



## Indian Trademark Law Enforcement

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In an extremely strong protection of IP rights, well documented IP laws are the key factors for economic growth, FDI investment and competitiveness. Various studies have shown that economic growth is closely related to how well the economy encourages, stimulates and protects research and development. The effectiveness of regulatory intellectual property rights (IPR) mechanism is a driving force for full innovative capacity and economic growth and business/employment expansion. A strong and effective IPR regime enforces legal and rightful mechanism for inventors, investment opportunities and further scope of business/ employment growth. In protection of intellectual property, the role of enforcement agency is extremely vital and critical. However, in India, barring various steps have recently been taken to strengthen implementation of intellectual property enforcement. There has been very low detection of these IPR crimes because of various reasons. Strong IPR implementation contribute to every country's economy, weak regulation does an opposite impact. IPR crime is a complex white collar crime. Its impact is hardly visible though it has cascading multiple effects on industry, government taxes, economy, employees, status of country and diminishing image on world platform. The officials who are dealing with must have rigorous training and should be equipped with most modern machines and equipments as this is new modern warfare. Barring legislative changes, Indian Government has taken various strong efforts with the more efficient intellectual property rights protection. Indian enforcement agencies are seen working in the area of IP protection/enforcement and but the levels of piracy is not arrested as number of IP crimes are going unreported sufficiency.

**Keywords:** IP Laws, The Trademark Act of India, Indian Police, IPR Crimes, Cosmetics, Counterfeit, IP Right, Telangana Intellectual Property Crime Unit, Cell for Intellectual Property Rights Promotion and Management, National Crime Record Bureau Data

Counterfeiting and smuggling have caused a loss of Rs 1.17 lakh crores to the Indian economy in 2017-18 in key industries viz textiles, tobacco products (cigarettes), readymade garments, capital goods (Machinery and Components), FMCG, Cosmetics and consumer (Electronics) durables.<sup>1</sup> The intellectual property crime graph are expected to be visually perceived on the higher side in India in the near future only if raids/actions are taken against infringers are stepped up in the right earnest. The regime has brought out guides/handbooks on IP laws for cognizance amongst the small and medium enterprises, enforcement agencies, scientific and academic communities and members of the public at astronomically immense level. Moreover, the regime has to step up organizing training of concerned officials through seminars and workshops for cognizance on IP issues, with participation from enforcement personnel as well as industry. Many advocates and police personnel are still not aware about infringements/penal provisions of IP laws and

its enforcement. They either don't react to the complainant or else let them go with a soft warning.

Central Police Authorities under the Ministry of Home Affairs and Economic Offence Wing (EOW), specialized enforcement agency under the Central Bureau of Investigation deals with concrete areas of intellectual property, such as, counterfeiting, piracy and cybercrimes, and handles the investigation and prosecution of IP rights infringements. The Economic Offence Wing was established in 1964, but commenced full operations in 1994 to deal with the offences and statutes listed in Section 3 of the Delhi Special Police Establishment Act, 1946, which include intellectual property crimes as well.<sup>2</sup> The EOW investigates only in volute and critical cases. There are many factors such as, political intervention, less workforce and court orders because of which these are overburdened, and the investigations conventionally involve the accumulation and analysis of documents amassed from sundry sources. As the Indian Constitution additionally mandates that the state govern law and authoritatively mandate; hence, the majority of the policing takes place through the

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respective regime states and coalescence territories thus influencing the investigation and playing with evidences.

### **Filing a Complaint**

When an IP right is infringed be it trade mark or any other IP crime, the legal rights holder can approach respective Police Officers to enforce its IP right/to make a compliant in writing to the concerned police authorities with full details such as, location, name or company's name of infringer, facts of the case, how the IP rights are impacting the right holders, etc. The rights holder can also directly approach the area Magistrate and file a criminal complaint. Based on the facts and nature of complaint, the Competent Court will direct the police to investigate the matter further.

