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Balancing Private, Public and Social Interests: A Pre- and Post-Independence Study of Indian IPR through Roscoe Pound's Theory

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Abstract

This paper discusses the development of Intellectual Property Rights (IPR) from Roscoe Pound's theory of Social Engineering, which suggests that law must provide a balance between private, public, and social interests. It provides an overview of the development of Intellectual Property in India, looking at customary protection in the medieval period (Guilds, Royal Patronage and Community ideas of knowledge). Then looks at the colonial period and the impact of the Act VI of 1856 and the Trademarks Act 1940. Then it looks at the development after independence with the Copyright Act 1957, the Patent Act 1970, and the impact of the TRIPS Agreement 1995. Finally, the paper looks at the National IPR Policy 2016. This analysis is supported using an online questionnaire carried out on B. A LL. B. and LL. B students looking at their knowledge of customary protection. Their views on whether rights should be balanced between owners and society. Their perceptions of corporations abusing intellectual property and how they feel traditional knowledge should be acknowledged within law and legal education. This paper demonstrates that there has been a shift from customary, community-focused intellectual property to owner-focused colonial laws. Then to a post-independence balance achieved through Social Engineering. Finally, to an externally imposed balance. This paper argues that there is only partial balance between these groups and traditional knowledge.

Keywords: Intellectual Property Rights, Roscoe Pound, Social Engineering, Indian Intellectual Property Law, Traditional Knowledge, TRIPS Agreement, Patents Act 1970, Copyright Act 1957, National IPR Policy 2016, Legal Education.

Introduction

Creativity and innovation are part of social change. They bring an abundance of knowledge to the economy. In the modern world, Inventions, literary works, and artistic works are important. Designs and trademarks of each form the subject matter to be recognized and protected. [1]To protect these innovations, the term "Intellectual Property" refers to a group of legal regimes that, to different degrees, confer ownership rights in particular subject matter. During the twentieth century, new or existing subject matter has been incorporated into existing IP regimes (e.g., the protection of computer software as a form of copyright, and the patentability of micro-organisms under patent law) and new regimes have been introduced

[1] **Ministry of Commerce & Industry, Dep't of Indus. Policy & Promotion, Gov't of India, *National Intellectual Property Rights Policy* (May 2016), https://ipindia.gov.in/uploads/National_IPR_Policy_English.pdf.**

designed to protect existing or new subject matter (e.g., plant variety protection, circuit layout). There is no indication that this trend towards highly expansive IP regimes will slow.

While India has been an innovative society culturally and technologically, it lacks awareness of Intellectual Property; moreover, it lacks the awareness required to understand why these innovations are to be protected and are individuals' rights. This hampers the society's progress significantly.

[2]IP operates in the corporate sector, where its processes are carried out through laws and responsibilities enforced through IP tools such as patents, copyrights, and trademarks. These tools are essential to any business model. However, the conversation about IP laws is stuck when it comes to awareness and realisation of them.

Giving IP laws the approach of the theory of [3] **Pound's Theory of Social Engineering,** the framework of IP laws can be identified and tested.

Roscoe Pound (1870-1964), who founded American sociological jurisprudence, viewed the law as a social institution that aims to "engineer society" so it is as efficient as possible. This means creating a society where the greatest number of human desires can be met with the least amount of friction. The law does this by providing a balancing act between conflicting interests. To help understand this, Pound divided interests into three groups. Private interests are those relating to your personal life, such as personality, family, property, and contracts. Public interests are those related to the state as a politically organised society. Social interests are those relating to the whole community, such as health, safety, preserving resources, and overall advancement. Pound's second jural postulate is that individuals can have control over things they have made using their own labour. This is the basis behind property law and patent law. This fits perfectly with IP law. A company has private interests in its property and labour due to having exclusive rights via patents, copyrights, and trademarks. Public interests can include health, education, and preserving culture. The state also has a public interest in revenue, trade policy, and technology. Corporate IP disputes are a conflict of legitimate interests, and the law will aim to find a balance. Within Indian law, there are many provisions that encourage this balance. These include the directive principles, Articles 7 and 8 of [4]TRIPS, and the structure of the Patents Act.

As there is no indication of how to weigh each interest, this theory can be seen as a way of understanding which interests exist and how they should be prioritised. This paper will look at how this theory applies to real statutory methods. IP law is primarily used in the corporate sector, so a company's IP strategy can affect public health, competition, employment, and culture. This chapter will show how Indian corporate, competition and trade laws already consider these interests.

History of Intellectual Property Rights, Pre-Independence

The phrase "Intellectual Property" in medieval India is an anachronism, and that itself is the central finding. Intellectual property (IP) as a legal category- exclusive, transferable, state-enforced rights in the creation of the mind did not exist in medieval India. It arrived only with British colonial statutes in the 19th century. Social, religious, and economic institutions did exist and performed some of the functions we now assign

[2] **World Intellectual Property Organization [WIPO] & Office of the United Nations High Commissioner for Human Rights [OHCHR],** ***Intellectual Property and Human Rights*****, WIPO Doc. WIPO/UNHCHR/IP/PNL/98/1 (Nov. 9, 1998),** https://www.wipo.int/edocs/mdocs/tk/en/wipo_unhchr_ip_pnl_98/wipo_unhchr_ip_pnl_98_1.pdf.

