

## UNRAVELLING THE WEB OF INTELLECTUAL PROPERTY RIGHTS FRAUD IN THE COMMERCIALIZATION ARENA

**Dr. Rajesh B. Deshmukh\***

**Mr. Kilel K. Benard\*\***

### **Abstract**

*Intellectual property is born out of human intelligence. Intellectual property rights are in simple terms, the rights that are attributed to intellect that is born from industrial creativity, scientific works, literature or works of art. In this section, patents, trademarks, copyrights, industrial designs, plant varieties, integrated circuit industrial designs, trade secrets, and geographic indications are just a few examples of the different types of intellectual property. There also exists several legal provisions in India to govern and safeguard the use of Intellectual property rights; “Trademark Act of 1999; Copyright Act of 1957; Patents Act of 1970; Geographic indications of Goods (registration and Protection) Act of 1999; Trade secrets (protection) under the Indian Contract Act of 1872; the Information Technology Act of 2000; and the Drug and Cosmetics Act of 1940” serve as substitutes for the absence of specific laws about piracy and counterfeiting in India. The aforementioned regulations, which support the statutory expression of creators' moral and financial rights over their works as well as the public's right to access them, encourage creativity and the application, dissemination, and creation of new works. Commercialization is known to be the act of running something with financial objectives. The idea of commercializing IPR is the most basic and true form of using one's creativity to improve both the development of society as well as one's financial situation. During the commercialization of IP, the creator or IPR owner intends to put their creation out in the market at a set fee. This action has brought technological advancement, global progress, development and industrialization to mention a few. The registrations in place that have been established seek to safeguard the intellectual property as well*

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\* Associate Professor & Research Guide, Shri Shivaji Law College, Parbhani; Affiliated to Swami Ramanand Teerth Marathwada University, Nanded.

\*\* Research Scholar; Shri Shivaji Law College, Parbhani; Affiliated to Swami Ramanand Teerth Marathwada University, Nanded, 2021.

*as its intellectual creator/owner from any theft and malice. However, the commercialization of these intellectual properties opens up a huge challenge of intellectual property fraud which is a form of modern-day crime called white-collar crime; that puts it in the same category as money laundering, and identity theft among others... Intellectual property fraud has been estimated by experts over the years to be in the trillions of dollars every year. The reality of this truth about the fraud of intellectual property rights is astounding. It is believed that when an intellectual property comes to market, a replica of the same creation is mass-produced to flood the market, this creates a big challenge that defeats the purpose of commercialization. Therefore, this article will contextualize the idea of intellectual property rights, discuss the laws that have been put in place to support them and address the problem of intellectual property fraud, which is impeding the successful commercialization of intellectual property rights. It will also provide some examples of intellectual property fraud that has occurred in India.*

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**Keywords:** *Concept, Commercialization, Strategies, Fraud, Impacts, Laws, Gaps, Combating*

## **1. INTRODUCTION**

Intellectual Property Rights (IPR) form the cornerstone of innovation and creativity in the modern economy. They provide creators and innovators with the legal framework to protect their inventions, designs, trademarks, and creative works. However, the burgeoning importance of intellectual property has also led to an unfortunate rise in fraudulent activities surrounding IPR, particularly in the context of commercialization. The purpose of this essay is to shed light on the different aspects of intellectual property rights fraud and how it affects the commercialization of IPR.

### **1.1. An Understanding of IPR**

Intellectual Property Rights encompass a range of legally recognized rights granted to creators or inventors, allowing them to have exclusive control over their intellectual creations. These rights are categorized into four main types: - copyright, trademark, patent and geographical

indications. However, several other legal provisions are in place to aid in all matters IP-related, they are as follows: -

1. Copyrights came into existence to protect original works such as literature, music, and artistry; they are works which contain authorship. Books, music, artwork, films, paintings, sculptures, databases, computer programs, ads, maps, and technical drawings are all protected by copyright<sup>1</sup>. The Copyright Act, 1957 is the provision in place that provides a framework for safeguarding copyrights in India.