In addition to the specific offences listed in the IP rights statutes, a Police Officer with a rank of at least Deputy Superintendent of Police or Sub-Inspector has the authority to conduct search and seizure in relation to Intellectual Property Crimes if they see it *prima facie* or if it comes to their knowledge. The police can seize the pirated goods and can take the seized goods at the police station, They can also arrest the accused party and produce before the Court and submit a sample/s of the pirated/spurious goods as evidence before the court along with investigation details or can seek time for remand of the accused/ further investigation. On the order of the Court, the Police either dispose of the infringing items or hand them over to the IP rights holder or can further send the samples to forensic lab for testing to judge other impacts of the pirated goods such as environment (impact on water, air, and plants if not properly disposed off) and inclusion of poison substance if any. Following search and seizure, the police is also entrusted with the additional responsibility of identifying the source of procurement of raw material and preparing the charge sheet with input from the public prosecutor and the IP rights holder.

### **Developments in India**

In 2016, India's first dedicated, state IP Crime Unit was launched by the Telangana State Government, The Telangana Intellectual Property Crime Unit (TIPCU). The unit was set up under the Cybercrime Wing of The Crime Investigation Department –CID and deals with complaints relating to online piracy and the illegal downloading/uploading and distribution of films and software. The TIPCU also

tracks down the culprits through IP address and arrests pirates, and freezes their accounts and assets used in violating the laws.<sup>3</sup> Most Police Departments have imparted specialized trainings to deal with online IP crime (eg. software piracy, infringement of copyright, trademarks, patents, designs and service marks, and theft of computer source code). The major cities in India with Cybercrime Cells are Mumbai, Delhi, Bangaluru, Chennai, Pune and Gandhinagar. Recently, The Central Government has taken many steps to promote IP awareness among the police. For example, the Cell for Intellectual Property Rights Promotion and Management (CIPAM) organises Police Training Programmes. In 2016, several training sessions were conducted with various state police departments. For the purpose of IP protection and awareness, CIPAM also collaborates with other organisations. Recently, it prepared an IP Rights Enforcement Toolkit for Police Officials in conjunction with the Federation of Indian Chambers of Commerce and Industry. IP rights are inherently dynamic in nature and their effective enforcement requires the police authorities to constantly upgrade techniques and methods while dealing with legal and technical issues with respect to availability of new tools such as, smart phones and social media, etc. These days, products are consumed rapidly. By the time Police registers FIR, the culprits are gone with profits and vacates their premises. Police has to take many initiatives in this regard, and so that confidence of rights holders is generated in authorities in terms of effective and expeditious IP laws protection and enforcement.<sup>4</sup>

### **European Union Data Report about India**

Many marketplaces like, *Karol Bagh, Tank Road* and *Gaffar market* in Delhi, were reported for selling counterfeit sports goods, footwear, clothing, apparel, luxury goods, watches and cosmetics of international brands by both wholesaler and retailer. Also, several European brands shops around these markets reported counterfeiting of their brands on these market places. According to stakeholders, some civil and criminal enforcement actions have been taken resulting in successful seizures of counterfeits, which however has not proved to be effective enough. Massive amounts of counterfeit goods were also reported by stakeholders on other marketplaces in India, for instance on *Lajpat Rai market, Arya Samaj Road, Hardiyen Singh Road* and *Sarojini Nagar market* in Delhi, the *Crawford market* in Mumbai, *Khidderpore*

market in Kolkata or the Sector 18, Atta market in Noida as well as Akal Garh, Chaura Bazar, Mochpura Bazar and Gur Mandi markets in Ludhiana.<sup>5</sup>

### America's Super 301 Report

As per Super 301 Report by USA, India is a rising threat to intellectual property rights protection. In today's era, Indian economy looks to IP development and protection to grow economy at a fast pace. Organizations now understand the need of protection and enforcement of IP, R&D is being taken recourse to, foreign brands are entering the market in a big way and substantial inflow of FDI is being witnessed. These benefits need to continue without being affected by factors such as piracy resulting in losses to organizations, evasion of taxes and violation of consumer rights. The industry associations in India estimate that the FMCG Sector loses approximately 15% of its revenue to counterfeit goods with several top brands losing up to 30% of their business due to IP crimes. Destruction of spurious goods in absence of vigilant consumers may not solve the problem much.

