

*Enforcement of IPR Laws in Post TRIPS Regime: An
Analytical study of India and China*

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Research Guide

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INDEX

CONTENTS	Page No
1. Introduction	1
2. Rationale of the Study	11
3. Objectives of the Study	19
4. Scope of the study	20
5. Hypothesis	21
6. Methodology	21
7. Review of Literature	22
8. Implications of Reviewed Literature	42
9. Scheme of the Study	43
10. Probable Outcomes of the Study	46
11. References	48

1. Introduction

Trade, commonly referred to as commerce, involves the exchange of goods, services, or both. In its earliest form, trade relied on the practice of barter, where goods and services were directly exchanged.¹ However, with the introduction of money as a medium of exchange, trade became more convenient and distinct from the act of buying and selling or earning. The concept of trade can be categorized into bilateral trade and multilateral trade. Bilateral trade refers to exchanges between two traders, whereas multilateral trade involves transactions among more than two traders. This distinction reflects the various ways in which trade can occur, facilitating economic interactions and the movement of goods and services in both local and global markets.

International trade pertains to the exchange or transfer of goods and services between distinct nations. This type of trade plays a significant role in driving global economic growth. It encompasses a wide range of commodities, including but not limited to television sets, clothing, machinery, capital goods, food, and raw materials. In addition to the trade of tangible goods, international trade also encompasses various services such as foreign transportation, travel and tourism, banking, warehousing, communication, distribution, and advertising. These services contribute to the overall expansion of international trade and facilitate economic interactions on a global scale. Furthermore, international trade involves the increase in foreign investments and the production of goods and services in foreign countries. This expansion of foreign business activities promotes economic development and fosters mutually beneficial relationships between nations.

The interdependence between countries worldwide provides a substantial thrust to International Trade which in turn helps in accelerating the growth of each country in terms of exports, foreign investment, exchange, technology ultimately satisfying the ever-growing needs of the people. Owing to such mutual dependence of the nations on each other the concept of export and import which has resulted into the establishment of international trade and international market has developed. International Trade in general terms means buying and selling of goods and services between different countries and international market is defined geographically as a market outside the international borders of a country. The importance of international trade is not only limited to economic positives; it has much more importance for establishment of peace as it helps the development of cordial relationships between nations.

¹ Ibrahim Mirchiwala , *History of Trade* available at https://www.streetdirectory.com/travel_guide/141653/trading/history_of_trade.html last visited on 19/3/2023

Traditionally the meaning of trade was restricted to the buying and selling of goods, which with the passage of time was extended to include services as well Intellectual Property. Also, trade between two nations used to take place with help of letters and the goods were to be shipped but now-a-days traders execute their trade agreements with the help of information technology and goods are delivered through Drones. The revolutionary change in the concept of trade gave rise to several issues at the international level for which the World Trade Organisation was established to regulate the trading relations between nations.

1.1 Evolution of International Trade

Trade as a concept has developed with the growth and development of mankind. According to the ancient Greek travel manuscript "Periplus Maris Erythraei," dated to the 1st century, it was the Indians who pioneered the concept of international trade. The manuscript attests that Indians engaged in extensive trade with the Romans, marking the earliest recorded instance of international trade.² China has also contributed for the creation of most powerful thing on earth that has helped to trade, i.e. Money. Later during the 11th Century the Song Dynasty created the first paper printed money which was then a landmark event for the development of international trade.³ Columbus had also sailed from Spain in 1492 in search of Trade however he ended up discovering America. In 1498 Vasco De Gama travelled from tip of Africa to India and returned with Jewels and Spices, it was due to trade that Vasco De Gama discovered a new and faster way to reach India. One of the smartest companies of Queen of England was established in India, the East India Company. The Company being smartest in sense as by the way of trade, they took over India and kept Indian as slaves in their own country. In 1672, the English East India Company finally secured a trading post in Taiwan- ten years after Dutch East India Company had been expelled from the island of China. The company also made a regular Trade with China.⁴

In 1700 when India was still believing that the British East India Company has arrived in India for a better future of the people of India, China on the other hand was on completely different track. China never trusted the British so it introduced the concept of Co-Hong⁵ in Canton where the British East

²The Voyage around the Erythraean Sea by Lance Jenott available at <https://depts.washington.edu/silkroad/texts/periplus/periplus.html>, last visited on 19/3/2023

³Ten important events in history that bring further development of international trade by Pallavi Barot. Available at <https://www.timetoast.com/timelines/10-most-important-events-in-history-that-bring-further-development-of-international-trade>, last visited on 19/3/2023

⁴Resources for the study of East Asia Language and cultures from antiquity to the Present available at <http://www.bl.uk/reshelp/findhelppregion/asia/china/guidesources/chinatrade/index.html> last visited on 19/3/2023

⁵Morse, H.B. *Chronicles of the East India Company trading to China, 1635-1834* available, at

India Company was functioning. “Co-Hong” was the sole recognised agency between Foreign and Chinese Merchants, the Hongers were the only Merchants licensed by the Chinese officials to deal with the foreign traders, they were made responsible not only for all the business deals but for their debts as well behaviour. Meanwhile in India, Mughal Empire in 1717 allowed the British East India Company to Trade without paying duties, which ultimately resulted that the company increased its power and was virtually ruling in India by 1757. Nevertheless, the East India Company also became bankrupt in 1799 because of the rise of the competition in free trade.⁶

China was experiencing a flourishing trade unlike India in 18th Century; the company traded British woollens and Indian cottons for Chinese tea, porcelain and silk. Tea imports soon became the largest single item in Britain’s Trading Account, which resulted the exports to China of British and Indian Goods began to decline and trade imbalance between Britain and China occurred as a result. In 1833, the jealously-protected monopoly of the East India Company was finally abolished and the China trade was opened to the competition of dozens of British companies, who had been petitioning the government and lobbying members of Parliament for free trade for years.⁷ On the other hand the first International Trade Agreement, the Cobden-Chevalier Treaty, 1860 was finalised in between UK and France and it talked about Free Trade.