2. Trademarks Guard symbols, names, and slogans used to identify goods and services, distinguishing them from competitors. Trademarks not only help distinguish between products in law and business, they are also important to consumers. They are used to identify and preserve text and create content that identifies the source, owner, or a manufacturer of a product or service<sup>2</sup>. The Trademark Act, of 1999 provides a legal framework to safeguard trademarks in India.

3. Patents are protected under The Patents Act, of 1970. With the help of patents, creators can keep others from copying, manufacturing, or commercializing their ideas without their consent. It is crucial to remember that patents are granted for a limited amount of time, after which they expire and become freely usable by anybody.

4. Trade Secrets Protect confidential information, such as manufacturing processes, formulas, designs, practices, and other proprietary information; In India, there is no specific legal framework that protects against trade secrets, however, trade secrets can be protected “under section 27 of Indian Contract Act, 1872”.

5. Geographical Indications; - are another unique intellectual property used in trade that aims to identify products with a quality reputation or attribute attributable to the geography of their origin that come from a particular area of a nation, region, or locality<sup>3</sup>. The provision in place is the “Geographical Indications of Goods (Registration and Protection) Act, 1999”.

6. Integrated circuit layout designs, also referred to as semiconductor topographies, are the three-dimensional configurations of an integrated circuit (IC) or microchip components and their connections. This covers the arrangement of transistors, resistors, capacitors, and other

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<sup>1</sup> “Copyright”, WIPO, available at: <https://www.wipo.int/copyright/en/> (last visited on Sept. 26, 2023).

<sup>2</sup> Carla Tardi, “Understanding Trademarks”, Investopedia, Mar. 23, 2022, available at: <https://www.investopedia.com/terms/t/trademark.asp#toc-understanding-trademarks> (last visited on Sept. 26, 2023).

<sup>3</sup> “Shahid Alikhan and Raghunath Mashelkar, *Intellectual Property and Competitive Strategies in the 21st Century*” 17-18 (Kailash Balani, New Delhi, 2006).

electronic components on a silicon wafer. “The Semiconductor Integrated Circuits Layout Design Act, 2000” is the Indian legal framework for layout designs.

7. “Plant Variety Protection and Farmers Rights (PPVFR) Act, 2001” provides a legal framework in India to deal with plant variety protection rights. Plant protection provides breeders with legal protection for plant varieties under Plant Breeders Rights (PBR). PBR is an intellectual property right that grants a breeder the sole ownership right to a registered breed<sup>4</sup>.

8. Industrial Design (ID) is the process of producing goods, supplies, machinery, and services that millions of people use daily all over the world. Industrial designers are primarily involved in the development stage of products and typically concentrate on their manufacturing, functionality, and outward appearance<sup>5</sup>. All of this eventually comes down to the final user's overall lasting value and experience with the good or service. In India, the existing legal framework dealing with industrial design is The Designs Act, of 2000.

## **1.2. Commercialization of IPR**

The commercialization of IP rights refers to the process of turning intellectual assets, such as Inventions, Industrial Designs, Trademarks, and Creative works, into products, services, or revenue streams. This can be done through various means, for example; - licensing, selling, or using Intellectual Property to create marketable products or services. Below are some commonly used strategies related to the commercialization of IPR:

**1.2.1. Licensing** - is one of the most common ways to commercialize Intellectual Property. The owner of the IP receives a fee or royalty payment in exchange for awarding his IP to be used by another. This then allows the owner to generate revenue without directly producing or marketing the product themselves<sup>6</sup>.

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<sup>4</sup> “Plant Variety Protection”, Obhan&Associates, available at: <https://www.obhanandassociates.com/practice-areas/intellectual-property/plant-variety/#:~:text=Plant%20variety%20protection%20provides%20legal,breeder%20of%20the%20registered%20variety.> (Last visited on Sept. 26, 2023).