[3] ***Pound Theory of Social Engineering*****, THE LEGAL QUOTIENT,** https://thelegalquotient.com/social-laws/law-and-society/pound-theory-of-social-engineering/1393/ **(last visited Oct. 24, 2023).**

[4] **Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994).**

to IP: attributing authorship, controlling access to knowledge, protecting craft techniques, and signalling the origin and quality of goods.

- Medieval India had no concept of intellectual property as exclusive, transferable legal rights. The dominant ethos, rooted in Hindu, Buddhist, and Jain thought, treated knowledge (vidya) as sacred, communal, and ideally shared rather than owned.
- Guilds (Shreni) of artisans and merchants performed proto-IP functions: they set and enforced quality standards, trained apprentices, and "protected craft secrets" as collective trade knowledge.
- Authorship was acknowledged but not monetised. Manuscripts were copied by hand by scribes and scholars; naming conventions and colophons recorded who composed and who copied a text, but there was no exclusive right to reproduce or profit from it. Royal patronage, not a market in copies, rewarded authors.

The transition from a medieval to a colonial period brought drastic changes to the recognition of intellectual property in India. Medieval society relied on royal patronage, guilds, membership, and traditional skills. However, with British rule, the system of protecting intellectual property evolved from an informal tradition to a formal statutory and proprietary system. This change arose through several legislative acts which created an official system in India. Two key acts will be discussed below to show the British government's ambition, but also the limits of its approach. These two acts will be discussed in detail below to show how the Western legal system was enforced in India and how this set a foundation for intellectual property discussions in the years before independence.

[5] Act VI of 1856: Patent Law

Act VI of 1856 was passed during the British colonial period and aimed to protect inventors by providing them with exclusive rights. It was an important early development in India, aimed at encouraging innovation but was primarily focused on commercial interests.

The main objective of the Act was to encourage new inventions and manufacturing by granting inventors exclusive privileges. Its purposes included:

- To encourage innovation by granting them exclusive rights
- To encourage innovation and new manufacturing techniques
- To protect inventors from infringement
- To allow inventors to gain commercially
- To encourage industrial technological development
- Provide a legal system

Important Provisions:

The Act had 37 sections. Key parts included:

- Section I to III: The inventor could make a petition to the Governor General in Council, allowing them to provide details of their invention. The government could conduct an inquiry before granting permission.
- Section IV: Granted exclusive rights to make, sell, and use an invention in India for 14 years.
- Section V: Allowed the government to impose conditions and restrictions on patent privileges.

[5] **Legislative Council of India,** ***Acts of the Legislative Council of India: 1856,*** **Vol. II (1856),** https://archive.org/details/in.ernet.dli.2015.94630

- Sections VI- VIII: Required a written description of the invention and made false declarations punishable as perjury.
- Sections IX-XIII: Dealt with fees, submission of copies, public inspection, and official records.
- Section XIV: Allowed refusal of protection if the invention was not new, the applicant was not the inventor, or the specification was insufficient.
- Section XV: Allowed termination of privileges if they were harmful to the State or prejudicial to the public.
- Section XVI: Recognised importers of new inventions as importers, subject to certain conditions.
- Section XVII: Permitted foreign inventors residing in India or abroad to apply.
- Section XIX: Provided a special route for actual inventors holding a British Patent to seek protection in India.
- Section XX: Protected persons who had used an invention before 7th July 1855.

Note: The initial patent term was 14 years. An additional period of up to 14 years required approval and was not automatic.

Criticism of Act VI of 1856

Despite introducing formal patent protection, the Act had several limitations:

- Colonial bias: Its framework operated within a colonial economy and reflected the commercial interests of British industry.
- Advantage to British interests: Section XVI recognised importers as inventors, potentially benefitting foreign manufacturers over legal producers.
- Recognition of British patents: Section XIX provided a special route for holders of British Letters Patents.
- Financial barriers: Section XXXVI required ₹100 stamp paper for relevant petitions, in addition to other fees. This could make protection difficult for ordinary artisans and small inventors.
- Administrative control: Patent privileges were granted under the authority of the Governor-General in Council.
- Neglect of indigenous innovation: The Act did not provide specific support for traditional Indian artisans, craft communities or small manufacturers.

The Act did not legally exclude Indian inventors. However, its financial requirements, administrative procedures and special recognition of British Patents created unequal practical opportunities. Therefore, it was structurally more favourable to establish British commercial interests.

Roscoe Pound's Theory of Social Engineering and its Application to Act VI of 1856

Roscoe Pound described law as a tool of Social Engineering. This means that the law should ensure there is a balance of interests which results in harmony between the individual, the society and the State.

Roscoe Pound categorised interests, which may be:

- Individual Interest: Right to own, Freedom and Property.
- Public Interest: The State and the Government.
- Social Interest: Public welfare, Social security, and Economic growth.

This aims to achieve the greatest satisfaction with as little conflict and negative impact on society.

