and the public. India's adherence to international treaties like the Berne Convention, TRIPS, and the Madrid Protocol further strengthens its IPR framework, making it globally compatible and supportive of both domestic and international stakeholders. Overall, India's IPR laws have matured into a dynamic and adaptive system, crucial for protecting creativity, encouraging investment, and enabling economic and cultural development in a rapidly changing world.