

Overview of Indian Patent System

1.1 Pre-Independence Scenario

The history of patent legislation in India has a huge British influence because making of the legislation started during the British rule. The first evidence of such legislation in India can be found in 1856 as the 'Act of VI', adopted from the British law of 1852 with minor modifications. This particular legislation was based on encouraging new and useful innovations and also to motivate inventors to disclose such innovations for the benefit of the society. Since competent approval of the British Crown was not obtained for the enactment of this law in India, hence it was deemed to be revoked and was then replaced by the 'Act IX' of 1857. Then came the 'Act XV' of 1859 which was much appreciated for the inclusion of 'exclusive privilege' rights, which allowed selling and using the invention in India by the inventor himself or by any authorized persons for a term of 14 years. This act was seen as a drastic improvement in protecting the rights of the inventor as it increased the radius of 'exclusive privilege' from useful inventions to all types of inventions and extension of priority period from 6 months to 12 months. Novelty of invention and prior public use of the said invention in India or United Kingdom was considered before granting of such privileges. The act of 1859 was re-thought in 1872 and its inclusiveness was increased by integrating protection of designs and thus was renamed accordingly as 'The Patterns and Designs Protection Act' under 'Act XIII' of 1872. More amendments were made in 1883 which was known as 'Act XVI' of 1883. Such amendments were made in light of the fact that those inventions which were exhibited at the Calcutta International Exhibition World's fair, before filing of application seeking patent protection, shall not lose novelty if filed for protection within 6 months from the opening

date of such exhibitions. This rule formed the basis of modern Indian patents act clause 'Not Anticipations' mentioned under Section 29-34. In order to be in tandem with the British law prevailing in United Kingdom, some changes were incorporated in the Indian law in light of the changes made in Britain in the year 1883. Such changes were officially inducted into the Indian law in 1888. Some noticeable changes that were inducted to be in resonance with the changes made in Britain were,

- Extensions of jurisdiction
- Fee reduction
- Extension of exclusive privileges
- To call for a model of the invention for the purpose of examination
- Appointment of agents to facilitate filing process for seeking patent protection
- Grant of compulsory license

Finally, the Indian Patents and Designs Act came to existence in 1911 which was the most comprehensive act on patents and designs to have existed before independence. With the enforcement of this act all other previous acts ceased to exist. Many of the provisions regarding patent administration and patent processing that are currently mentioned in the existing act of 1970 owes its existence from the 1911 act. Subsequent amendments made in 1920, 1930 and 1945 lead to the incorporation of several currently existing provisions such as establishment of Controller of Patents for administering the patents act, patent of addition, government powers to take control of certain inventions, concept of provisional specification etc.

1.2 Post-Independence Scenario

The Indian Patents Act, 1970 was metamorphosed to its current stage through the extensive reviews and recommendations given by two expert committees namely,

- (a) Justice (Dr.) Bakshi Tek Chand Committee
- (b) Justice N. Rajagopala Ayyangar Committee

Justice (Dr.) Bakshi Tek Chand Committee: Due to the dynamic nature of our society and rapidly changing configuration of the economic & political environment of our country, an urgent need was felt to hyphenate the existing patent system to such changing environment. In

order to achieve this task, Government constituted the Justice (Dr.) Bakshi Tek Chand Committee in 1949. The said committee was expected to review the then existing patent legislation and provide deeper insight into various aspects like prevention of abuse of patent rights, implementation of special provisions to govern patents on food/medicine, provision to regulate patent agents, provisions on best practices of patent office and services rendered by them etc. The recommendations by the committee were submitted on 04.08.1949. The committee suggested certain amendments in some sections of the then existing act to prevent abuse of patent rights, through grant of compulsory license, revocation of patent and setting up an ad-hoc special tribunal with judiciary powers to provide relief against abuse of patent rights. The committee also emphasized the need of making inventions related to food, medicine, surgical devices available to the public at an affordable price with suitable compensation to the patentee as well. Some of the recommendations of the committee were incorporated in the patent act in 1950, particularly those related to compulsory license and revocation as it was very necessary to prevent abuse of patent rights at the earliest. However, when the bill was introduced in the Parliament in 1953 (the first Lok Sabha after independence), it lapsed as the government did not press hard enough to get it passed by the parliament.