However, this was not fully achieved in the Act VI of 1856. Whilst this provided inventors with the sole

right to their inventions and meant that the government could regulate or remove any privilege that was determined to be for the state or public, it favoured those with more financial and commercial resources. Those who were not considered well enough were Indian artisans, traditional manufacturers, and local communities. Therefore, this Act focused on commercial protection, without considering indigenous innovation, fairness of patent rights, and the wider interests of Indian society.

Act VI of 1856 was an important step in the development of Indian Patent Law. However, from the perspective of Roscoe Pound's Theory of Social Engineering, it failed to establish a proper balance between individual, public, and social interests.

Its framework provided practical advantages to established British commercial interests while giving insufficient attention to Indian artisans and local innovators. It demonstrates that legal protection alone does not guarantee social justice. Law must also promote public welfare, equal opportunities, and inclusive development.

[6] The Trademark Act, 1940

The Trademark Act of 1940 was passed by the Indian Legislature and received assent from the Governor-General on 11th March 1940. The purpose of the Act was to enable the registration of Trademarks and increase protection. This Act enables protection for Trademarks, which are used by businesses to identify goods. It aims to prevent confusion, protect business identity, and provide a structure for registering Trademarks.

Important provisions

- Section 1: This section states that the name of the Act shall be the Trademarks Act, 1940, and extends to the whole of British India.
- Section 2: Defines key terms such as trademark, registered trademark, certification trademark, registered user, and associated Trademarks.
- Section 4: Creates a Trademarks Registry and allows for a register to be created with information about registered Trademarks and proprietors.
- Section 5: Enables a trademark to be registered for specific goods or classes of goods.
- Section 6: A trademark must have distinctiveness.
- Section 8-10: Prevents registration of Trademarks that causes scandalous/ deceiving messages, cause offence to religious feelings, and are identical or deceptively similar to an already registered trademark.
- Section 14-16: Deals with registration of Trademarks, including opposition from interested parties.
- Section 18: Trademarks will be registered for 7 years initially and can be renewed for 15 years.
- Section 21: A registered proprietor will have an exclusive right to use the trademark.
- Section 28-35: Deals with assignment and transmission of registered and unregistered Trademarks. There are restrictions in place to prevent confusion and duplicate exclusive rights.
- Section 37-38: Provides for removal of Trademarks from the register for specific reasons of non-use. It also enables defensive registration of famous Trademarks.
- Section 39-45: Deals with the use of registered Trademarks by registered users. Allows for permitted use and use in export trade.

[6] **The Trade Marks Act, 1940, No. 5, Acts of the Central Legislature, 1940 (India), https://bombayhighcourt.gov.in/bhc/libweb/archive/oldlegislation/1940.05.pdf**

- Section 46-49: Enables cancellations, amendments, and correction of register information. Provides for some challenges to registered Trademarks.
- Section 50-61: Deals with certification Trademarks. These are Trademarks that certify the origin, material, manufacturing process, quality, and other features of goods.
- Section 62-66: Includes special provisions for textile Trademarks. This includes creating a separate department within the Trademarks Registry at Bombay and advisory committees with knowledge of the textile industry.
- Sections 67-69: Include penalties for falsifying information on the register and falsely stating that a trademark is registered. There are also restrictions on the use of the Royal Arms and State Emblems without authorisation.

Criticisms of the Trademarks Act, 1940

- Business-oriented: The Act mainly revolves around business, business reputation, and protecting the interests of registered proprietors.
- Overemphasis on registration: The Act places too much importance on registration, which can be a problem for small traders and traditional producers, as they may not have the knowledge or resources.
- Traditional knowledge was not recognised: The Act does not provide a particular framework for protecting community names, traditional goods, or geographical indications.
- Colonial legislation: This Act was made by the Indian legislature but would be put into practice within British India. The act had a very formalised approach to regulating business.
- Cost involved: Small traders may be put at a disadvantage due to the cost of registering and legal processes.

Roscoe Pound's Theory of Social Engineering and its application to Trademarks Act, 1940

Roscoe Pound described law as being a tool of Social Engineering, whereby there must be a balance between interests to ensure harmony within society and between the individual, society, and state. The different interests are broken down and divided into three groups:

- Individuals (Rights, Freedom and Property)
- Public (The State and Government)
- Social (Public good, safety and Economic growth)

This will ensure everyone can gain maximum satisfaction with the least conflict and damage to society.

The Trademarks Act 1940 did not achieve this, as while it protected individual interests through exclusive rights (s21) and public interests by stopping misleading and confusing trademarks (s8 & s10). However, it was heavily biased towards protecting businesses that had registered their trademark. It did not adequately consider small businesses, traditional producers, and local communities, nor did it protect collective identity. Whilst the act did help regulate trade and protect consumers, it did not ensure a full balance of interests between business and society.