<sup>5</sup> “What is Industrial Design?”, “Industrial Designers Society of America (IDSA), available at: <https://www.idsa.org/about-idsa/advocacy/what-industrial-design/> “(last visited on Sept. 26, 2023).

<sup>6</sup> “Methods of Commercializing Intellectual Property – Part I”, Intepat, June 19, 2023, available at: <https://www.intepat.com/blog/methods-of-commercializing-intellectual-property-part-i/#:~:text=Commercialization%20Through%20Licensing,renting%20out%20one%27s%20intellectual%20property.> (Last visited on Sept. 26, 2023).

**1.2.2. Selling the Intellectual Property** - this means the original owner relinquishes all rights to the Intellectual Property in exchange for an agreed huge payment<sup>7</sup>. This can be a strategic move for the seller if they want to divest themselves of the Intellectual Property or focus on other areas of their business.

**1.2.3. Joint Ventures and Partnerships** - companies can collaborate to commercialize Intellectual Property<sup>8</sup>. Here the move involves combining different types of Intellectual Property to create a new product or service or leveraging each other's strengths to bring a product to market more effectively.

**1.2.4. Franchising** - this is a form of licensing where a business owner grants the right to operate a business using its trademark and business model to a third-party<sup>9</sup>. This strategy allows the owner to expand the brand and generate revenue.

**1.2.5. Spin-offs and Startups** - sometimes, individuals with valuable intellectual property choose to create a new business around it<sup>10</sup>. Here the strategy involves securing funding, developing a business plan, and bringing the product or service to market.

**1.2.6. Crowdsourcing and Open Source** – in this strategy, some companies or individuals choose to release their intellectual property for free use by the public, allowing a community of developers or creators to contribute and build upon it<sup>11</sup>. In turn, it can lead to rapid innovation and widespread adoption.

**1.2.7. Strategic Alliances** - Companies can form partnerships or alliances with other businesses to jointly develop or market products using each other's intellectual property<sup>12</sup>. This strategy can be particularly effective when the strengths of each partner complement one another.

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<sup>7</sup> Richa Phale, “Commercialization of Intellectual Property Rights and its Key Business Concerns”, Taxguru, Jan. 16, 2020, available at: [https://taxguru.in/chartered-accountant/commercialization-intellectual-property-rights-key-business-concerns.html#ii\\_IPR\\_commercialization\\_by\\_way\\_of\\_Assignment](https://taxguru.in/chartered-accountant/commercialization-intellectual-property-rights-key-business-concerns.html#ii_IPR_commercialization_by_way_of_Assignment) (last visited on Sept. 26, 2023).

<sup>8</sup> Simrankumar1904, “Commercialisation and Intellectual Property Rights in India”, “Legal Service India, available at: <https://www.legalserviceindia.com/legal/article-8844-commercialisation-and-intellectual-property-rights-inindia.html#:~:text=In%20this%20type%20of%20Commercialization%2C%20the%20IPR%20owner%20enters%20into,into%20marketable%20products%20or%20services.>” (Last visited on Sept. 26, 2023).

<sup>9</sup> “Methods of Commercializing Intellectual Property Part II”, *Intepat*, June 22, 2023, available at: <https://www.intepat.com/blog/methods-of-commercializing-intellectual-property-part-ii/> (last visited on Sept. 30, 2023).

<sup>10</sup> Yumiko Hamano, “Commercialization Procedures: Licensing, Spinoffs and Start-Ups”, “WIPO, available at: [https://www.wipo.int/edocs/mdocs/aspac/en/wipo\\_ip\\_han\\_11/wipo\\_ip\\_han\\_11\\_ref\\_t7b.pdf](https://www.wipo.int/edocs/mdocs/aspac/en/wipo_ip_han_11/wipo_ip_han_11_ref_t7b.pdf) “(last visited on Sept. 26, 2023).

