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# India



*The Taj Mahal is a white marble mausoleum located in Agra, Uttar Pradesh, India. It was built by Mughal emperor Shah Jahan in memory of his third wife, Mumtaz Mahal.*



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# India and the National IP Policy

Vikrant Rana from S.S. Rana & Co. discusses India's draft National IP Policy and the way forward.

**W**ith the motto of “*Creative India, Innovative India*” the six member IPR Think Tank recently released its first draft on India's National Intellectual Property Rights Policy. Soon after the new central Government, led by Prime Minister Narendra Modi came into power, the IPR Think Tank was constituted last year with the objective that includes drafting India's IP policy, identifying areas in the IPRs where study needs to be conducted and to furnish recommendations in this regard to the Ministry and to keep the Government advised on the best practices to be followed in Indian Intellectual Property Office in order to create an efficient and transparent system of functioning in the said offices.

Under the chairmanship of Retd. IPAB Justice Prabha Sridevan the comprehensive policy is drafted on the lines of 'Make in India', 'Digital India', 'Skill India' and 'Smart

Cities' slogans. The IPR draft states to inspire India to take a lead in various fields of human accomplishments.

It enumerates policy measures to make the IP Systems more inclined towards the local needs of our country, which at the same time are directed towards stronger and more holistic enforcement of the rights. It states that “in future negotiations in international forums and with other countries, India shall continue to give precedence to its national development priorities whilst adhering to its international commitments and avoiding TRIPS plus provisions”.

## Features of the National IP Strategy

The draft proposes its objectives in following categories - IP Awareness and Promotion, Creation of IP, Legal and legislative framework, IP Administration and management, Commercialization, Enforcement and Adjudication, and Human Capital Development so as to realize the full potential of IPR for India's socio-economic growth and to address issues of sustainable development, inclusive growth and formulation of the policy objectives that would be the pillars of the envisaged IPR strategy.

The draft then elaborates on the steps that it intends to take to achieve its objectives in the aforementioned seven categories.

## Résumé

**Vikrant Rana, Managing Partner, S.S. Rana & Co.**

Vikrant is the managing partner of S.S. Rana & Co., a premier Intellectual Property Law Firm of India. He is an Advocate-on-Record with the Supreme Court of India (2006) and is a registered patent agent. For over a decade, Vikrant has been providing practical legal advice to many Fortune 500 companies and some of the world's most esteemed corporations on securing, protecting, and enforcing their IP assets in India and world over.

“ To impart predictability, transparency and efficiency in the administration and enforcement of IP laws. ”

### **IP Awareness and Promotion:**

The draft proposes adoption of nationwide campaign to raise IPR awareness in all sectors of society. It intends to initiate customized programs for “the specific needs of industries, MSMEs, R&D institutions, science and technology institutes, universities and colleges, inventors and creators, entrepreneurs”.

### **Creation of IP**

In this section the policy suggests measures that are to be taken to promote creation of IP in India. It states that those IP are to be brought in limelight which are “India’s special strengths and where India has future potential.” It highlights the importance of MSME sector in India that accounts for about 45 percent of India’s manufacturing output but have limited IP assets as their IP mostly pertains to “utility models” which are not accorded protection in India. The policy suggests new law on Utility models in India to recognize “petty patents”.

### **Legal and Legislative framework**

In order to “to impart predictability, transparency and efficiency in the administration and enforcement of IP laws”, the draft proposes review of the existing IP laws so that it can be updated and any anomaly and inconsistency can be removed.

### **IP Administration and Management**

The policy proposes administrative measures that Office of Controller General of Patents, Designs, and Trademark (CGPDTM), Office of Registrars of Copyrights, and other nodal agencies needs to take for “efficient, expeditious and cost effective grant and management of IP rights”

### **Commercialization of IP**

Among other measures the policy proposes establishment of an “IP Promotion & Development Council (IPPDC) as the nodal organization for the promotion, creation and commercialization of IP” and enumerates several steps by way of which it intends to attain its objective of connecting “investors and IP creators”.

### **Enforcement and adjudication:**

The draft proposes IP Enforcement and adjudication by sensitizing people on the value of IP, it also proposes measures for strengthening the existing enforcement measures, measures for facilitating IP dispute resolution.

### **Human Capital Development**

This section proposes strengthening human resources, and establishing as well as expanding institutes and IPR cells for “teaching, training, research and skill building in IP”.

### **Major Considerations**

The draft observes the trend of patent filing in India where that over 75% of patent filings are by foreign entities and recommends adoption of concerted action to increase filings by Indians.



**Trends of Patent Applications Filed in India: (2007-13)**

Year	Applications Filed	Residents	Non-Residents
2007-08	35,218	6,040	29,178
2008-09	36,812	6,161	30,651
2009-10	34,287	7,044	27,243
2010-11	39,400	8,312	31,088
2011-12	43,197	8,921	34,276
2012-13	43,674	9,911	33,763

In addition to measures such as creating target specific awareness programs for industry and R&D sectors, the draft suggest adoption of new law on Utility Models so as to accord protection to those inventions which may not be patentable under the Indian Patent Act, but are novel, inventive and utilitarian in its own spheres. It is pertinent to mention that in 2011, the Department of Industrial Policy and Promotion had issued the discussion paper on Utility Models with the objective of developing a suitable framework to protect the same. The draft paper had then pointed out that in China, Korea, and Taiwan, domestic applicants comprise more than 97% of the applicants for utility models, on the contrary the foreign filing figures were not that encouraging in countries like Australia and Brazil. However despite of the several comments forwarded to Government by stakeholders from research, academia and industry there hasn't been any development on the Utility Model law in India. However if implemented, it would be interesting to see what parameters government would propose with respect to patentability criteria, substantive examination and registration procedure. Similarly the legislative route and infringement as well as enforcement measures are other such issues which would require careful deliberations.

**“ However such policies and legislative frameworks needs to be analyzed and reviewed periodically to formulate a comprehensive Indian IP system in pace with the global developments. ”**



It would also be interesting to observe the management of IP Promotion & Development Council (IPPDC) that is proposed to serve as the nodal organization for the promotion, creation and commercialization of IP assets. While providing "window services to entrepreneurs, startups and manufacturing units for IP awareness, protection and utilization" is a welcome step, the IP Office may itself consider taking steps to abridge the gap between the right holders and the industry. This can be achieved by establishing a cell where innovators and right holders seeking to commercialize their invention by way of licensing, cross licensing, assignments, merger/sale or acquisition can approach and register their asset. The IP Office can either publish the said information on their website or in the weekly journals.

## Conclusion

The draft though comprehensive misses out on certain issues such as pharmaceuticals and compulsory license. It is not clear as to what would be the government stance on such issues and what steps it would take to ensure access of medicine by all and to avoid misuse of patent rights by right holders.

Nevertheless India has been bringing in several policy reforms - both in administration and statutes from time to time which includes India's recent accession to Madrid Protocol, ratification of the Marrakesh Treaty 2013, and India's designation of the International Search Authority and International Preliminary Examination Authority. However such policies and legislative frameworks needs to be analyzed and reviewed periodically to formulate a comprehensive Indian IP system in pace with the global developments.