

INTELLECTUAL PROPERTY RIGHTS IN INDIAN CONTEXT

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INTRODUCTION

The paper makes a brief survey of the Intellectual property rights that are classified under the Agreement on Trade Related Intellectual Property Rights (TRIPs) of WTO. The objectives of the chapter include explaining the nature and scope of Intellectual Property Rights, dispute settlement mechanism in WTO and describing the changes brought out in the legal framework of India in consonance with the provisions of TRIPs agreement. The chapter also explains the structural and Institutional arrangements made in India for protection of Intellectual Property Rights. The chapter discusses context of the agreement in which Traditional knowledge systems of biological diversity are valued in making legislations.

These have been varied opinions and perceptions on the nature and utility of Intellectual Property Rights in India. In spite these diverse standpoints, IPRs are considered as a pre requisite for free trade and economic development. Consequent to the development of innovative practices and creative thinking, the scope of Intellectual property is widened with new forms. Accordingly the governments of member countries of WTO in general and Indian government in particular initiated various legislative and executive measures to respect and follow the obligations of TRIPs agreement. In this connection, the present chapter explains different areas of Intellectual Property and the enactments that are formulated in India to protect and preserve these rights. Along with it, the chapter discusses the options available under dispute settlement mechanisms on IPR issues.

CLASSIFICATION OF INTELLECTUAL PROPERTY RIGHTS UNDER WTO

The trade related Intellectual Property Rights of WTO agreement owes its origin to the historical process of negotiations of the Uruguay Round of GATT. The agreement prescribes certain standards for members in various areas of Intellectual property. The TRIPS agreement prescribes three criteria for patentability which are novelty, innovation and Capability of Industrial application under Article 27 of TRIPs Agreement.

The agreement on Trade Related aspects of Intellectual Property Rights (TRIPS) consists of seven crucial parts. The First part of the TRIPS agreement deals with general provisions and basic principles.

The second part of the TRIPS agreement discusses different types of Intellectual Property and standards concerning the availability, scope and se of Intellectual Property Rights.

The forth part of the TRIPs Agreement elaborates upon the Acquisition and Maintenance of Intellectual Property Rights Inter Parties Procedures.

The fifth part of the TRIPS Agreement explains the Dispute Prevention and Settlement mechanisms.

The sixth part of the TRIPS Agreement prescribes the Transitional Arrangements, and finally.

The seventh part of the TRIPS Agreement indicates the Institutional arrangements and final provisions.¹

The Agreement on Trade Related Intellectual Property Rights consists of 73 Articles seven broad parts of the agreement. The rules governing multilateral trading system are made applicable to all the countries that have consented to be members of WTO. An effective dispute settlement mechanism is also evolved that can impose trade penalties on members violating the agreement².

NATURE AND SCOPE OF INTELLECTUAL PROPERTY UNDER WTO

Article 1.2 of the Agreement explains Intellectual Property. Accordingly Section 1 to 7 of part II of the Agreement deals with Intellectual Property. There are seven types of Intellectual Property Rights recognized by the WTO Agreements. These included,

1. Copy Right and Related Rights (Article 9-14)
2. Trade marks (Article 15-21)
3. Geographical Indications (Article 22-24)
4. Industrial Designs (Article 25-26)
5. Patents (Article 27-34)
6. Layout Designs-Topographies of Integrated circuits (Article 35-38)
7. Protection of undisclosed Information (Article 39)³

IMPACT OF WTO AGREEMENTS ON INDIAN LEGAL FRAMEWORK

Agreement Trade Related Intellectual Property Rights (TRIPs) to which India is a signatory is an integral part of WTO and it has an enormous impact in Indian legal framework on these issues. In the last two decades, India has enacted various laws and amended the existing laws in compliance to TRIPs agreement. Further, India has also established a comprehensive statutory, administrative and judicial mechanism in tune with the provisions of TRIPs agreement to protect the Intellectual Property. The importance of Intellectual property is recognized as a policy instrument for wide range of socio-economic and technological development. The following laws are formulated or amended to fully comply with the TRIPs frame work⁴.

1. Indian Patent Act 1970 (amended 1999,2002 and 2005)
2. Indian Copy Right Act 1957 (amended in 1995)

3. Indian Geographical Indications of Goods (Registration and Protection) Act, 1999
4. Indian Trade Marks Act 1999
5. Indian Designs Act 2000
6. Indian Information Technology Act 2000
7. Indian Semi Conductor – Integrated Circuits & Layout Designs Act 2000
8. Indian Plant Varieties and Farmers Rights Act 2001
9. Indian Biological Diversity Act 2002
10. Indian Competition Act 2002

These legislations formed as part of the India Government resolve to protect Intellectual Property Rights of the citizens. They have been enacted or reframed with amendments in tune with the provisions of TRIPs agreement signed in WTO⁵.

REFERENCES

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6. Rajdeep Sahrawat, "Software Products: The Perfect Storm: The Hindu Business Review, July 27, 2009. Page 15, Hyderabad.