Post-Independence Reforms and Global Integration

Upon Independence, India had a legal framework for IPRs that was built to protect the commercial interests of the colonial regime (for example, Act VI of 1856 and the Trade Marks Act, 1940). However, the newly formed State worked to transform this system to align with the objectives of an independent

sovereign nation. These objectives included enhancing self-sufficiency, public good, and increasing industry. This can be seen as aligning the three interest groups within the IPR system, as Pound describes. The private interests of authors, inventors, and traders (such as exclusive rights) would no longer override the social interests of the public, such as affordable medicine, education, and knowledge. Instead, the public interest of the state could be prioritised by developing an independent industry. Between 1957 and the present day, there have been two distinct periods of legislation. The first was between the Copyright Act, 1957 and the Patents Act, 1970. This was a period of intentional legislation, as IPRs were used as a tool to develop the nation. The second period began in 1995 when India joined the World Trade Organisation, making it obligatory to comply with the TRIPS Agreement. This meant that domestic legislation was now aligned to international minimum standards. This period ended with the National IPR Policy, 2016, seeking to bring the system together and overcome the lack of awareness.

Henceforth, each of these developments is evaluated against the framework of Pound's Theory of Social Engineering, in order to determine whether the resulting legislation achieved a workable equilibrium between private, public and social interests.

[7] The Copyright Act, 1957

This Act was created on 4th June 1957 and is known as "An Act to amend and consolidate the law relating to copyright." This Act became effective on 21st January 1958. It applies throughout India. The Copyright Act 1957 was the first copyright legislation created by the Parliament in independent India.

Important Provisions

- Section 13 – Copyright shall exist in ordinary literary, dramatic, musical and artistic works, cinematograph films and sound recordings.
- Section 14 – Copyright means the exclusive right to reproduce, issue copies of, show or communicate to the public, translate and adapt.
- Section 16 – There shall be no copyright except as provided in this Act or otherwise in force.
- Section 17 – The author shall be the first owner of copyright; although there are no exceptions to this rule, these include the employer, commissioner of particular works, and government.
- Section 18-19A - Any assignment of copyright must be in writing, signed, and specify the right, duration, territory, and royalties. Assignment may be cancelled by the Appellate Board if the assignee does not exercise the rights, or if it is harsh to an author assignor. This cannot happen within 5 years.
- Section 22-29 – Copyright lasts for 60 years. This is measured from the date of death of the author for published literary, dramatic, musical, and artistic works. 60 Years will be measured from the publication of films. Sound recordings, anonymous works, and government works.
- Section 31-32A – Works can be licensed under the compulsory licensing provision. This includes works not made available to the public, works whose author cannot be traced, and translation/reproduction for teaching, study, or research. There is also a license provided for those with disabilities.
- Sections 33-36 – Copyright societies must be registered.

[7] **The Copyright Act, 1957, No. 14, Acts of Parliament, 1957 (India), https://copyright.gov.in/Documents/Copyrightrules1957.pdf.**

- Sections 40-43 – The central government can extend the copyright by making an order relating to foreign works. They can also limit copyright if a foreign country does not provide sufficient copyright for Indian authors.
- Section 51 – Infringement denied.
- Section 52 – Exceptions to infringement. This includes fair dealing for personal use, research, critique, and news reporting. Some educational uses are allowed.
- Section 57 – The author has the right to claim authorship. They can also object to prejudicial alteration or damage.
- Section 63 – Knowingly infringing will result in a fine of 50,000 – 2 Lakh Rupees and a prison sentence between 6 months and 3 years.

The Copyright Act was amended in 1983, 1984, 1992, 1994, 1999, 2012 and 2017. Main alterations include:

- 1992 – General copyright term increased to 60 years from 50 years.
- 1994 – Addition of provisions relating to computer programmes. Copyright societies were included. Performer and broadcaster rights were included.
- 2012 – Added protection of technological protection measures and rights management information. More exceptions to copyright relating to accessible formats. Statutory licensing of cover versions and broadcasting. More protection of royalties for authors.
- 2017 – Copyright Board replaced with Appellate Board.

Criticisms of the Copyright Act 1957

- Limited Scope – Section 16 States there shall be no copyright outside of the Act. Section 52 outlines what acts can be performed. The fair dealing provisions only allow for specific uses, and there are no provisions for computer programmes.
- Ownership bias towards employers/commissioners – Section 17 (b) and (c) state that the employer or commissioner of the work will be the first owner of the copyright unless otherwise agreed. This can result in individuals having weaker rights.
- Complicated processes for accessing works – There are many complicated processes for compulsory licensing. Applications must be made to the Appellate Board, an investigation must take place, and the owner must be asked beforehand. This can reduce the use of compulsory licensing for small publishers, students, or libraries.
- Not applicable to community or traditional works – The criteria for copyright do not apply to community works. There is no specific provision for folklore.

Roscoe Pound's Theory of Social Engineering applied to the Copyright Act 1957

The Copyright Act can be interpreted to balance private, public, and social interests and is a stronger example of a balance than Act VI (1856) or the Trademarks Act (1940).

Pound's theory that individuals have the right to control their creation through their own labour can be seen in the author's exclusive rights, being the first owner, and the requirement to have a written assignment. The author has protection from the assignee. The author also has special rights to claim authorship and prevent prejudice to their work. The author also has the right to receive a share of the resale.

