2. HISTORICAL DEVELOPMENT OF IPR

The study of historical development of IPR will reveal the evolution and importance it carried from the inception of its identification to this date of magnificent TRIPS, which create ripples between all the member and non-member countries of the world.

Every nation state has an economy, and the mutual relations amongst national economies constitute the international economic system. The distinguishing features among states and their economic relations is market transaction. Contemporary nation states are not willing to allow their international economic relations to be determined by market forces.

The National economic policies that are apparently wholly domestic in nature may nevertheless have profound effects on international trade and Investments. It is therefore necessary that a nation must keep its economy adjusted to the world economy.

Example: Exchange control: when a government restricts convertibility of its currency, it regulates not only the movement of goods but also of service and capital.
Protectionism is a principle policy that is a via media between the objectives of absolute national self-sufficiency and lassie faire.

Tariff barriers is an important factor that is in support of fair and free trade. It levy import tariff, restrict export under quota and non-tariff barriers of providing incentives and subsidies for export and anti dumping etc.

International trade relationship dates back to Greek civilisation. Management of such relationship at an Institutional level began only in the late 18th and early 19th century. During that period the national barriers, which were explained above, were in vogue.

In the year 1846 the protective legislation known in Britain as "The corn laws" were repeated. This was followed by removal and reduction of hundreds of tariffs on imported goods in Britain. Apart from these unilateral actions treaties were also entered into between nations.

The notable treaties being Cobden Chevalier treaty of 1860 from which emerged the principal of most favored nation (MFN).

In India, the history of intellectual property system is traced back to 1856. The first legislation on the subject was brought into force in the form of an Act on protection of inventions based on the
British Patent law of 1852. As per this legislation, a system was introduced in India in the form of grant of certain privileges to an inventor of new manufacture for a period of 14 years. The Act was reenacted with some modifications as the Act XV of 1859 in which patent monopolies were called Exclusive Privileges. According to this legislation an inventor of a new manufacture, by filing a specification disclosing the invention, could obtain the Exclusive Privilege of making, selling, and using the invention in India and also authorising others to do so on his behalf for the term of 14 years from the date of filing of such a specification. In 1872 the Patents and Designs Protection Act was passed which was followed by Protection of Inventions Act 1883. These Acts were consolidated as Inventions and Designs Act 1888. Subsequently the Act 1888 was replaced by the Indian Patents and Designs Act 1911. In England the grant of patent is a privilege of the British Empire by the Crown for new inventions providing solutions for technical problems. Many of the basic concepts of the modern patent systems were embodied in the English Statute of Monopolies of 1623 and methods of doing business that incorporated some features of a patent system were in use by Venetian merchants at least a century earlier. In India it is always a statutory right conferred under the relevant statute.

After India's Independence based on the fact that the patent system has played a key role in the industrial and economic
development of many countries which are today recognised as industrially and economically advanced in the world, it was felt that the patent system that has been in force in India has not helped in achieving its fundamental objectives namely to stimulate and encourage innovative activities and dissemination of knowledge in the country and to encourage commercial exploitation of the patented inventions to boost industrial development of the country and consequent economic development. Considering that India was in the threshold of major industrial development, it was felt that the provision of the Indian Patent and Design Act 1911 were not adequate and is based on the English system and has not worked in the nation's interest and required modifications.

At this stage by a resolution dated 1-10-48 the Government of India referred Indian Patent and Design Act 1911 to Hon'ble Mr. Justice BAKSHI TEK CHAND a retired judge of the High Court Of Lahore and the Member of the Constituent Assembly as its Chairman and six others as its members to review the Patent Laws in India with a view to ensure that the systems must be more conducive to our national interest. The Committee filed its detailed report in 1950 about the failure of Patent Act, that is the main purpose of stimulating invention among Indians and to encourage the development and exploitation of new inventions for industrial purpose to our country. While dealing with the problem in hand the said committee also
analyse the SWAN REPORT which is the basis of British Patens Act 1944.

Subsequently in April 1957, the Government of India requested Hon'ble Mr. Justice Rajagopala Ayyengar to advise the Government on the question of revision of the Patents and Design Act. The committee gone into the bill and agree with the earlier view about the failure of patent law for our nations interest and also recommend that the two separate enactments be passed in respect of Patents and Design. Hon'ble Mr. Justice Ayyengar submitted his report in Sep 1959 with various recommendations for effecting radical changes in the Patent Act. Based on the recommendations of Justice Ayyengar and also considering the changes proposed in the light of further examination by the government of India, a comprehensive and consolidated Patent Bill was introduced in the Parliament in the year 19671. The report clearly explains that a developing country like India need to have process patent, strict regulations for compulsory license procedures, short period of protection, government power to decide matter, right to trade mark and design are all for the development of industries as a whole and as individual holder or at his decision. It is wrong to claim that our IPRs law on protection and enforcement is weak. This statement is wrong on fact and circumstances of the case.