In 1946, the Bretton Woods system was introduced; this Summit was called up keeping in mind the impact on trade due to World War. This International Economic Model was called to stop wars and depression, it was during this era that the concept of Free Trade had stopped literally, due to war between Nations and that affected lives of millions of people.⁸ The initial multilateral free trade pact was the General Agreement on Tariffs and Trade (GATT), launched in 1947 with 23 participating nations, which established fundamental guidelines for world trading system. The goal of the GATT was to stop rules that made trade between countries difficult. These rules were one of the reasons why global trade went down by 66% during the Great Depression.⁹

<https://open.library.ubc.ca/collections/bcbooks/items/1.0373597> last visited on 21/3/2023

⁶ Ten important events in history that bring further development of international trade by Pallavi Barot . Available at <https://www.timetoast.com/timelines/10-most-important-events-in-history-that-bring-further-development-of-international-trade> (last visited on 29/3/2023)

⁷ Resources for the study of East Asia Language and cultures from antiquity to the Present, available at <http://www.bl.uk/reshelp/findhelpregion/asia/china/guidesources/chinatrade/index.html> last visited on 22/10/2022

⁸ Kimberly Amadeo, Bretton Woods System and Agreement ,(<https://www.thebalance.com/bretton-woods-system-and-1944-agreement-3306133> last visited on 19/3/2023)

⁹ GATT, The WTO agreement series 2, available at https://www.wto.org/english/res_e/booksp_e/agrmtseries2_gatt_e.pdf last visited on May 16, 2023

Over time, membership expanded to 128 countries till 1994, before it was succeeded by the World Trade Organization (WTO) in 1995.¹⁰ Three essential provisions made up the GATT. First, it stipulated that every member must accord Most-Favored-Nation (MFN) status to all other members, guaranteeing fair treatment with regard to tariffs. The MFN rule, a cornerstone of the GATT, stipulates that if one-member country offers preferential treatment to another, such as lowering customs taxes on particular imports, it must do so without limitations or delays and apply to all other members as well. With this guideline, all GATT members are treated equally and without prejudice when it comes to things like internal taxes, import and export fees, customs tariffs, and other rules. There are few exceptions, such as customs unions and free trade zones that permit reciprocal preferential treatment under Article XXIV and a 1979 decision permitting preferences among developing countries.¹¹

Second, with the exception of situations like agricultural surpluses, the protection of balances of payments, and the safeguarding of growing industries, the GATT forbade curbs on the volume of imports and exports. Furthermore, nations may impose trade restrictions to protect their national security, as well as to protect their patents, copyrights, and morals in society. Inclusion of developing nations in the GATT was the subject of the third clause, which was first introduced in 1965. In order to boost developing nations' economies, developed nations agreed to lower tariffs on their imports from those nations. Article II and Article XXVIII governed these processes, forming the basis for successive GATT negotiations among developed countries to reduce tariffs. These discussions produced progressively stricter deadlines that constrained the outcomes of tariff reductions. The GATT expanded the number of consumers in the global middle class, which increased demand for trade with developed countries. As a result, this move helped developed countries by enlarging their markets.

During the 1960s and 1970s, developing countries, bolstered by their growing economic power, became dissatisfied with the GATT system's constraints and the need for consensus to bring about changes. In an effort to change the UN system, Developing Nations joined together to create the New International Economic Order (NIEO) in 1973. This was done because they thought that the international community's ineffective reaction to connected crises was harming their interests. The

¹⁰ The 128 countries that had signed GATT by WTO available at https://www.wto.org/english/thewto_e/gattmem_e.htm#:~:text=The%20128%20countries%20that%20had%20signed%20GATT%20by%201994&text=The%20governments%20that%20had%20signed,known%20as%20%E2%80%9CWTO%20members%E2%80%9D. last visited on May 16, 2023

¹¹ GATT, The WTO agreement series 2, available at https://www.wto.org/english/res_e/booksp_e/agrmtseries2_gatt_e.pdf last visited on May 16, 2023

crisis was caused by the U.S.'s unilateral decision to end the exchangeability of dollars for gold in 1971, which led to a decline in the value of the greenback in several nations. The NIEO was created in response to these crises, expanding on the Global South leaders' development agenda. It included a comprehensive reform package designed to give Developing Nations more control over their natural resources, reverse their historical status as raw material exporters, create new institutions to regulate commodities and multinational corporations, and promote technology transfer for industrialization and a decline in reliance on commodities.

Despite the NIEO being approved by the General Assembly of the United Nations, there were issues with its overall implementation. While conceding certain underlying problems, the U.S. pushed for a piecemeal strategy for interacting with the programme.¹² The number of negotiations on different NIEO parts expanded, fragmenting the efforts and eroding the solidarity of Developing Nations. The NIEO's momentum waned as the 1980s approached. Rising interest rates and a global debt crisis affected some of its major supporters who either lost political power or passed away. U.S. President Ronald Reagan's declaration to halt the search for new international institutions further weakened the initiative.

Ultimately, the NIEO remained more of a symbolic rallying cry for the Global South, and it did not become a strong legal framework. It was eventually succeeded by the right to development, which also faced similar challenges. It was destined to fail, as it lacked the support and voice of the major economic and political players.¹³ On the other hand the consensus requirement in GATT, though it blocked extreme developing country demands, may have been crucial in preserving the GATT's success compared to the inefficiencies and political struggles witnessed in other UN bodies.¹⁴ The harder law-making process under the consensus requirement in GATT facilitated the strengthening of the GATT normative regime, reduction in trade barriers, and improvement in overall welfare. If developing countries had pushed their NIEO demands within the GATT without the support of major trading nations, the GATT would likely have faced the same fate as the NIEO: commercial irrelevance.

¹² M.Ya'kub Kadir, *The Failure of the New International Economic Order a Lesson Learned*, available at <https://e-journal.unair.ac.id/YDK/article/download/13561/13187/93390> last visited on 12/4/23

¹³ F.V. Garcia-Amador, *The Emerging International Law Of Development* (1990).

¹⁴ Thomas Franck, *Lessons of the Failure of NIEO*, in *International Law And Development*, Canadian Council On International Law, Proceedings, Xv Annual Conference 82 (1986)

The GATT Agreement which went through several rounds of negotiation and the longest one, the Uruguay Round which lasted from 1986-1994 led to the establishment of WTO. The WTO Agreements were negotiated and signed by the bulk of the world's trading nations. These documents provide the legal ground rules for international commerce. They are essentially contracts, binding governments to keep their trade policies within agreed limits. Although negotiated and signed by governments, the goal is to help producers of goods and services, exporters, and importers conduct their business, while allowing governments to meet social and environmental objectives. Having known that the most harmonious way to settle the differences between nations is only through some neutral procedure based on an agreed legal foundation, it established its dispute settlement bodies as stated in WTO Agreements.¹⁵

The establishment of WTO was gradual but progressive as the GATT Agreement witnessed several rounds of negotiations since its inception which is summarised as under.¹⁶

1947	23 countries signed the GATT in Geneva in 1947, giving birth to it. It attempted to prevent trade restrictions and encourage tariff leniencies.
1948	The official implementation of GATT, and Cuba hosted the first session of its Contracting Parties.
1949	More tariff concessions and new members were included in the second round of trade discussions, which took place in Annecy, France.
1950	The Third Round took place in Torquay, and as a result, there were considerable tariff reductions of roughly 25% from levels in 1948.
1956	The Geneva Fourth Round resulted in significant tariff reductions of almost \$2.5 billion.
1958	Committees were created to examine various trade issues, and the Haberler Report gave directions for GATT's operations.
1960	The Dillon Round, which started in 1960 with the goal of lowering tariffs, ended in 1962 with trade concessions of around \$4.9 billion.
1961	In order to negotiate quota constraints, the Short-Term Arrangement for Cotton Textiles was developed in 1961.
1964	The Kennedy Round came to an end with nearly \$40 billion in concessions, and it was characterised by universal tariff reductions and separate agreements.
1965	GATT's Part IV on Trade and Development, which focuses on lowering trade barriers for developing nations, was added in 1965.
1973	Over \$300 billion in trade was covered by the comprehensive agreements that resulted from the Tokyo Round on both tariff and non-tariff issues.
1974	The Multifibre Arrangement (MFA), which later underwent multiple extensions, went into effect in 1974 to regulate the textile sector.
1982	GATT Ministers pledged to battling protectionism and reaffirmed the legitimacy of GATT regulations.