India being signatory to Customs Mutual Assistance Agreements with most of its major trade partners (including European Union & US) which facilitate sharing intelligence and investigative data relating to IP violations. With regard to the judicial side, in the last few years, Indian courts take a very lenient view to cases of counterfeit/piracy cases. That is the main reason why the IP Crime Graph is very low in registering the cases. Strong new reforms are desired to fight this menace.<sup>6</sup>

### India's Policing Report

Delhi, Kerala and Maharashtra have a more adequate policing structure than other selected states. Police *adequacy index* as the report states, All-India Overall Index 0.42, Strength 0.46, Infrastructure 0.75 and Budget 0.06 (index interpretation: 0-worst performing; 1-best performing).<sup>7</sup> India has a specialized Administrative Tribunal that exclusively hears IPR appeals. The Indian Intellectual Property Appellate Board with at least one judicial member and one technical member was set up to hear appeals against decisions of the Register of Trademarks in 1999.<sup>8</sup> It expanded its jurisdiction to geographical indications in its initial year and to patents in 2007. The Board sits in Chennai, Mumbai, Delhi, Kolkata, and Ahmedabad. However, infringement trials remain in the High Courts of India.<sup>9</sup> India also enacted and established Commercial Courts as per PRS Lok Sabha

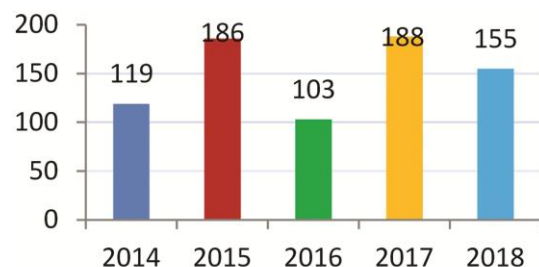
and Rajya Sabha. Although, IPR cases would be under the ambit of Commercial Courts, the judges would not necessarily possess IPR expertise.<sup>10</sup>

### Indian National Crime Record Bureau

As per the Indian National Crime Record Bureau Data (NCRB Data), the situation is very poor as the world is facing the heat of pirated goods of Indian origin. The government should take stringent measures in registering the IP crimes. Though police department work at over capacity.

The NCRB Crime Report data (Fig. 1) the maximum number of cases reported/registered were 188 in 2017; while 103 cases were reported in 2016. Further, in Delhi alone 54 cases were reported out of 103 crimes in total. With reference to its Table 17A.3, in 2016, 102 cases were with pending investigation from previous year. Where as almost similar number of cases (103) were reported in 2016. Also, 32 cases were found with insufficient evidence, whereas 2 cases reported false in 2016. Police disposed off 109 cases while 96 cases were pending during the year 2016. Whereas no disposal data for such crimes has been provided in year 2017 and 2018.

The Table 17B.3 of NCRB the report mentions the data of metropolitan cities. As per the report there were 79 cases pending investigation from previous year in 2016 and 53 fresh cases for 2016; hence a total of 132 cases for investigation. However, 22 cases were found with insufficient evidence. The Police disposed off 64 cases with 64 cases still pending for investigation at the end of the year 2016. The Table 18A.3 of the report describes the disposal of cases by courts in 2016. The cases with pending trial from previous year were 276 in 2016, however, 75 cases were under trial. Only one case was compounded and the trial of 11 cases was completed. Two cases resulted in the conviction of culprits; whereas in 9 cases the accused were acquitted or discharged. The courts disposed off 12 cases, however, 339 cases were