The fair dealing provisions, limited duration and author having the ability to give up their rights mean that works cannot be held back from the public indefinitely. The license provisions will ensure that the work cannot be restricted from being used in Indian languages or classrooms without reason. The exception for those with disabilities clearly shows a social interest.
The State can control its international positioning. The State also controls the collective management, as copyright societies must be registered. The Appellate Board has control over licensing issues. The State also holds copyright in Government works.

[8] The Patent Act, 1970

Modern patent law in India can be traced back to the Indian economic goals and reformation of Intellectual Property law within the country. After Independence, the current law – the Indian Patents and Designs Act, 1911 was heavily criticised, as it had been designed to benefit foreign monopolies. To address this, the Government of India formed the Ayyangar Committee that submitted their report in 1959. The committee recommended a complete overhaul of the patent system to ensure that patents would not limit competition within the country or increase the cost of key commodities, including food items, chemicals and pharmaceuticals. This formed the foundation of the Patents Act, 1970, which came into effect on 19th September 1970. It aimed to stimulate domestic invention while ensuring that the country would remain at an advantageous position in terms of socio-economic welfare.

Important Provisions

- Only Process Patents for Pharmaceuticals and Chemicals – Section 5 stated that no patent could be filed for substances used as food, medicine/drugs, or made by chemical processes. This meant that domestic companies were able to produce the essential medicines by using alternative methods to infringe on the patent.
- Shorter Period of Protection – The law originally stipulated much shorter periods of protection. Particularly for pharmaceutical and chemical processes.
- Compulsory Licence – The Act ensured there were strong provisions for the Controller of Patents to issue compulsory licences to companies after 3 years from the grant of the patent. This could be done if the Patentee failed to meet the reasonable needs of the public, if it wasn't being sold at a reasonably affordable price, or if it was not being worked in India. Section 92 also allows the Central Government to issue compulsory licences quickly if there has been a national emergency, extreme urgency, or public health issues.
- Requirement of Working – The main motive behind patents is to encourage domestic production. Sections 83 (a) and (b) state that inventions must be worked in India on a commercial scale to the full extent possible. Section 146 also requires patentees/licensees to give regular statements showing how much of their invention has been worked commercially in India.

Effects

The structure of the Patents Act 1970, including product patents not being allowed for pharmaceuticals and the requirement to work, caused a huge boom in the Generic Drug industry in India.

[8] **The Patents Act, 1970, No. 39, Acts of Parliament, 1970 (India)**

As process patents were available, Indian companies were able to legally create cheaper alternatives to patented medicines. This has made India the ‘ Pharmacy of the Developing World’. India provides a large proportion of generic medicines globally. They produce cheap vaccines, anti-retrovials, and anti-infectives both domestically and internationally.

Criticisms

Whilst having huge success for socio-economic purposes, the Act received a lot of criticism from research-based multinationals and innovation economists:

- Lack of Incentive to invest in R&D – Critics claim that, as pharmaceutical products couldn’t receive product patents, it discourages investments in risky research (R&D) to create new chemical entities.
- Global Pressure – Before India became more economically liberal and signed the Trade-Related Aspects of Intellectual Property Rights Agreement, the lack of strong product patents led to pressure from other countries.
- Pressure to Compromise – Even though product patents were introduced in 2002 and 2005, there are still strict rules around the patents.

Roscoe Pound’s Social Engineering Theory

Roscoe defined law as a type of social engineering. This means a balance should be reached between society's opposing and overlapping public and private interests: the Patents Act, 1970 is a typical example of this theory being applied:

Pound claimed that the law should always prioritise the interests of society over private interests. This can be seen in Section 83, which states that the patent should not hinder the protection of public health, nourishment, or the socio-economic development of India.

The inclusion of compulsory licensing, government use, and power of acquisition shows that Pound believes that private ownership of ideas shouldn’t be absolute and should only be given as a concession by society.

This piece of legislation gives inventors a short period of monopoly but also has strict rules around working the invention, controlling the price, and compulsory licensing. This has created a balance between rewarding innovation and protecting society.

[9] The TRIPS Agreement (1995)

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an annex – Annex 1C of the Marrakesh Agreement. Signed on 15th April 1994 and came into effect on 1st January 1995, when the World Trade Organisation was created. It was the first time that IPRs were included in the multilateral trading system. There are three main aspects to the Agreement. Firstly, there are minimum standards of protection which are based on the Paris and Berne Conventions (Articles 2.1 & 9.1). Secondly, there are domestic enforcement provisions, and thirdly, enforcement through the WTO. Members can give greater protection than required by TRIPS but not less.

TRIPS forms part of the [10] WTO single undertaking, meaning that countries must accept TRIPS to become members of the WTO. Therefore, as India became part of the WTO they also agreed to TRIPS. However,

[9] **Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994), https://www.wto.org/english/docs_e/legal_e/27-trips.pdf.**

[10] **World Trade Organization, *Intellectual Property: Overview of TRIPS Agreement*, WTO, https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm**

this proved difficult to comply with. The Patents Act 1970 only provided protection for process patents within the Pharmaceutical Industry, whereas TRIPS requires product and process patents for all areas of technology. This includes an additional four years to allow countries to adapt to the new requirements. In addition, they also receive an additional five years for new product patents. During this period, countries could place their application into a "mailbox" (Article70.8).