<sup>11</sup> “Livio Cricelli, Michele Grimaldi & Silvia Vermicelli, et.al., “Crowdsourcing and Open Innovation: A Systematic Literature Review, an Integrated Framework and a Research Agenda”, Springer Link, July 22, 2021, available at: <https://link.springer.com/article/10.1007/s11846-021-00482-9> “(last visited on Sept. 26, 2023).

<sup>12</sup> *Supra* note 9, *commercialization through joint ventures*.

**1.2.8. Brand Extension** – this move involves using a well-known brand to launch new products or services. This strategy relies on the strength of the existing brand to generate interest and trust in the new intellectual property.

**1.2.9. Enforcement of IPR** - For commercialization to be successful, intellectual property rights must be protected and upheld<sup>13</sup>; which means taking legal action against infringement or unauthorized use of the intellectual property.

**1.2.10. Market Research and Valuation** - Before commercializing intellectual property, it is important to conduct market research to understand the demand, competition, and potential profit of that specific product or service<sup>14</sup>.

**1.2.11. Adaptation and Innovation** - Sometimes, adapting or improving upon existing intellectual property can lead to successful commercialization. This move involves combining different types of intellectual property or finding new applications for existing technology.

It's worth noting that the approach to commercializing intellectual property can vary greatly depending on three key things; first is the type of intellectual property, second is the industry, and third is the specific goals of the owner. In addition, it is critically important to seek legal advice and protection for your intellectual property to ensure it is used and commercialized in a way that benefits you and your business.

## **2. IPR FRAUD**

“Fraud is defined as the act of concealing the truth to gain something else; the motive usually being money. Fraud involves two elements: deception and harm to the individual who was tricked. Its dishonesty is meant to gain an edge”<sup>15</sup>. This is the definition of fraud by the Honourable Supreme Court in the case of “Kamlaben Punjabhai Solanki v. Stensile Stree Ltd.”. While commercializing IPR several forms of deception can be witnessed.

### **2.1. Fraud(s) Associated with IPR**

As the value of intellectual property continues to grow, so does the incentive for unscrupulous persons who engage in fraudulent activities. Some common forms of IPR fraud in the context of commercialization include; -

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<sup>13</sup> Richa Phale, *supra* note 7, *IPR Enforcement*.

<sup>14</sup> Richa Phale, *supra* note 7, *IPR Valuation*.

<sup>15</sup> “Kamlaben Punjabhai Solanki Daughter of Deceased Punjabhai v. Stensile Stree Ltd., Petition No. 3105 of 1998”

- 2.1.1 Counterfeiting** - This involves producing and selling imitation goods or services that infringe on the legitimate IPR owner's rights. Counterfeiting is particularly dominant in industries such as fashion, pharmaceuticals, and electronics.
- 2.1.2. Trademark Squatting** - This is the process by which people register trademarks to sell them for a premium to the rightful owner. In the era of e-commerce, where domain names are crucial, this practice presents particular challenges.
- 2.1.3. Patent Trolling** - Patent trolls are individuals who obtain patents with the express intent of filing lawsuits against alleged infringers. They frequently use the threat of an expensive legal battle to pressure parties into making settlement offers.
- 2.1.4. Plagiarism and Copyright Infringement** - In this digital age, plagiarism and copyright infringement have become widespread, and the ease at which copying and disseminating content online is making it challenging to enforce copyright protection.

## **2.2. Consequences of Fraud with regards to IPR**

The prevailing matters of Intellectual Property Rights fraud pose a great significant challenge and ramifications for individuals, businesses, and economies at large.