Justice N. Rajagopala Ayyangar Committee: After the independence, the primary objective of the government was to make the country self-sustainable on social, economic and technological grounds. Henceforth, to achieve this task it was clear that the country's economy needs a continuous infusion of inventions which shall indirectly benefit the society as well. On the other hand, abuses related to patent rights also need to be curbed which otherwise could be a discouraging factor for the society. In light of the above facts, it was very necessary to bring a huge reform in the then existing Patents and Design Act, 1950 and hence the Justice N. Rajagopala Ayyangar Committee was constituted in 1957 to examine the question of revision of the patent law and suggest the government accordingly. The committee extensively studied the Swan committee report of the UK and also went through the recommendations of various other committees constituted by different countries for bringing reforms in their patent act. The said Ayyangar committee understood the evils of monopoly which a patent provides but also realized the goodness of technological and innovation stimulation that the patent system provides to the society. Thus, the patent system was not

only to provide monopoly advantage to the patentee but also to bring technological advancement by providing inventors a conducive environment for inventions which shall largely play a critical role in the economic development of the country. Ayyangar committee's major role was to get this balance of patent monopoly and technological advancement right for a sustainable economic and social development of the country. Ayyangar committee took a note of the fact that an Indian patentee should take all efforts to commercialize the invention in India, the committee also noted that conclusive evidence is available to prove the fact that countries who have adopted patent system have witnessed significant technological advancement. Henceforth, the committee recommended retention of the patent system in India along with some major changes in the patent act. This is was when the existing Patent Act, 1970 was taking its final shape. The currently prevailing patent legislation in the form of Indian Patents Act, 1970 came into existence when the bill was passed through a Joint Parliamentary Committee. The said act replaced all other previously prevailing legislation. The provisions of the act mostly came into force on 20th April, 1972 along with patent Rules, 1972. Some of the then salient features of the act were,

- Classifying certain inventions as non-patentable
- Foreign filing rules for Indian resident
- Provisions for imposing secrecy directions for inventions related to defence purposes of the country
- Expansion of scope of patent revocation
- Provision of further appeal to High Court against specific decisions of the Controller
- Expansion of Indian patent office
- Strengthening of compulsory licensing

An illustrative representation depicting the various events associated with the birth of Indian Patents Act, 1970 along with time line is given below for easy understanding of the proceedings.