¹⁵ GATT History by Peter Yu available at <https://www.thebalance.com/gatt-purpose-history-pros-cons-3305578>, last visited on April 5, 2022

¹⁶ Fifth Anniversary of Multi-lateral Trading System, Press Brief by WTO, available at https://www.wto.org/english/thewto_e/minist_e/min96_e/chrono.htm last visited on May 5, 2022

1986	The Uruguay Round, which addressed a variety of trade issues including agriculture, textiles, and intellectual property, was officially inaugurated.
1993	The Uruguay Round's triumphant conclusion.
1994	The Uruguay Round Agreements were ratified in Marrakesh, and as a result, GATT 1994 was included into the World Trade Organisation (WTO) on January 1, 1995.

1.2 The Role of World Trade Organisation (WTO)

In essence, WTO acts as a forum where member nations can come together to discuss their trade-related problems. The WTO's actions are essentially the results of the discussions and negotiations that normally start the process. The talks of the Uruguay Round (1986–1994) and earlier negotiations under the GATT served as the foundation for a sizeable percentage of the WTO's ongoing operations. Where governments attempted to lower trade barriers, these conversations were crucial in lowering them, hence fostering trade liberalisation. It's crucial to remember, though, that the WTO's function goes beyond just trade liberalisation. Its regulations allow keeping trade barriers in place in some circumstances, such as for consumer protection or disease control. A majority of the trading nations in the world drafted and signed a set of agreements that form the foundation of how the WTO functions. These Agreements create the rules that govern global trade, basically acting as contracts that bind states to coordinate their trade policies within predetermined parameters. Governments negotiate and sign these agreements, but their goal is to make it easier for companies to produce goods and services, export them, and import them while allowing governments to pursue social and environmental objectives. Although the WTO was founded on January 1, 1995, its origins go back more than 50 years.¹⁷

The four major pillars of WTO are Trade Related Investment Measures (TRIMS) Trade Related Intellectual Property Rights (TRIPS) and General Agreement of Trade Services (GATS) and GATT. TRIMS are related with international commerce while facilitating cross-border investment and boosting economic growth, particularly in developing nations. GATS seek to create international trade regulations, ensure equal treatment, and set policy commitments to encourage fairness, economic growth, and trade advancement within the services industry. TRIPS Agreement looks into the minimum protection to intellectual property, which should be enforced by all the Member Nations.

¹⁷ What is the World Trade Organization by WTO, available at https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm#:~:text=What%20is%20the%20World%20Trade%20Organization%3F last visited on April 5, 2022

The role of WTO is summed as under:

1.2.1 Trade Negotiations

The WTO Agreements includes Goods, Services and Intellectual Property. They spell out the principles of liberalization, and the permitted exceptions. They include individual countries' commitments to lower customs tariffs and other trade barriers, and to open and keep open services markets. They set procedures for settling disputes. These Agreements are not static they are renegotiated from time to time and new agreements can be added to the package.¹⁸ Many are now being negotiated under the Doha Development Agenda, launched by WTO trade ministers in Doha, Qatar, in November 2001.

1.2.2 Implementation and Monitoring

WTO Agreements require Governments to make their trade policies transparent by notifying the WTO about laws in force and measures adopted. Various WTO Councils and Committees seek to ensure that these requirements are being followed and that WTO Agreements are being properly implemented.¹⁹ All WTO members must undergo periodic scrutiny of their trade policies and practices, each review containing reports by the country concerned and the WTO Secretariat.²⁰

1.2.3 Dispute Settlement

The WTO's procedure for resolving trade disputes under the Dispute Settlement Understanding (DSU) is vital for enforcing the rules and therefore for ensuring that trade flows smoothly.²¹ Countries bring disputes to the WTO if they think their rights under the agreements are being infringed.²² Judgements by specially appointed independent experts are based on interpretations of the agreements and individual countries' commitments.²³

¹⁸ WTO in Brief by WTO available at

https://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr_e.htm#:~:text=The%20WTO's%20overriding%20objective%20is,a%20forum%20for%20trade%20negotiations last visited on 1/2/2023

¹⁹ Kim Anderson, *WTO international trade* available at <https://www.britannica.com/topic/World-Trade-Organization> last visited on 1/2/2023

²⁰ WTO in Brief by WTO available at

https://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr_e.htm#:~:text=The%20WTO's%20overriding%20objective%20is,a%20forum%20for%20trade%20negotiations last visited on 1/2/2023

²¹ Understanding the WTO by WTO available at https://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.htm last visited on 1/2/2023

²² WTO in Brief by WTO available at

https://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr_e.htm#:~:text=The%20WTO's%20overriding%20objective%20is,a%20forum%20for%20trade%20negotiations last visited on 1/2/2023

²³ What is WTO by WTO available at https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm last visited on

1.2.4 Building Trade Capacity

WTO Agreements contain special provision for developing countries, including longer time periods to implement Agreements and commitments, measures to increase their trading opportunities, and support to help them build their trade capacity, to handle disputes and to implement technical standards.²⁴ The WTO organizes hundreds of technical cooperation missions for developing countries annually.²⁵ It also holds numerous courses each year in Geneva for government officials. Aid for Trade aims to help developing countries develop the skills and infrastructure needed to expand their trade.²⁶

1.2.5 Outreach

The WTO maintains regular dialogue with Non-Governmental Organizations, Parliamentarians, other International Organizations, the media and the general public on various aspects of the WTO and the Doha negotiations, with the aim of enhancing cooperation and increasing awareness of WTO activities.²⁷

1.3 Trade Related Intellectual Property Rights (TRIPS)

"Intellectual property" refers to creations of the mind. These creations can take many different forms, such as artistic expressions, signs, symbols and names used in commerce, designs and inventions. Governments grant creators the right to prevent others from using their inventions, designs or other creations — and to use that right to negotiate payment in return for others using them. The extent of protection and enforcement of these rights varied widely around the world; and as Intellectual Property became more important in trade, these differences became a source of tension in international economic relations. Hence, new internationally-agreed trade rules for intellectual property rights were seen as a way to introduce more order and predictability, and to settle disputes more systematically.²⁸

[1/2/2023](#)

²⁴ WTO in Brief by WTO available at

https://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr_e.htm#:~:text=The%20WTO's%20overriding%20objective%20is,a%20forum%20for%20trade%20negotiations last visited on 1/2/2023

²⁵ Understanding the WTO Basics , Principles of Trading System by WTO available at

https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm last visited on 1/2/2023

²⁶ Understanding the WTO by WTO available at https://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.htm last visited on 1/2/2023

²⁷ WTO, History of WTO in making, available at https://www.wto.org/english/thewto_e/thewto_e.htm last visited on 1/2/2023

²⁸ TRIPS, available at https://www.wto.org/english/tratop_e/trips_e/trips_e.htm#issues , last visited on 1/2/2023

The WTO's TRIPS Agreement is an attempt to narrow the gaps in the way these rights are protected and enforced around the world, and to bring them under common international rules. It establishes minimum standards of protection and enforcement that each government has to give to the intellectual property held by nationals of fellow WTO members. The TRIPS Agreement provides protection to Copyright, Trademark, Geographical Indication, Industrial Designs, Patents, Layout Designs of Integrated Circuits and Trade Secrets.