- 2.2.1. Economic loss** - For legitimate businesses, counterfeiting and other forms of intellectual property rights fraud may result in significant financial losses. It is estimated that piracy and counterfeiting cost the world economy hundreds of billions of dollars each year.
- 2.2.2. Dampening Innovation** - Innovation may be hindered when creators and innovators are not adequately compensated because they may be less inclined to dedicate their important time and resources to creating new concepts and technologies.
- 2.2.3. Undermining Consumers** - trusting of counterfeit and fraudulent products, may lead to health and safety risks for consumers. Also, when consumers can't trust the authenticity of a product, it undermines confidence in the market and legitimate businesses.
- 2.2.4. Legal Costs and Resource Drain** - Fighting Intellectual Property Rights fraud can be a costly and time-consuming endeavour for any business forcing it to divert resources away from research, development, and other productive activities.

## **2.3. IPR Laws Combating Fraud**

India has a well-established legal framework that combats intellectual property fraud. This framework encompasses various laws, provisions and regulations. Following are some of the legal provisions:

**2.3.1. Patents Act, 1970:** The granting and safeguarding of patents in India are governed by this statute. It lays down provisions related to the registration, rights, and enforcement of patents. Such as; if a person makes a false claim on a patent, then he shall be liable for a punishment of a fine of up to one lakh rupees<sup>16</sup>. If someone is asked by the government to produce an invention for use and refuses to do so, or if they submit fraudulent data somewhere information is needed, they run the risk of being charged with a crime<sup>17</sup>. A registered person is the only individual authorized to act as a patent agent under the Patent Act of 1970. A person faces a fine of one lakh rupees for falsely identifying themselves as patent agents, and five lakh rupees for further offences<sup>18</sup>. If a firm commits the aforementioned offence, then each individual in control of the organization's operations will be held accountable<sup>19</sup>.

**2.3.2. “Trademark Act, 1999”:** This act provides for the registration and protection of trademarks in India. It covers aspects like the registration process, rights of the trademark holder, and penalties for infringement. the provisions related to fraud are primarily dealt with in Section 57. This section provides for penalties in cases where a person falsely represents a trademark as registered.

Section 57 states that if a person represents a trademark that is not registered or uses a counterfeit trademark, or if this trademark contains, disposes of or possesses moulds, blocks, machines, plates or other devices used for this purpose; counterfeiting or altering false trademarks Anyone who uses the trademark for goods or services or both, or uses packaging containing false trademarks, or forges business information is punishable by a prison term not less than three years or fine, or both<sup>20</sup>.

Anyone who counterfeits a trademark without the permission of the trademark owner counterfeits a similar trademark or counterfeits a genuine trademark by altering, deleting, adding or otherwise using fraudulent methods for products and services or packaging will be considered liable for labour violations<sup>21</sup>.

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<sup>16</sup> The Patent Act, 1970 (1970), s. Section 120.

<sup>17</sup> Ibid, s. Section 122.

<sup>18</sup> Ibid, s. Section 123.

<sup>19</sup> Ibid, s. Section 124.

<sup>20</sup> The Trade Marks Act, 1999 (1999), s. Section 57.

<sup>21</sup> Ibid, s. Section 102.



Trademark Act provides penalties for the use of false trademarks and trade descriptions. Such attempted fraud will be “punishable with imprisonment for a period not less than six months which may extend to three years and/or with a fine which may extend to two hundred thousand rupees but not less than fifty thousand rupees”<sup>22</sup>. Penalties for the sale of goods and services under false trademarks or false descriptions are also punishable with “imprisonment for not more than six months and not more than three years or with a fine of not less than fifty thousand rupees but not more than two thousand rupees or both”<sup>23</sup>. False representation of trademark as registered is penalised with up to three years prison sentence, fine, or both<sup>24</sup>. The punishments in the Trademark Act aim to prevent fraudulent activities related to trademarks and provide penalties for such actions.