Benefits of TRIPS to India

- Dispute Resolution – Member disputes are resolved via the WTO.
- Protection – National Treatment is provided, and geographical indications are protected. This means that all member states' nationals are protected.
- Investment & Technology – IPR Protection encourages innovation and technology transfer (Article 7). Supporters argue that high IPR standards will encourage investment.

Roscoe Pound's Theory of Social Engineering and TRIPS

TRIPS tries to achieve a balance between the three interested groups identified by Pound.

The Preamble of the TRIPS Agreement acknowledges that IPRs are a private right. Exclusive rights to patents are provided under Article 28. The Patent Protection period is 20 years under Article 33. Strong enforcement provisions are provided.

A balance between rights and obligations must be maintained to promote social and economic welfare under Article 7. Public Health and knowledge are protected via Articles 8.1, 27.2, and 31.

The state has control over its legal system and development policies. This is achieved via Articles 1.1, 40, and transition periods (Article 65).

India has demonstrated this by accepting product patents but includes Section 3(d) and compulsory licensing. However, there is still no perfect balance, as TRIPS does not specify how the interests should be balanced. As it sets minimum standards, it only moves towards increased protection.

[11] National Intellectual Property Rights Policy 2016

The National Intellectual Property Rights Policy was adopted by the Government of India on 12th May 2016 under the Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce and Industry. It is a policy document, not an Act of Parliament. The policy states that its rationale is the need to create awareness of IPR as a marketable financial asset and economic tool. It acknowledges that much of the IP created in India remains unprotected, because of a lack of awareness and a perception that the process of protection is complicated.

Objectives of The 2016 IPR Policy

- IPR Awareness: Outreach and promotion, including a nationwide campaign and IP in school and university curricula.
- Generation of IPRs: IP audits, support for MSMEs, start-ups and grassroots innovators, and protection of traditional knowledge.

[11] **Ministry of Commerce & Industry, Dep't of Industrial Policy & Promotion, Gov't of India, *National Intellectual Property Rights Policy* (May 12, 2016), https://ipindia.gov.in/uploads/National_IPR_Policy_English.pdf.**

- Legal and legislative framework: Strong and effective laws that balance the interests of right owners with the larger public interest, with periodic review.
- Administration and management: Modernising IP offices, fixing timelines for disposal, expedited examination of patents and e-filing.
- Commercialisation of IPRs: Licensing, valuation, IP-backed finance and an IP exchange.
- Enforcement and adjudication: Capacity-building of police and judges, specialised commercial courts and alternative dispute resolution.
- Human capital development: teaching, training and research in IP, including the Rajiv Gandhi National Institute of Intellectual Property Management (RGNIIPM), Nagpur.

Important Provisions

- Steps 1.1 and 1.5.3 (Awareness): adopt the slogan "Creative India; Innovative India" for a national campaign, and include IPRs in the school curriculum at an appropriate level.
- Step 2.2 (Generation): Carry out an IP audit or baseline survey across sectors to assess strengths and target programmes.
- Step 2.15 (Generations): Introduce support systems for MSMEs, start-ups and grassroots innovators to reduce the transaction cost of creating IP.
- Step 3.1 (Legal Framework): Study whether existing laws are appropriate for protecting traditional knowledge, genetic resources and traditional cultural expressions, and propose changes.
- Step 3.7 (Legal Framework): Amend the Cinematograph Act, 1952, to provide penal provisions for illegal duplication of films.
- Steps 4.1-4.2 (Administration): Transfer the administration of the Copyright Act,1957 and the Semiconductor Integrated Circuits Layout-Design Act, 2000 to DPIIT.
- Step 4.13 (Administration): Create the Cell for IPR Promotion and Management (CIPAM) under DPIIT.
- Steps 4.14 and 4.16.1 (Administration): Explore expedited examination of patent applications to promote manufacturing in India, and fix and adhere to timelines for grants and for opposition matters.
- Step 4.21 (Administration): Redesignate the Controller General of Patents, Designs and Trade Marks as the Controller General of Intellectual Property Rights.
- Step 6.2 (Enforcement): Take strong measures against attempts to treat generic drugs as spurious or counterfeit.
- Steps 6.9-6.10 (Enforcement): Address anti-competitive licensing through the Competition Commission of India, adjudicate IP disputes in Commercial Courts, and promote alternative dispute resolution.
- Step 7.1 (Human Capital): Strengthen RGNIIPM, Nagpur, to train administrators, professionals, and academics.

Criticisms

- Not legally binding: As a policy, it sets goals and recommended steps, and its success depends on the ministries and agencies that implement it.
- Self-assessment: The Policy itself describes India's IP regime as TRIPS-compliant, robust and equitable, so it is not an independent evaluation of the law.

- Acknowledged gaps: It admits that the share of patent filings by Indians is low and that design filings are far below potential. It also calls for further study of how existing laws apply to traditional knowledge, genetic resources, and cultural expressions.
- Implementations: Many steps are expressed as things to "explore" or "consider."