The TRIPS Agreement is acknowledged as a comprehensive and cutting-edge framework for sustaining intellectual property norms and provides significant protection for intellectual property within trade-related regions. Notably, it has the distinction of being the first contract to explicitly cover all facets of intellectual property and include a number of specific stipulations.

The three main areas of governance covered by this agreement are as follows:

Standards: Each Member State is required to develop a minimum set of requirements in order to protect IPRs in all areas of covered intellectual property. The terms of protection within each category of intellectual property are precisely defined in the agreement, including the extent of protection, the rights to be granted, any potential exceptions to these rights, and the minimum period of protection.

Enforcement: TRIPS provides a comprehensive list of rules that apply to all IPR enforcement proceedings. It covers regulations for civil and administrative procedures, potential remedies, temporary measures, particular border requirements, and criminal procedures are covered. These regulations outline the procedures and remedies that need to be put in place to give right holders the opportunity to use their rights in an effective manner.

Dispute Resolution: The WTO's established dispute resolution processes are to be used to settle disputes between WTO members about their duties under the TRIPS Agreement. The disputes are resolved as per the DSU of WTO.

The TRIPS Agreement plays a critical role in facilitating trade in knowledge and creativity, in resolving trade disputes over intellectual property, and in assuring WTO members the latitude to achieve their domestic objectives. The Agreement is legal recognition of the significance of links between intellectual property and trade.²⁹

Under the TRIPS Agreement, WTO Members have considerable scope to tailor their approaches to IP protection and enforcement in order to suit their needs and achieve public policy goals. The

²⁹ WTO, *History of WTO in making*, available at https://www.wto.org/english/thewto_e/thewto_e.htm last visited on 1/2/2023

Agreement provides ample room for members to strike a balance between the long term benefits of incentivising innovation and the possible short term costs of limiting access to creations of the mind. Members can reduce short term costs through various mechanisms allowed under TRIPS provisions, such as exclusions or exceptions to intellectual property rights.

The TRIPS Agreement covers five broad areas:

- General provisions and basic principles of the multilateral trading system that applies to international intellectual property
- Minimum standards of protection for Intellectual Property Rights that members should provide
- Procedures that Members should provide for the enforcement of those rights in their own territories
- Settlement of Disputes on Intellectual Property between members of the WTO
- Special transitional arrangements for the implementation of TRIPS provisions.

2. Rationale of the Study

The purpose of the present study is to evaluate the protection on products in context to IPR in both nations i.e. India and China. Particularly, the present study is concerned with the Patent, Trademark and Design Laws enacted in India and China as the issues of counterfeit goods is more concerned with the violations of Patent, Trademark and Design Rights. It provides a comprehensive analysis of the legal frameworks employed by these countries in addressing issues related to counterfeit goods. The study also evaluates the sincerity with which both countries uphold the TRIPS Agreement and their adherence to international law and treaties. This study intends to provide insight into how well China and India are doing in protecting IPR not only within the borders but also beyond.

2.1. China

China's Legislative Body is divided into three different levels.³⁰ The first level is the National People's Congress and Standing Committee, the laws and rules published at this level overrule legislation published at other level if the latter conflicts with the former. The second level is the State Council, and its role is to publish "Administrative Statutes".³¹ The Chinese Courts decides cases

³⁰ China National Intellectual Property Administration (CNIPA) Law and Policy available at <https://english.cnipa.gov.cn/col/col1327/index.html> last visited on 5/5/2023

³¹ WIPO Magazine , *China's Commitment to strengthening IP Judicial Protection and Creating a Bright Future IP Rights*

relying only on the legislation published by these two levels. The third and last level consists of departments under the State Council.³² These departments may also publish rules, orders, regulations and circulations from time to time and these rules are enforced by the local administrative authorities. The Court may make reference to these rules as necessary, but Courts are not bound by them when deciding the cases.

2.1.1 Understanding TRIPS, WTO and China

China became the 143rd Member of the World Trade Organization on December 11, 2001, following approximately fifteen years of exhaustive negotiations.³³ In order to fulfil its aspiration of joining the WTO, China underwent significant revisions to its patent, copyright, and trademark laws. These amendments came into effect on different dates, with the revised Patent Law taking effect on July 1, 2001, followed by the revised Copyright Law four months later. The amendments were made to ensure compliance with the TRIPS Agreement, specifically focusing on Part II and Part III of the Agreement. The primary motivation behind these extensive changes was China's desire to accede to the WTO. Additionally, the pressure from the United States played a significant role in urging China to enact proper IPR laws.³⁴

2.1.2 China's IPR laws

China provides the protection Patent and Design Rights under Patent Law of the People's Republic of China which was enacted in the year 1984 and was amended in 2000 to meet the TRIPS obligations. So far as the Trademark law is concerned, Trademark law of the Peoples Republic of China, was enacted in the year 1982 which was amended in the year 2001 to meet the TRIPS requirement. However, to comprehensively understand the enforcement of IPR laws in China a mere reading of its IP legislations is not enough. The Patent Trademark and Design Laws of China is required to be read along with Chinese Criminal Law which provides for infliction of punishment looking into the gravity of IPR violations. Further to understand gravity of IPR violation the Supreme People's Court and Supreme Peoples Procurate has come out with a concept of 'Judicial

by Justice Tao Kaiyuan., available at https://www.wipo.int/wipo_magazine/en/2019/03/article_0004.html last visited on 5/5/2023

³² Mathew R , *A brief Analysis of the Chinese Intellectual Property Regime*, available at <https://a-capp.msu.edu/article/a-brief-analysis-of-the-chinese-intellectual-property-regime/> last visited on 6/5/2023

³³ The First decade of TRIPS in CHINA by Peter K. Yu, Drake University, 2012, available at https://papers.ssrn.com/sol3/papers.cfm?Abstract_id=2175385 last visited on 6/5/2023

³⁴ Dexin Tian and Chin-Chung Chao, *Strategies under pressure: USA-China copyright dispute*, available at <https://digitalcommons.unomaha.edu/cgi/viewcontent.cgi?article=1012&context=commfacpub> last visited on 6/5/2023

Interpretation.’ The Judicial Interpretation provides an interpretation of severity of infringement and determines the threshold of criminal charges. Hence, it posits a complex system for layman to understand the enforcement of IPR in China.