**2.3.3. Copyright Act, 1957:** This act protects literary, dramatic, musical, and other artistic works. It grants creators of original content exclusive rights to reproduce, distribute, and perform their work. In the interest of safeguarding against infringement, this act implements the following provisions to prevent violations; Section 63 provides that a person who knowingly violates the law or abets it will face a prison sentence between six months to three years, and a fine not less than fifty thousand rupees but up to two hundred thousand rupees<sup>25</sup>.

The act also punishes false or fraudulent entries in the registry with imprisonment of up to one year, a fine, or both<sup>26</sup>. Additionally, the crime of committing fraud or making false statements to influence authority or the government may be punished with a prison sentence of up to one year, a fine, or both<sup>27</sup>.

**2.3.4. Designs Act, 2000:** This act provides a framework for registration and protection of industrial designs. It provides for the registration process and enforcement mechanisms against unauthorized use.

**2.3.5. “Geographical Indications of Goods (Registration and Protection) Act, 1999”:** The act aims to protect the territorial integrity of Indian products. It ensures that products belonging to a specific location are recorded and legally protected.

The following sections focus on fraud under the Act: -Section 38, deals with fraud and fraudulent use of geographical indications<sup>28</sup>; section 39 “states the penalty for applying for a

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<sup>22</sup> Ibid, s. Section 103.

<sup>23</sup> Ibid, s. Section 104.

<sup>24</sup> Ibid, s. Section 107.

<sup>25</sup> The Indian Copyright Act, 1957, Section 63.

<sup>26</sup> Ibid, Section 67.

<sup>27</sup> Ibid, Section 68.

<sup>28</sup> “Geographical Indication of Goods (Registration & Protection) Act, 1999” (1999), s. Section 38.

false geographical indication is imprisonment of not less than six months but extends up to three years, and a fine of not less than fifty thousand rupees but extend to two thousand rupees”<sup>29</sup>. Section 40 of this act “provides for an imprisonment of not less than six months, which may extend to three years, and a fine of not less than fifty thousand rupees, which may extend to two hundred thousand rupees, for sales of goods for which false GI is applied”<sup>30</sup>. Section 42 “provides that those who make false statements about the registration of the region will be punished with imprisonment of up to three years, a fine, or both”<sup>31</sup>. Section 44 “Fraudulent entry into a register is also punishable by imprisonment for a term which may extend to two years, a fine, or both”<sup>32</sup>.

**2.3.6. “Semiconductor Integrated Circuit Layout Design Act, 2000”:** This act deals with the protecting layout designs of integrated circuits and provides for registration and enforcement mechanisms. It also provides for the following penalties; The penalty for design infringement is “imprisonment for a term which may extend to three years or a fine which may extend to one hundred thousand rupees but not less than fifty thousand rupees, or both”<sup>33</sup>. The penalty for a false representation of design is a maximum of six months in prison or a fine of up to fifty thousand or both<sup>34</sup>. “Falsification of entries in the Design registry is punishable by up to two years in prison, or with a fine, or both”<sup>35</sup>.

**2.3.7. “The Plant Varieties Protection and Farmers' Rights Act, 2001”:** This act is aimed at safeguarding agricultural rights and plant varieties. It establishes a framework that ensures the safeguarding of new plant varieties and ensures fair compensation for farmers. Penalties under this act are enacted to combat fraudulent behaviour; the penalty for applying false denomination which amounts to fraud shall be punished with “imprisonment for not less than three months but up to two years or with a judicial fine of not less than fifty thousand rupees but up to five hundred thousand rupees or both”<sup>36</sup>. The penalty for selling goods under a false name is also punishable by “imprisonment of not less than six months but not exceeding two years or a fine of not less than fifty thousand rupees but not exceeding five hundred thousand or both”<sup>37</sup>. “The penalty for falsely presenting a variety as registered is a minimum term of imprisonment of six

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<sup>29</sup> Ibid, s. Section 39.

<sup>30</sup> Ibid, s. Section 40.

<sup>31</sup> Ibid, s. Section 42.

<sup>32</sup> Ibid, s. Section 44.