Source: NCRB data

Fig. 1 — Trade mark crime cases registered all over India

still pending for trial in the courts at the end of year 2016. Trial was completed only in 7 cases in 2016 and in one case the accused were convicted and in rest of 6 cases the accused were discharged or acquitted. As per the data in the report, 242 cases were pending in trial courts of India by the end of 2016.<sup>11</sup>

### **Challenges in IPR: Indian Perspective**

IPR plays an important role in all areas and sectors and has become an important aspect in all research oriented industries. The continuous efforts of the government in policy establishment, IT protection and infrastructure took IPR much ahead. Despite significant achievements, our industry is still facing challenges at domestic international levels because of counterfeit products. Firstly, in India, IPR lacks its roots and people are still unaware about IP rights, penal provisions and the advantages of taking steps for protection intellectual property. To overcome this, the government has been promoting the awareness of IPR by organizing awareness programs and by organizing educational programs for the skilled impart of knowledge amongst the innovators which is very nominal count. Secondly, steps need to be taken to efficiently handle the increase of IPR awareness and to tackle the need of highly skilled and specialized Judges, IP attorneys and IPR professionals. Apart from the above issues, TRIPS flexibility especially relating to patent protection, compulsory license and government use poses a challenge to Indian IP regime. There have also been significant concerns over IP enforcement, with a backlog of cases at both the civil and criminal courts and IP Offices, and this is the area where Indian regulatory authorities are working hard.

### **Indian Government's Initiatives to Protect IPR**

Prominent institutions like National Police Academy and National Academy of Customs, Excise and Narcotics in particular have been holding training programs on IP laws for the police and customs officers, in addition to more comprehensive inclusion of contents on IP laws in their regular training programs. In addition, the Government of India has constituted Copyright Enforcement Advisory Council (CEAC) and created IP cells in police department, with the objective of strengthening the IP enforcement. As a consequence of the number of measures initiated by the government, there has been more activity in the enforcement of IP laws in the country. Over the last few years, the number of IP violation cases registered has also not been registered

by police because of overload/or might be due to very less numbers of trade mark crimes have been registered just to show the numbers .

### **Conclusion**

During the recent years, the scale of the IP crime grew at a very high rate and India has been seen as a big source for the counterfeit products. Importantly, in India, the counterfeit traders are small-scale business operators and street vendors, who are only the small & front face of much wider and more sophisticated networks indulged in vast IP crimes. Evidence shows that organized criminals and terrorists are heavily involved in planning and committing IP crimes. Online piracy is facilitated by increases in transmission speeds. However, India globally has been seen as a country that does not provide adequate IP rights protection and enforcement. In fact, IP crime in India is lower than in Asia-Pacific region and globally but with lenient and leverage continues it will become a gigantic monster. India may have a separate legislation to address counterfeiting cases, however, it offers substantial statutory remedies both of civil and criminal nature. In recent times, the Government has made vibrant changes to IP laws and more amendments are awaited including change in IP and Customs laws to implement border control measures as required by the TRIPS Agreement.

It is observed that government is trying to implement regulatory mechanism efficiently but the pace to arrest the problem has not been seen to the level of satisfaction. The number of cases registered is very few. Rigorous training needs to be organized to specialized police personnel with special cells and special powers should be given to such concerned officials. In fact it is strongly recommended that there should be direct training from trade mark department or a special training department should be created to generate awareness among all stake holders. India has 138 police personnel per 1,00,000 population.<sup>12</sup> Whereas, the training is imparted only to 6.4 police officials.<sup>7</sup> These police officials work with excessive burden on their head. Thus IP laws do not much time in government priority list as visible crime reporting/recording is not there. Hence, registration of these crimes generally gets a least priority. Day by day IP crimes leads to the major loss of revenue to the government and also loss of reputation in the international market this impact the repulsion of big manufacturing companies in the terms of investment and direct loss of business/government revenues/loss of job opportunities/loss of technology. It is therefore

recommended to have specialized courts, special police officers and special budget along with infrastructure to tackle this menace.

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