2.2 India

India was one of the founding members of The TRIPS Agreement. The TRIPS Agreement came into force on 1/1/1995 and it has set different deadlines to be implemented by the Member Nations according to their status.³⁵ India was obligated to comply with the WTO's TRIPS Agreement starting from 2005, following a ten-year transition period granted to the country from 1995 to 2005. The TRIPS Agreement had set a basic standard that all the member nations had to provide in order to protect and promote IPRs. India was very responsive in order to bring changes as per the international standards set by the TRIPS Agreement. In the end India did make changes as to qualify with the global standards of TRIPS Agreement.

2.2.1 Making Provisions as per the TRIPS Agreement

In order to meet its obligations under the WTO, India made amendments and introduced new IPR laws. These include the following:

1. Patent Law: After joining the WTO and signing the TRIPS Agreement, India made several amendments to its Patent Law, leading to the development of an enhanced Patents Act. The Patents Act underwent multiple amendments over the years.
2. Trademark Law: Previously, India had the Trade Mark and Merchandise Act 1958, which covered trademark aspects. However, in order to simplify the process and align with global standards, India replaced it with the Trademark Act, 1999.
3. Design Law: India enacted the Design Act in 2000 to encourage innovation in industries and adapt to rapid changes in the design field. The Act was later amended in 2008 to incorporate more detailed classification systems aligned with international standards.

2.2.2. National Intellectual Property Policy 2016

India, being one of the fastest-growing economies globally, owes its success to its creative capabilities and innovative leverage. The National IP Policy 2016 aims to harness the economic and

³⁵ WTO, TRIPS FAQ, available at https://www.wto.org/english/tratop_e/trips_e/tripfq_e.htm last visited on 6/5/2023

social benefits of IPRs on a larger scale. The National IPR Policy 2016 aims to promote innovation, creativity, and entrepreneurship while reducing the production and distribution of fake goods in India. It seeks to advance an India where intellectual property encourages improvements in traditional knowledge, arts, culture, science, and technology, as well as biodiversity resources. While combining international best practises modified for the Indian context, the policy aims to establish an institutional system for implementation, monitoring, and evaluation. It also discusses the necessity of creating incentives, safeguarding traditional knowledge, and assisting government programmes like Make in India, Start-up India, and Digital India. Overall, it aims to streamline India's IP regime, improve business rankings, attract investors, and stimulate creativity and innovation across various sectors.

2.3 China and India

China has established itself as the global manufacturing powerhouse, capable of producing everything from small clocks to massive Boeing airplanes. This extraordinary manufacturing capability showcases the sheer power and prowess of China's industrial sector. However, amidst this dominance, China is also keen on protecting its domestic culture, particularly in relation to the production of counterfeit goods. Alongside its reputation as the world's manufacturing hub, China is notorious for its Shanzhai Culture, a phenomenon commonly known as the Copycat Culture, which significantly impacts intellectual property rights worldwide.

The term "Shanzhai" derives its origins from ancient Chinese popular culture, where it referred to the mountain strongholds used as hideouts by bandits and outlaws during the 12th century.³⁶ Initially, Shanzhai products were associated with low cost and inferior quality. However, as time progressed, substantial investments were made to enhance their quality to the point where they could rival the originals. The level of craftsmanship and attention to detail became so precise that distinguishing between an original product and a Shanzhai counterfeit became an arduous task. The Shanzhai practices prevalent in China encompass a wide range of activities, extending from merely replicating small ideas from a book to outright duplicating entire car designs.³⁷ Shanzhai Culture began with their products being low cost and low quality products but as the time went on people started invested in it heavily and to that the extent that the Shanzhai products stand the same standard of that as the original. The work is made with so precision that if original and Shanzhai products are kept

³⁶ Deconstructing *Shanzhai*—China's Copycat Counter culture: Catch Me If You Can by William Hennessey, Campbell Law Review (2012)

³⁷ China View , Copycat 'Shanzhai' Culture Takes on Life of its Own, , available at http://news.xinhuanet.com/english/2008-12/30/content_10582935.htm last visited on 8/4/ 2022

together it is impossible to figure out which is, original and which is duplicate. Further the laws in China when read together in context of IPR protection exhibits certain ambiguities and loopholes and this seems to have been done in order to protect its domestic market.

India also faces counterfeit products which are not limited only to expensive luxury goods, ordinary staples like cumin seeds, cooking oil, baby care items. An intriguing finding from the poll was that customers believe counterfeiting affects 25–30% of the market, which is greater than what the business typically estimates. This point was emphasised by Suresh Krishnamurthy, Senior Director of CRISIL Market Intelligence and Analytics.³⁸ A joint report by Crisil and the Authentication Solution Providers Association (ASPA) estimates that between 25 and 30 percent of all goods sold in the nation are fake, with counterfeiting being most common in the FMCG and apparel industries, followed by the pharmaceutical, automotive, and consumer durables sectors.³⁹ According to the survey, the industry with the highest prevalence of counterfeit goods is the apparel sector (31%), followed by FMCG (28%), and automotive (25%). Pharmaceuticals (20%), consumer durables (17%) and agrochemicals (16%) also suffer from widespread counterfeiting.⁴⁰ Unexpectedly, the survey finds that 27% of buyers are ignorant of the fact that the things they buy are fake at the time of purchase. Furthermore, 31% of customers purposefully purchase fake goods. In India, the illicit traffic in products reached 2.6 trillion in FY 2019–20, with an increasing tendency and affecting almost every sector.

But, India does not exhibit any such cultural practices as in case of China, which are contrary to the objectives of IPR laws. India has established well-defined IPR standards in compliance with the TRIPS Agreement. This has instilled confidence among multinational companies regarding the protection of their intellectual property rights. As a result, companies that were initially investing in China are now turning their focus towards India. For instance, the Chinese mobile giant, Xiaomi (MI), has commenced operations in India as a prime example of this trend.⁴¹

³⁸ Almost 25-30% products sold in India spurious with counterfeiting: Report by Saurav anand available at <https://www.livemint.com/industry/retail/almost-25-30-products-sold-in-india-spurious-with-counterfeiting-report-11674655725574.html> last visited on 4/4/2023

³⁹ Almost 25-30% products sold in India spurious with counterfeiting: Report by Saurav anand available at <https://www.livemint.com/industry/retail/almost-25-30-products-sold-in-india-spurious-with-counterfeiting-report-11674655725574.html> last visited on 4/4/2023

⁴⁰ Ibid

⁴¹ Xiaomi now has a second factory in India, manufactures one phone a second by Shruti Dhapola, available at www.indianexpress.com/article/technology/tech-news-technology/xiaomi-redmi-4a-now-has-a-second-factory-in-india-manufactures-one-phone-a-second-4577623/ last visited on 14/7/2023

Furthermore, both India and China share similarities in terms of their economic development. Both countries have experienced remarkable growth in their economies. China's transformation began in the late 1970s, transitioning from a closed and centrally planned economic system to a market-based one. This gradual shift involved reducing dependence on agriculture, implementing liberalization measures, promoting privatization, strengthening the stock market, and embracing foreign business opportunities. As a result, China emerged as the largest economy in the world, surpassing the United States in 2016.⁴² Similarly, India's economic journey took a different trajectory. Historically, India's economy was rooted in agriculture, modern handicrafts, and the service sector. However, recognizing the need for diversification and modernization, India initiated economic reforms in the 1990s. These reforms led to the liberalization of the economy, including industrial deregulation, privatization of state-owned enterprises, and greater openness to foreign investment. These measures aimed to create a more open and competitive market, fostering economic growth and development.