<sup>33</sup> “The Semiconductor Integrated Circuits Layout-Design Act, 2000” (2000), s. Section 56.

<sup>34</sup> Ibid, s. Section 57

<sup>35</sup> Ibid, s. Section 59.

<sup>36</sup> “The Plant Varieties Protection and Farmers' Rights Act, 2001” (2001), s. Section 70.

<sup>37</sup> Ibid, s. Section 71.

months, with the possibility of three years, or a minimum fine of one hundred thousand rupees, with the possibility of five hundred thousand rupees, or both”<sup>38</sup>. Penalty for subsequent offences “shall not be less than one year but extended to three years imprisonment or with a fine not less than two hundred thousand rupees but extended to two million rupees or both”<sup>39</sup>.

**2.3.8. The Information Technology Act, 2000:** While primarily focused on electronic commerce and digital communication, this act also contains provisions related to intellectual property infringement in digital space. Specifically, sections related to fraud are “Section 65 - Tampering with computer source documents”: This section deals with the act of tampering with computer source documents with the intent to cause damage or injury<sup>40</sup>. Section 66 - Computer-Related Offences: This section covers a variety of computer-related offences, including unauthorized access, identity theft, and malicious code entry<sup>41</sup>. Section 66 C - Punishment for identity theft: This section specifically deals with the act of identity theft and prescribes penalties for it<sup>42</sup>. Section 66 D – Using computer resources to cheat: This section addresses cheating by impersonation using a computer resource<sup>43</sup>. Section 66 E - Violation of privacy: This section pertains to the violation of privacy through the capturing or publishing of private images of an individual without their consent<sup>44</sup>. Section 66 F - Cyber terrorism: This section is related to cyber terrorism and prescribes penalties for engaging in cyber-terrorist activities<sup>45</sup>.

It's important to note that while these sections cover various aspects related to fraud and cybercrimes, they may not specifically use the term "fraud" in their title, words such as false declaration, omission and false presentation are commonly used instead.

**2.3.9. The Customs Act, 1962:** This act empowers customs authorities to enforce intellectual property rights at the borders, allowing them to seize counterfeit and infringing goods. False declaration and false document presentation with intent to commit fraud “may be punished by a fine, a two-year jail sentence, or both”<sup>46</sup>. Evasion duty or prohibition by

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<sup>38</sup> Ibid, s. Section 72.

<sup>39</sup> Ibid, s. Section 73.

<sup>40</sup> The Information Technology Act, 2000 (Act of 2000), Section 65.

<sup>41</sup> Ibid, Section 66.

<sup>42</sup> Ibid, s. 66C.

<sup>43</sup> Ibid, s. 66D.

<sup>44</sup> Ibid, s. 66E.

<sup>45</sup> Ibid, s. 66F.

<sup>46</sup> The Customs Act 1962, s. 132.

fraudulent means or attempts will be punished with a fine which may exceed one crore depending on the market price of goods or fifty lakhs depending on duty on evasion<sup>47</sup>.

**2.3.10. The Competition Act, 2002:** While primarily focused on preventing anti-competitive practices, this act also addresses issues related to abuse of intellectual property rights. “Penalties are imposed in this provision for this subject matter; Penalties for misrepresentation or failure to provide information are fined a minimum of fifty lakh rupees and a maximum of one crore rupees”<sup>48</sup>. The penalty for offences relating to furnishing of information is also penalised with a fine that may extend to Ten lakh rupees<sup>49</sup>.

In addition to these acts, India is a party to several international agreements and treaties related to intellectual property, such as the TRIPS agreement which is under the WTO<sup>50</sup>.

### **3. IPR LEGISLATION GAP(S) AND SUGGESTIONS**

The Indian legislature has in place several legislations on IPR, and most of these legislations have a significant impact. The registration, commercialisation and protection of IPR have been made possible with those laws in place. However, as development progress and advancement happen, there are some gaps within the existing legislation that need amendment or changes to adjust to the current need. Below are some areas and suggestions.