1 Handbook of Indian Patent Law & Practice N.R.Subbaran
The advent of 20th century saw USA's political and economic power diminishing and its trade partners for free trade affected. The First World War contributed to the negative trend and protectionism, when nations involved in beggar the neighbor policies including competitive exchange rights devolution and trade restriction. This notorious dealing called smooth holy tariff passes in 1930 by USA congress.

The period between the two-world ware was one of general surplus capacity, the great depression as it become known. Faced with unprecedented levels of unemployment, often accompanied by acute balance of payment difficulties, many countries attempted to insulate them by imposing protective import tariffs, protective quotes and exchange controls.

When the depression set in, the USA congress enacted the Smoot-Hawney tariff, which increased the protection afforded to the domestic market (it could do so because its share of world exports is 20% represented only 6% of its NP). Britain faced with unimaginable trade deficit, abandoned the gold standard in 1931 and ended its century of free trade in 1932 with the passing of the Import Duties Act, in 1934. There was an amendment to Smoot-Hawney act and the Reciprocal Trade agreement act was passed.

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1 Greenway, Dram International Trade Policy 1983  
2 Tussie, Diana The less developed countries and the world trading system 1987
In the period up to the outbreak of World War II United States concluded reciprocal agreements with 24 countries on the basis of most favored nation treatment. But this principle was not without opposition. For a balanced international economy, it was recommended that countries reduce their tariffs and encourage imports not in proportion to the reciprocal concessions but in proportion to the strength of the balance of payments.

The experiences associated with the economic chaos of the 1930s had a salutary effect. Even before the end of II world war the allies were planning and co-ordinate to response to provide a framework within which unilateral monetary & trade relations could be conducted in an orderly fashion.

In 1944 after the world war II, several international measures were undertaken to liberalize trade and payment between nations. An agreement was entered into between the USA and Britain at Brettonwoods, new Hampshire, USA. Under this agreement three institution were envisaged namely:

1. international monetary fund (IMF) to facilitate international liquidity.

2. International Bank for reconstruction and development (IBRD) to facilitate infrastructure development popularly known as World Bank.

1 Greenway David international trade policy 1983

It was signed as part of the preparatory negotiations to set up an international trade organisation. It was concerned to promote free trade and to regulate trade policies of the member countries along with IMF & WB.

However IMF and WB were duly created. However the US congress was not willing to go ahead and never voted on the creation of ITO. The US congress approval was required to authorize the US government to accept the Havana world Trade charter and to participate in the ITO, which was refused in 1950. GATT then became, by default, a treaty with contracting parties covering rules for trade between them. Technically it is not a legally constituted organisation. However it survived in the form of plural lateral voluntary membership-agreement and continued efforts to reduce tariffs.

However the provisional agreement among the nations were negotiated in the year 1947. This multilateral world-trading regime came to be governed by the adoption of Havana charter ie the General Agreement on Tariffs and Trade (GATT). It does not include any other provisions of employment, investment, restrictive business practice, commodity agreement or the organizational provisions that related to the proposed ITO. The GATT was only supported by the temporary protocol of provisional application. It had no provision to establish a
full-fledged organisation with only short-term support and states in the UN system. But still it survived what we have for the past 50 years (till WTO came into existence in 1995) is the principle institution governing international trade relations\(^1\).

The Second World War brought above a radical shift in the balance of power between the worlds leading industrial states. The USA emerged from its isolationism of the interwar period as the worlds dominant great power with definite plans to make the worlds safe for capitalism for it had lots of interest at state. American enterprises look without difficulties took over markets which has previously been dominated by European and Japanese Markets.

The fundamental idea that determined a large part of the American governments planning was that the country needed overseas export for a surplus production that was estimated to be at least $10 billions. To achieve a sufficiently large export surplus become the key to the whole economic post war programmer, which was supposed to save the world from communism and the united states from unemployment. Hence world trade had to be liberalized, all obstacles to imports removed and competition on equal terms allowed.

\(^1\) WTO & International trade M.B.Rao
At this stage it is relevant to study the background under which the IPRs which hither to under the management and control of WORLD INTELLECTUAL PROPERTY ORGANISATION popularly known as WIPO an United Nation organisation and UNITED NATION COMMITTEE ON TRADE AND DEVELOPMENT popularly known as UNCTID again an UN organisation which assisted the developing nations technical development was overlooked and the developed countries mainly USA brought this IPRs under GATT as issues relates to trade the aspects shall come under the purview of GATT which till then deals with trade and tariff only.