A brief comparison as under will help to understand the similarities between these two nations.⁴³

Sr. No.	Subject	China	India
1.	GDP Growth Rate ⁴⁴ (2022)	\$ 18.1 Trillion	\$ 3.39 Trillion
2.	India's Export with China ⁴⁵ (2022)	\$ 9.49 Billion	-----
3.	China's Exports with India ⁴⁶ (2022)	-----	\$ 56.53 Billion
4.	Gold Reserves ⁴⁷	1,31,650.05 Million	50,577.34 Million
5.	Economic Grouping ⁴⁸	Upper Middle Income	Lower Middle income
6.	Ranking in the Income Group ⁴⁹	1	1

⁴² China vs India, by CIA Factbook, available at <https://www.indexmundi.com/factbook/compare/china.india/economy> last visited on 5/5/2023

⁴³ India vs China : A comparison of economic growth, available at <http://zeenews.india.com/economy/india-vs-china-a-comparison-of-economic-growth-2039581.html> last visited on 5/5/2023

⁴⁴ Decan Herald , *India's GDP gap with US, China s widening alarmingly* available at: <https://www.deccanherald.com/opinion/india-s-gdp-gap-with-us-china-is-widening-alarmingly-1233747.html> last visited on 7/7/2023

⁴⁵ PTI, *India- China trade shows first signs of slowdown in year*, available at <https://economictimes.indiatimes.com/news/economy/foreign-trade/india-china-trade-shows-first-signs-of-slowdown-in-years/articleshow/101735216.cms?from=mdr> last visited on 14/7/2023. See also India Exports to Japan by Trending Economics available at <https://tradingeconomics.com/india/exports/japan#:~:text=India%20Exports%20to%20Japan%20was,COMTRADE%20database%20on%20international%20trade> last visited on 14/7/2023

⁴⁶ Ibid

⁴⁷ Goldhub, *Gold Reserves by Country* available at <https://www.gold.org/goldhub/data/gold-reserves-by-country>, last visited on 5/5/2023. See also ENS, *Reserve Bank's gold reserves rose 4.5% to 794.64 tonnes in 2022-23* available at <https://indianexpress.com/article/business/banking-and-finance/reserve-banks-gold-reserves-rose-4-5-to-794-64-tonnes-in-2022-23-8598814/>

⁴⁸ Ibid

⁴⁹ GII 2023 at Glance , WIPO (2023) available at <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-2000-2023-section1->

7.	Regional Leader of their group as GII 2023 ⁵⁰	YES	YES
8.	Global Innovation Index Rank ⁵¹	12	40
9.	Science and Technology Clusters ⁵²	9	3
10.	GII Rank in 2013/2023 ⁵³	35/12	66/40

Further, the Patent Trademark and Design Registration Data as per the Annual Reports of both the countries are presented as under: ^{54 55}

Sr. No	Subject	China (2022)	India (2021-2022)
1.	Domestic Applications (Patent)	13,10,000	29,508
2.	Foreign Applications (Patent)	1,55,000	36,932
3.	Patent applications by China in India	-----	3,547
4.	Patent Applications by India in China	179	-----
5.	Domestic Application (Designs)	7,77,663	11,936
6.	Foreign Applications (Designs)	17,055	3848
7.	Design applications by China in India	-----	671
8.	Design Applications by India in China	12	-----
9.	Domestic Application (Trademark)	73,04,007	4,47,805
10.	Foreign Applications (Trademark)	2,12,000	13,721
11.	Trademark applications by China in India	-----	1,993
12.	Trademark Applications by India in China ⁵⁶	N.A.	-----

The above data clearly shows that, China has a strong focus on both domestic and international Patent, Trademark and Design applications. On the other hand, India's numbers are comparatively lower, indicating a potential gap in its emphasis on patent Trademark and Design protection both domestically, and in the Chinese market.

[en-gii-2023-at-a-glance-global-innovation-index-2023.pdf](#) last visited on 5/5/2023

⁵⁰ Ibid

⁵¹ GII 2023 at Glance , WIPO (2023) available at <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-2000-2023-section1-en-gii-2023-at-a-glance-global-innovation-index-2023.pdf> last visited on 5/5/2023

⁵² Ibid

⁵³ GII 2023 , WIPO (2023) available at <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-2000-2023-en-main-report-global-innovation-index-2023-16th-edition.pdf> last visited on 5/5/2023

⁵⁴ Annual Report 2022 by a China National Intellectual Property Administration available at https://english.cnipa.gov.cn/module/download/download.jsp?i_ID=186070&colID=3261 last visited on 23/9/2023

⁵⁵ Annual IPR Report 2021-2022 by The Office of the Controller General of Patents , Designs, Trademarks and Geographical Indication, available at https://ipindia.gov.in/writereaddata/Portal/Images/pdf/Final_Annual_Report_Eng_for_Net.pdf last visited on 23/9/2023

⁵⁶ The Trademark Registration Data provided by the China as per their Annual Report contains data of only Top Ten Applicants from across the world and India is not in the list, hence the data is not available.

India has a considerable economic edge over other major economies in the twenty-first century because of its vast size and diverse population. Recent trends in demography suggest that India has surpassed China in terms of overall population, accounting for the greatest portion of the world's population at about 17.8%,⁵⁷ surpassing one-sixth of the total. According to projections, India will overtake China in terms of the proportion of the working-age population by 2030. In the coming decades, it's expected that this proportion will increase even further and not just stay greater than China's. Furthermore, compared to peer nations, India is predicted to maintain the lowest ratio of elderly dependency, resulting in higher rates of saving and investment for the remaining decades of this century.⁵⁸

There are several compelling reasons for this research:

1. **Economic Significance:** India and China are two of the world's most populous countries with rapidly growing economies. Understanding the similarities and differences in their IPR laws can provide valuable insights into the opportunities and challenges faced by businesses and innovators operating in these markets.
2. **Bilateral Trade and Investment:** India and China have significant trade and investment ties. Examining their IPR laws can shed light on how these countries protect and enforce intellectual property rights, impacting cross-border transactions and foreign investments.
3. **TRIPS Agreement Compliance:** Both India and China are signatories to the World Trade Organization's TRIPS Agreement. Analyzing their implementations of TRIPS provisions can help assess their commitment to international standards of IPR protection.
4. **Patent Laws:** Understanding the nuances of patent laws in India and China is crucial due to their implications for innovation, research, and technology transfer. Comparing patent filing procedures, examination timelines, and enforcement mechanisms can provide insights into the patent landscape in these countries.
5. **Trademark Laws:** Trademarks are essential for brand protection and consumer trust. Analyzing the trademark registration processes, use requirements, and enforcement measures in India and China can help businesses safeguard their brand identities in these markets. This will also help to understand the fight against the counterfeit market.