**3.1.Enforcement of IPR laws.** India has laws that cover nearly every kind of IPR and its enforcement mechanisms; yet, the legislative process is sometimes convoluted and unclear, and the same topics might be debated for years on end. Industries may experience ambiguity as a result, which may make strategic decisions about IP enforcement more difficult.

To improve efficiency and boost knowledge in judicial intellectual property matters, the Commercial Courts Act was created in 2015 and revised in 2018. Nevertheless, the Act has only helped a small number of courts thus far. According to rights holders, jurisdictional issues have made commercial courts less effective, and there are still insufficient resources for staffing and training. So, there is more action needed from the legislature here.

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<sup>47</sup> *ibid*, s. 135.

<sup>48</sup> The Competition Act 2002 (Act 12 of 2003), s. 44.

<sup>49</sup> *Ibid*, Section 45.

<sup>50</sup> Toto Jose, “TRIPs and India’s Intellectual Property Rights Regime”, Indian economy. Net, Sept. 19, 2016, available at: “<https://www.indianeconomy.net/splclassroom/trips-and-indias-intellectual-property-rights-regime/#:~:text=For%20India%2C%20the%20WTO%27s%20TRIPs,domestic%20legislation%20compatible%20with%20TRIPs.>” (Last visited on Sept. 26, 2023).

**3.2.Geographical Indications (GI):** The legislation on the protection of geographical indications can be inconsistent and tough to keep up with sometimes. Therefore, it is essential to reinforce the legal framework protecting GIs and raise public awareness of how vital they are.

**3.3.Plant Varieties Protection:** The protection of plant varieties is another area where the legal framework may require further refinement to encourage investment in agricultural research and development.

**3.4.Copyright Challenges in the Digital Era:** Adapting copyright laws to the digital age poses challenges, especially regarding issues like fraud, digital piracy, fair use, and the liability of internet service providers.

**3.5.Cross-Border Enforcement:** Given the global nature of intellectual property infringement, improving mechanisms for cross-border enforcement and cooperation is essential. The legislation needs to enhance international inter-agency coordination and cooperation to combat IPR fraud and other violations at an international level.

**3.6.Design Protection:** The present design guidelines are meant to address the proliferation of design-related activities and specify how designs are classified, primarily per international standards. The World Intellectual Property Organization's standards served as the foundation for India's Semiconductor Integrated Circuits Layout Design Act, but the absence of implementation guidelines and low filing volume has rendered the law dormant. This poses an opportunity for enhancing the protection of industrial designs and addressing issues related to design fraud and piracy.

### **3. CONCLUSION**

The surge of IPR fraud in commercialization is a critical issue that demands concerted efforts from governments, businesses, and individuals alike. Strengthening legal frameworks, enhancing international cooperation, and promoting awareness are essential steps towards mitigating the negative impacts of IPR fraud. Ultimately, safeguarding the integrity of IPR is not just a legal imperative, but a crucial driver for fostering innovation, economic growth, and consumer trust in the global marketplace.

Fraud which has been the topic of focus in this article clearly shows just how damaging it is in this new market of intellectual property rights commercialization. And while there exists a legal framework in place to combat Intellectual Property Rights fraud in India more is yet to be done in implementing it. Also, while commercializing Intellectual Property, several methods are in existence as illustrated above, but the practical part of commercializing Intellectual Property is

where potential Intellectual Property inventors and creators are left exposed to the wolves and this needs to be addressed. The existence of penal provisions in the legal framework doesn't guarantee much when the implementation of those laws is none existent. This crime of Intellectual Property fraud is one of the white-collar crimes in the world right now, India and the whole international community need to step up their roles in fighting white-collar crime by strengthening the framework already in existence as well as strengthening its enforcement both locally and internationally.