Roscoe Pound's Theory of Social Engineering and the National IPR Policy

The Policy attempts to balance Pound's three groups of interest through administration and awareness, not through new rights.

- Private interests: The Policy states that IP rights are essentially private rights (Objective 6). It aims to help owners capture their values through commercialisation (Objective 5), including licensing, valuation and IP-backed finance (step 5.11.1), and to protect them against counterfeiting and piracy through trained enforcement agencies and specialised commercial courts. This reflects Pound's second jural postulate, that individuals may control what they create by their own labour.
- Social interests: The mission gives priority to access to healthcare, food security and environmental protection. The Policy supports affordable medicines and opposes treating generic drugs as spurious or counterfeit. It seeks to protect traditional knowledge from misappropriation and to extend the benefits of the IP system to MSMEs, farmers, weavers and artisans. Objective 3 also expressly commits to a legal framework that balances the interests of right owners with the larger public interest.
- Public interest: The State's interest appears in its role as administrator and coordinator: DPIIT's nodal role, the modernisation of IP offices and the integration of IP into national development plans.

The Policy comes closer to Pound's idea of "least friction" than earlier instruments in one respect: it names all three groups of interests in its objectives and does not favour one of them. Its strengths are these:

- It addresses the practical weakness identified in this paper: The problem is low awareness and complex processes, and the Policy targets both through its awareness campaign, simplified procedures, and improved IP offices.
- It includes groups the 1856 and 1940 Acts overlooked: small businesses, farmers, artisans, and traditional knowledge holders are named as intended beneficiaries.

Critical Analysis

The Indian IP regime can be clearly seen to have developed through four stages, which reflect the balance between Roscoe Pound's three interests. During the Medieval era, a customary system existed with protection provided by guilds and royal patronage. It focused solely on protecting the communities' social interests and did not provide private exclusive rights. During the colonial period, however, laws were introduced, including the Act VI of 1856 and the Trademarks Act 1940. These protected private exclusive rights to protect British interests whilst providing only limited protection for the public. For example, Section XV of the 1856 Act provided that if a privilege was causing harm, it could be terminated. This resulted in Indian Traditional Artists and small traders being disadvantaged during this time.

After Independence, there was a shift towards a social engineering approach. Laws were put in place to protect the public and social interest. The Copyright Act 1957 provided protection for authors' exclusive rights under section 14 but also included provisions to ensure wide accessibility. This included statutory fair dealing and compulsory licensing. The Patents Act 1970, however, took a much more extreme approach. It protected the nation's health and encouraged self-sufficiency by providing protection for processes only, not patents for pharmaceuticals. There were also strict working requirements and

compulsory licensing provisions. This meant that IP rights were seen as a way to improve society as a whole. This led to the growth of the generics industry within India.

In the modern era, the 1995 TRIPS Agreement has pressured India to balance its own interests with those of the international community. This resulted in the introduction of the National IPR Policy, 2016. After TRIPS, the balance became externally restricted. Product patents were adopted. However, India also used the flexibilities provided under TRIPS. The 2016 policy focused on using social engineering to improve administrative awareness and production for MSMEs, traditional knowledge holders, and weavers. Whilst post-independence laws achieved a working balance, it remains only partial; no real solution protects community creativity and traditional knowledge. Ultimately, the balance provided by the pounds approach relies on the legislature's and courts' discretion to decide how to balance the competing interests.

Data Analysis and Interpretation

The paper till now has looked at the evolution of Intellectual Property Law in India from Traditional to Colonial, to post-independence and further. However, this is purely based on statutes and policy. Moving forward, the paper will analyse the questionnaire results. The paper's main argument is that IP law has evolved over time. However, the questionnaire aims to gather law students' opinions on how much IP law has changed over time and its impact on society.

The law students are the selected subjects of the questionnaire because they are the future generation of advocates, judges, policymakers, and IP Professionals. It therefore matters that they know and believe in IP. They also learn about IP, and therefore their awareness of the history of IP will be formed or lost.

Hypothesis

H1 – Awareness of pre-colonial and customary protection practices among law students is limited.
H2 – Respondents accept that individual IP claims must be weighed against social interest.
H3 – Respondents see corporate misuse of IP and consider existing law insufficient.
H4 – Respondents support recognition of customary protection in law and legal education.

Data Collected

The survey was administered online between 2 and 12 November 2026; the respondents are B.A. LL.B. and LL.B. students. The analysis is descriptive, using counts, percentages, and means.

Question-by-Question Results

Q1. Communities in India protected their crafts, skills, and reputation through their own rules before modern IP laws existed.

Response	ALL	B.A. LL.B	LL.B
AGREE	80.6%	20%	100%
NEUTRAL	16.1%	19.2%	0%
DISAGREE	3.2%	3.8%	0%

Most respondents accept that customary protection existed before codified IP law, which supports the history of guilds and community rules in this paper.