⁵⁷ World Population Data by United Nation Population Fund , Available at <https://www.unfpa.org/data/world-population-dashboard> last visited on 23/9/2023

⁵⁸ Economy Watch Monitoring India's macro fiscal performance (82nd Issue) August 2023 BY Ernest and Young available at https://www.ey.com/en_in/tax/economy-watch/india-towards-becoming-the-third-largest-economy-in-the-world#:~:text=Trends%20in%20the%20growth%20of,age%20structure%20of%20its%20population. last visited on 23/9/2023

6. **Design Laws:** The protection of industrial designs is vital for industries involved in product manufacturing and design. Exploring the design registration systems and infringement remedies in both countries can offer valuable information for businesses seeking to protect their designs. Counterfeit Goods copy the Design of the Original Goods, hence understanding the Design Laws is significant.
7. **Customs Border Laws:** Customs enforcement plays a crucial role in preventing the import and export of counterfeit goods. Understanding how India and China implement their customs border laws to combat IP infringement can provide valuable insights for businesses in managing IP-related risks.
8. **Impact on Innovation and Business Strategies:** The level of IPR protection and enforcement can significantly impact innovation and business strategies in both countries. Researching this area can help companies develop appropriate IP management strategies tailored to the Indian and Chinese markets.
9. **Policy Implications:** The findings of this research can have policy implications for both countries. It can help identify areas for improvement in IPR laws and enforcement measures, leading to a more conducive environment for innovation and economic growth.

In conclusion, conducting research on IPR laws between India and China in the areas of patents, trademarks, and designs, along with considerations of the TRIPS Agreement and customs border laws, will provide valuable insights for WTO, businesses, policymakers and stakeholders seeking to navigate and understand the IPR landscape in these dynamic and influential markets.

3. Objectives of the Study

- 3.1 To study the historical perspectives of IPR laws in India and China
- 3.2 To examine the binding obligations of the TRIPS Agreement on Member Nations
- 3.3 To examine the Dispute Settlement Mechanism of the World Trade Organization and analyse TRIPS violations cases pertaining to India and China
- 3.4 To analyze the enforcement of the TRIPS Agreement on Patent, Trademark, and Design Laws in India
- 3.5 To analyze the enforcement of the TRIPS Agreement on Patent, Trademark, and Design Laws in China
- 3.6 To study the Judicial Interpretation of China and its impact on Patent, Trademark and Design Laws
- 3.7 To study the protection of Patent, Trademark and Design rights with relation to Custom Laws in India and China
- 3.8 To study the awareness of IPR among Start-ups and Small Entities in Gujarat.

4. Scope of the study

The scope of this study is focused on the impact of the TRIPS Agreement in India and China, as governed by the WTO. The WTO serves as an organization that facilitates trade among its member nations by providing frameworks for implementing, administering, and operating multiple trade Agreements. The TRIPS Agreement is one such tool aimed at promoting easier trade between nations. Currently, the WTO has 164 Member Nations⁵⁹ and 136 of them are also members of the TRIPS Agreement.⁶⁰

The study specifically focuses on only three aspects of intellectual property: Patents, Trademarks, and Designs while excluding pharmaceutical and agricultural products. It examines the measures implemented by India and China to protect intellectual property rights in relation to these aspects. Additionally, the study considers the role of the WTO's Dispute Settlement Body in addressing TRIPS-related issues specifically concerning India and China.

Pharmaceutical products are not included in the study in order to concentrate on a thorough grasp of counterfeiting across various consumer goods. The goal of the study is to investigate the IPR laws against the complex system of fake goods creation, consumption, and distribution in the larger market. The research intends to provide insights into the legal components of counterfeit goods by focusing on these areas, illuminating the available protection for the legitimate enterprises and the steps required to address this prevalent problem. Hence, the IPR laws pertaining Patent, Trademark and Design in India and China are analysed in context of the International Standards led down in TRIPS Agreement. Additionally, a non-doctrinal study is conducted to assess enforcement amongst innovators and/or manufacturers in Gujarat regarding their IPR laws.

⁵⁹ WTO, *Members and Observers*, available at, https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm last visited on 14/7/2023

⁶⁰ WTO, *WTO and TRIPS*, available at https://www.wto.org/english/news_e/news23_e/heal_17mar23_e.htm last visited on 14/7/2023

5. Hypothesis

5.1 The counterfeit goods market leading to Patent, Trademark and Design violation in India and China undermines the TRIPS obligations.

5.2 China's enactment of Judicial Interpretation has resulted in dilution of IPR Laws limiting their effectiveness in safeguarding Intellectual Property Rights.

5.3 While the TRIPS Agreement has prompted India and China to adopt uniform laws for intellectual property rights, the DSB decisions indicates that, there are still some grey areas.

5.4 Border measures to combat trade of counterfeit goods are inadequate in India and China resulting into non-adherence to the obligations under the TRIPS.

5.5 Start-ups and Small Entities in the State of Gujarat are not aware about Intellectual Property Rights.

6. Methodology

The study involves both Doctrinal as well as Non-Doctrinal research methods.

6.1 Doctrinal Research

The doctrinal study focuses on analysing the existing statutory provisions of India and China's IPR laws in relation to the TRIPS Agreement. Various aspects of IPR and the TRIPS Agreement are examined, considering the prevailing legal frameworks. To conduct this study, relevant source materials has been collected from primary and secondary sources, such as relevant statutes, published books by renowned authors on the TRIPS Agreement, WTO, India and the TRIPS Agreement, China and IPR, China and the TRIPS Agreement, and Shanzhai Culture. Additionally, case laws, articles published in domestic and foreign journals, parliamentary documents, and materials from international conventions and covenants are referenced.

The study also makes use of dedicated websites of the Chinese and Indian governments, especially those related to the Department of IPR and other relevant acts. Information from national and international conferences, seminars, consultations, and workshops is included as well. Up-to-date developments and current information is collected from various websites.

6.2 Non-Doctrinal Research

Population:

Start-ups and Small Entities in Gujarat⁶²

⁶² For Start-ups, the entity must not have been operational for more than five years, and its annual turnover should be less than ₹25 crores during the year. Whereas Small entities are the enterprises involved in manufacturing or production where

Sampling Technique:

The researcher has adopted Non-probability sampling technique since it is not possible to have a proper list of Start-ups and Small Entities. Hence, Purposive sampling technique is utilised in the current research.

Tools:

Questionnaire: A Questionnaire is framed to obtain data from the respondents.

Sample size:

Data is collected from 105 Start-ups and Small Entities of Goods in Gujarat.