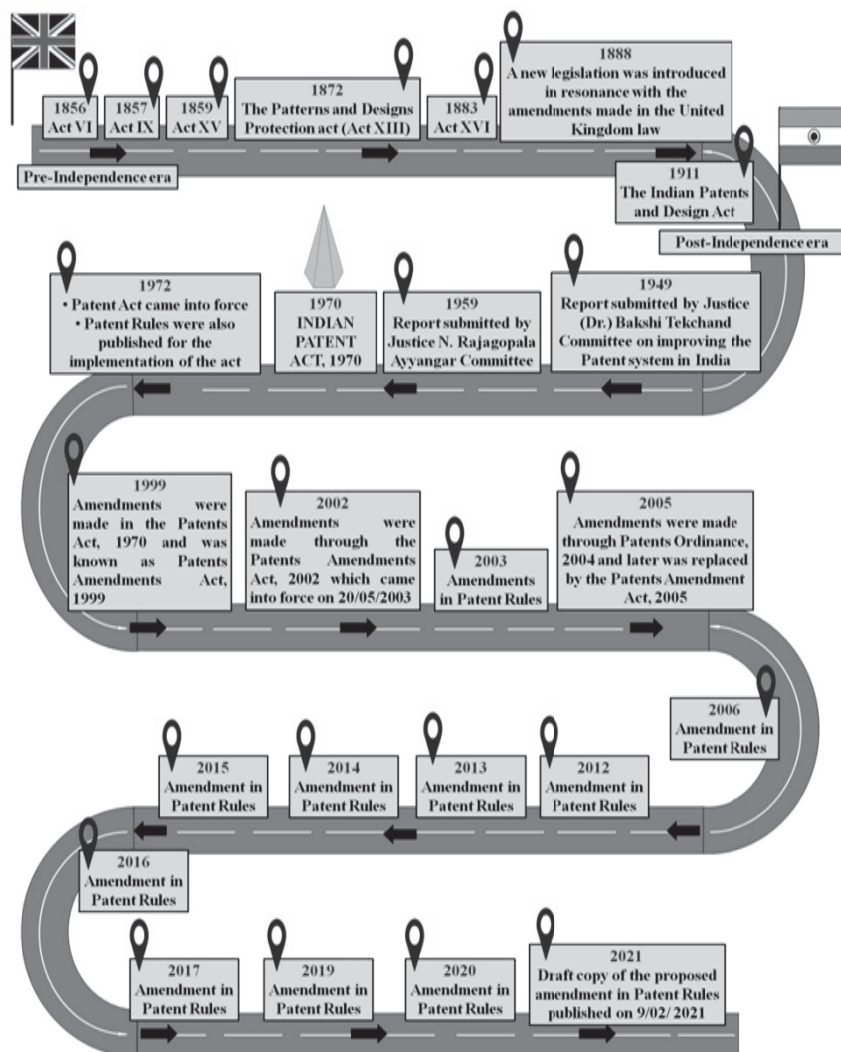


FIGURE 1.1 History of Indian patent system along with time line.

Patent Amendments

Three major amendments were made to the Patents Act, 1970. The first amendment is known as the Patents Amendment Act, 1999, the second is known as the Patents Amendment Act, 2002 and the third is known as Patents Amendment Act, 2005. For the implementation of the patents act, patent rules were published in 1972 which also underwent a series of amendments which shall be described separately in the next section. All these amendments were made to comply with the minimum protection

and patent administration standards laid down by TRIPS agreement to which India became a signatory in 1995. The amendments made are briefly described below,

Patents Amendment Act, 1999: The amendments were approved in 1999 and was made effective retrospectively from 1st January 1995. This particular amendment made way for the filing of product patents in the field of drugs, pharmaceuticals and agricultural chemicals. It also allowed Exclusive marketing Rights (EMR) for articles belonging to the above-mentioned field which were patented in foreign country and for which patent was filed in India as well, for commercial activities related to the said products in India

Patents Amendment Act, 2002: these amendments came into force on 20.05.2003 along with the introduction of the new Patent Rules, 2003. Some of the most important amendments that were made in 2002 act were,

- New definition of Invention
- Expansion of non-patentable inventions
- Patent protection term of 20 years
- Constitution of Appellate Board
- Process patent for microorganisms
- Prevention of patenting of traditional knowledge and biodiversity

Patents Amendment Act, 2005: The third amendments were brought in the form of ordinance in 2004 which was further replaced by the Patents Amendment Act, 2005 which came into force from 01.01.2005. Some of the important amendments made were,

- Expansion of product patents to all fields of invention
- Introduction of time bound patent processing
- Grant of compulsory license to export medicines to such foreign countries who have no infrastructure for such production during public health crisis
- Introduction of pre-grant and post-grant opposition

Patent Rules: in order to implement the Patents Act, 1970, government constituted the Patent Rules, 1972 to facilitate implementation and administering the Patent act, 1970. A new set of patent rules were framed in 2003 which replaced the earlier existing rules of 1972. Further amendments to these rules were made in 2005, 2006, 2012, 2013, 2014, 2015, 2016, 2017, 2019, 2020 and 2021. The most important amendments that were made in 2019 were,

- Mandatory for patent agent to operate only through electronic submission of documents

- No transmittal fee for PCT applications filed electronically
- Widening the scope of rule 7 to encourage startups by considering them as small entities

Patent Amendment Rules, 2020 came into force from 19.10.2020, which further streamlined and created ease of operation regarding requirements related to filing Form-27 and submission of verified English translation of priority documents. On February 9th, 2021 Government of India through DPIIT published the draft copy of the proposed patent amendment rules 2021. The proposed rule intends to benefit eligible educational institutions (Indian and Foreign) in terms of filing fee and expediting examination process.