This can be seen from the report filed by the Committee appointed by the USA, which mainly consists of Mega industrialist and economist. This committee was found in 1975. The committee on changed International Realities has focused on matters affecting US International competitiveness as well as threatened US leadership in huge technology, intensive activities and exportable services. Consequently the employment prospects of their makers have become one of the most critical national policy issues of this decade.

Two technological trends have exacerbated these problems.

1. The escalating cost of developing new, competitive products in many rapidly innovating sections and
2. The increased ease with which these products can be copied.

Coupled with lower or rare protection of IPRs in many
developing countries and newly industrializing countries lost sales, jobs and profits pose a serious threat to US Research and Development oriented industries.

Technological leadership is one of the keys to international economic success, but this advantage is being damaged by the infringement, policies and practices of some trading partner. The only path to compliance is an effective US program of unilateral constraints making infringement too expensive to continue.

It is a complex and difficult subject. It involves many policy problems of Govt. In USA’s opinion WIPO is a completely ineffective organization in so far as the enforcement of patents rights are concerned. WIPO is a creature of the United Nations and therefore by political necessity, cater to opposite parties too.

The ancient practice of commercial piracy has become a major issue in international economic policy making. While it flourishes in all countries, it is the cross border aspect of these operations that has emerged as a critical economic and political problem. Recent technological trends have two effects, both of them costly to the inventors and authors who seek protection. In a developing country with few authors and inventors, infringement presents itself as a means of providing consumers with goods and services they could not otherwise afforded.
In the minds of leaders of most developing countries, in fact, the crucial task is to promote the modernization of their economies and the observance of rules imposed from outside on how they acquire needed goods takes second place to the demands of development. In both countries the obvious victims of infringements of IPRs are the creators themselves, the consumer of defective infringing goods and to the extent that lack of protection depresses the creative impulse, society at large when long-term benefits from innovation are foregone. USA, Europe, Japan business representatives briefed their Government the importance of IPR protection and the estimated loss these nations economy suffered.

Establish a national intellectual property committee with representatives from the private and the Government to maintain a watching brief on developments in IPR issue, effects of changing technologies, shifts in perceptions of national needs and coordination of IPR policies with policies in other fields. Meanwhile Developing countries Government cannot ignore the injury to their citizens and firms in enforcement of IPR. The national laws should be strengthened that permits unilateral action including withdrawal of concessions in other areas for other purposes. No one is likely to complain if inducement to good behavior proves more effective than threats against bad behavior.
Since the World War II, new circumstances have greatly altered the way in which international commerce is carried on. Economic recovery and the growth of present day competitors have challenged the preeminence of the USA as a trading nation. There has been a large increase in the number of sovereign countries—many with industrial and cultural philosophies at variance with those of the developed world. The nature of US trade has been changing from large volume, mass produced items to new products containing higher technology and more creative inputs. The trend towards international productive activities through joint ventures and licensing has introduced questions about the legal jurisdiction of shared IPR. Attention has been shifted from distortion created by tariff barriers to more subtle non tariffs obstacles to trade. USA problems is two fold—it burdened by growing deficits in its merchandise trade accounts and saw a serious erosion of its competitive advantage in producing distinctive and innovative goods1.

The WTO came into force on 1st January 1995, when the ITO was renamed as world trade organisation. Part of the reason for this 50 years delay was the opposition from the USA to a world rule making body in the field of trade. These rules could go against the USA’s interest and would amount to a loss of sovereignty for the trade super power. The very same United States saw the need for a fully

IPR & US Competitiveness in Trade by Helena Stalgon

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empowered world body in mid 1980 to frame and enforce a law to combat rampant I P piracy the world over. Ultimately the eighth round at Uruguay the final agreement encompassed goods, services and intellectual property 1.

However the executive of Indian Nation who are instrumental in signing the Treaty has to demonstrate before the nation the reasons of their accepting these provisions which radically change the nation's priorities in the welfare scheme and the obligations imposed on them in the Governance of the nation as per the CONSTITUTION which supreme and above all.

The historical background of the establishment WTO clearly demonstrate and convey that at one point of time during great depression when protectionism & trade discrimination was the tool of these very developed nations to reach the present position dictate now to the developing nation who too follow the same path for their nations development. Now as a developed country to expand market for their surplus/ excess goods, protection of all IPRs as trade related matters so as to take it out of the UNITED NATIONS forum knowing the difficulties there, along with the non-tariff, trading system for better economic of their business, industry and trade future.

1 WTO in the millennium. Arun Goval