Q2. Modern IP law gives more importance to individuals and companies than to communities

Response	ALL	B.A. LL.B	LL.B
AGREE	67.7%	65.4%	80.0%

NEUTRAL	25.8%	30.8%	0%
DISAGREE	6.5%	3.8%	1%

About two-thirds see formal IP law as tilted towards owners and firms. The quarter who are neutral suggest that many are unsure how far the law serves collective interests.

Q3. IP law should balance the owner's rights with the needs of society, such as access to medicines and knowledge

Response	ALL	B.A. LL.B	LL.B
AGREE	87.1%	88.5%	80.0%
NEUTRAL	12.9%	11.5%	20.0%
DISAGREE	0%	0%	0%

This is the strongest result. Nobody rejects balancing private rights against social needs, which is the core of Pound's theory.

Q4. The law should allow the government to step in when an IP holder's pricing or conduct harms the public

Response	ALL	B.A. LL.B	LL.B
AGREE	71.0%	65.4%	100%
NEUTRAL	25.8%	30.8%	0%
DISAGREE	3.2%	3.8%	0%

Most accept State intervention in the public interest, but support is weaker than for the general principle in Q3. People accept balance more readily than a specific State remedy.

Q5. Current Indian laws are enough to stop companies from misusing their IP rights

Response	ALL	B.A. LL.B	LL.B
AGREE	16.1%	11.5%	40.0%
NEUTRAL	32.3%	30.8%	40.0%
DISAGREE	51.6%	57.7%	20.0%

Only one in six thinks the law is enough. A third are unsure, which points to a gap in knowledge of what the law provides.

Q6. Traditional and community-based protection of knowledge should be recognised by law along with modern IP rights

Response	ALL	B.A. LL.B	LL.B
AGREE	77.4%	76.9%	80.0%
NEUTRAL	16.1%	15.4%	20.0%
DISAGREE	6.5%	7.7%	0%

There is strong support for bringing customary protection into the formal system, in line with the gap in protection of traditional knowledge noted in the earlier chapters.

Q7. Companies sometimes use IP rights in ways that are unfair to the public

Response	ALL	B.A. LL.B	LL.B
AGREE	90.3%	88.5%	100%
NEUTRAL	6.5%	7.7%	0%
DISAGREE	3.2%	3.8%	0%

Nearly all believe corporate misuse of IP happens, so the corporate overreach discussed in this paper is a perceived problem.

Q8. Did your course teach you about the history of IP in India?

Response	ALL	B.A. LL.B	LL.B
YES	25.8%	15.4%	80.0%
NO	74.2%	84.6%	20.0%

Three-quarters of these students were not taught the history of Indian IP. The history is largely missing from legal education, especially for BALLB students.

Q9. Before this survey, did you know that India had traditional systems like guilds that protected craft and trade knowledge?

Response	ALL	B.A. LL.B	LL.B
YES	71.0%	73.1%	60.0%
NO	29.0%	26.9%	40.0%

Most already knew about guilds, but nearly three in ten did not. Awareness did not depend on the course: 75% of those whose course covered the history knew, compared with 69.6% of those whose course did not.

Q10. Should law colleges teach traditional Indian protection practices along with modern IP law?

Response	ALL	B.A. LL.B	LL.B
YES	90.3%	92.3%	80.0%
NO	9.7%	7.7%	20.0%

Nine in ten want this taught, so students see a gap in the curriculum and want it filled.

Q11. Do India's existing IPR laws adequately protect traditional knowledge and customary intellectual property? (open-ended)

Response	ALL	B.A. LL.B	LL.B
NOT ADEQUATE	64.5%	65.4%	60.0%
PARTIAL/LIMITED	12.9%	11.5%	20.0%
ADEQUATE	3.2%	3.8%	0%
UNCLEAR	19.4%	19.2%	20.0%

Limitations

Descriptive study: No inferential statistics used, only the number and percentage of results. This means that hypothesis can only be shown and not proved.

Short term data: Survey was conducted between the 2nd and 12th of November. Data is self-reported.

Limited doctrine: Legal sources were used. There was not much case law or empirical/economic evidence. Pound's theory did not offer any way to weigh up interests; therefore, some interpretation was needed.

Conclusion

This paper has shown how the Indian legal framework surrounding IP has evolved through 4 distinct stages. During the medieval period, there were no exclusive rights only communal interests were covered by customary law. Colonial legislation introduced exclusive ownership rights; however, this was primarily for British commercial interests without consideration for indigenous innovation. Post independence, both the Copyright Act 1957 and Patent Act 1970 viewed IP as an instrument for national development resulting in a good balance being reached. The Patent Act 1970 also allowed cheap access to medicines. However, since the introduction of TRIPS the balance has been externally limited. However, flexibilities have been

utilised to protect public interests and the National IPR Policy 2016 now focuses more on raising awareness and inclusivity.

However, the balance is still not fully achieved with traditional knowledge and creativity within communities not being adequately protected. This is supported by the survey results which show students strongly support the balance between rights and society, they believe there is misuse by corporations, are unsure about current legislation and want traditional practices to be acknowledged. Therefore, recommendations include changes to the curriculum, more acknowledgement of traditional protection and continuing to rely on legislative and judicial discretion to balance interests.