Analysis of data:

The complete analysis of the quantitative data is concluded using the percentage and frequency method. The qualitative data was analyzed with the help of the content analysis method.

7. Review of Literature

Zheng Chengsi (1999) –In this work-The TRIPS Agreement and Intellectual Property Protection in China

This article explores the implementation of the Agreement on TRIPS Agreement in China and its impact on intellectual property protection. In keeping with its open reform philosophy, it shows China's efforts to build and expand its intellectual property protection system. The article discusses China's legislative system, which automatically incorporates international treaties into domestic law, with certain reservations. Additionally, it looks at China's involvement in TRIPS Agreement discussions before to its admission to the WTO. The article details the amendments made to China's Patent Law and Trademark Law, aligning them with the provisions of the TRIPS Agreement. It mentions the protection of well-known trademarks, service marks, and geographical indications. The introduction of criminal sanctions for copyright infringement and regulations for the protection of intellectual property by the customs authority are also discussed.

The proposed reforms to China's existing intellectual property laws, including the Patent Law, Trademark Law, and Copyright Law, are examined. These reforms aim to enhance protection for well-known trademarks, address conflicts between domain names and trademarks, and update

the investment in plant and machinery is between ₹25 lakhs and ₹5 crores, as defined by the Micro, Small, and Medium Enterprises Development Act, 2006

provisions related to e-mail, software-related inventions, and databases. The need for a review process for administrative decisions in patent and trademark matters is highlighted.

The article concludes by discussing the debate surrounding the liability of individuals who unknowingly infringe intellectual property rights. It examines the principle of liability with fault in Chinese law and contrasts it with the concept of strict liability. The need to align Chinese intellectual property laws with the enforcement requirements of the TRIPS Agreement is emphasized. Overall, the article emphasizes China's commitment to intellectual property protection and its efforts to harmonize its legal framework with international standards, particularly the provisions of the TRIPS Agreement. It highlights ongoing discussions and proposed amendments to strengthen intellectual property rights in China.

Altacit Global Attorneys (2008) in their research paper “India IPR Customs & Border Protection Developments”

This research paper titled "India IPR Customs & Border Protection Developments" by Altacit Global Attorneys, with an emphasis on India, this research paper explores the subject of protecting intellectual property rights (IPRs) at the border. It emphasises how crucial National Customs and Border Protection is to the fight against the influx of pirated and counterfeit goods that violate intellectual property rights. In order to lessen the flow of counterfeit goods in international trade, the paper emphasises the importance of protecting intellectual property rights (IPRs) at the border. It talks on the legal system, especially the Customs Act of 1962, which forbids importing products that violate intellectual property rights. The Intellectual Property Rights (Imported items) Enforcement Rules, 2007, which give Customs Authorities the authority to handle fake and pirated items at the border, are discussed in this article.

Trademarks, copyrights, patents, designs, and geographical indications are only a few of the categories of intellectual property that these regulations regulate. The study report describes the requirements for registration by right holders, including the bond and indemnity bond issuance process, as well as the accompanying procedures. Additionally, it highlights the registration's geographic reach by listing the customs ports and stations where these regulations are in effect. The article discusses limitations and exclusions, noting that small consignments and baggage intended for personal use are free from these regulations. It also covers the procedure of suspending goods, including Customs' need to notify right holders and the release of commodities that have been suspended in certain situations. The article emphasises Customs' responsibility in locating and

seizing counterfeit items as well as their duty to supply the information required to identify them. Finally, it discusses how to get rid of products that are infringing, emphasising that the right holder must provide permission before they can be destroyed or disposed of. With an emphasis on enforcement through Customs and Border Protection, this research paper provides a thorough overview of the legislative framework and procedural issues of safeguarding intellectual property rights at India's borders.

Jayant Kumar (2009) in his work “India: Enforcement of Intellectual Property Rights through Customs”

The research study examines how India's customs implement intellectual property rights (IPR). It emphasises how important customs authorities are to upholding intellectual property rights and guarding borders against the introduction of products that violate intellectual property. With the expansion of global trade, customs is now responsible for more border control and intellectual property protection. The Customs Act, 1962, which gives the Central Government the authority to forbid the import or export of items that violate copyright, patent, trademark, or other legal rights, is one of the main legal frameworks highlighted in this article.

The Central Government's 2007 Intellectual Property Rights (Imported Goods) Enforcement Rules are described in detail in this paper. These regulations outline the terms and processes that forbid the importation of products that violate intellectual property rights. It also provides definitions for the terms "infringing goods" and "protected goods" under intellectual property regulations. The procedure by which holders of intellectual property rights can ask that the clearance of goods suspected of violating their rights be suspended is a critical topic of discussion. The notification to the Commissioner of Customs is examined in a set amount of time, and if it is registered, then certain requirements must be met, such as the filing of bonds to indemnify customs officials. The study also explores Customs' power to halt the clearance of goods in the event that there are good reasons to believe that intellectual property is being violated. The correspondence and subsequent measures, such as the release of goods in the event that the right holder declines to participate in the proceedings, are specified. There is also discussion of special provisions for perishable items.

The paper emphasises that confiscated goods may be destroyed or disposed of under official supervision, and the right holder may object to the method of disposal. It also clarifies how Customs uses a dedicated website to register intellectual property online, enabling efficient enforcement and communication. The practical application of the legal framework was demonstrated by the

Commissioner of Customs in Mumbai's decision on a patent infringement problem in a real-world case involving the patent holder, S. Ram Kumar. Overall, the study highlights how important customs is to border intellectual property protection as well as how the legal system helps with these efforts.

Peter K Yu (2011)-In this work "**Shaping Chinese Criminal Enforcement Norms through the TRIPS Agreement**" the author discusses the challenges and limitations of using international intellectual property agreements, particularly the TRIPS Agreement, to shape local criminal enforcement norms in China. The author begins by providing background information on the TRIPS Agreement, which introduced comprehensive multilateral norms on intellectual property enforcement, including criminal procedures and penalties. Initially, there was optimism about the benefits of these international standards, but developed countries later criticized their inadequacy and pushed for higher standards through various trade agreements. The article focuses on China as a case study and examines the recent dispute between the United States and China over China's compliance with the TRIPS enforcement provisions. It highlights the complexities of China's criminal system and the challenges of using international agreements to shape criminal enforcement norms. The author suggests that Western stereotypes about the Chinese legal system may have influenced the US position, and emphasizes that China's criminal law is well-developed, although it may lack certain procedural safeguards, judicial independence, and evidentiary standards.

The author discusses the limitations of the TRIPS approach in shaping criminal enforcement of intellectual property rights. The article explores the differences between administrative and judicial enforcement systems in China and their effectiveness in deterring infringement. It also notes that the TRIPS Agreement does not define what measures constitute criminal enforcement, leaving it up to each WTO member to design its own domestic criminal law system. The article concludes by emphasizing that the TRIPS Agreement, while introducing a minimum standard for criminal enforcement, has limitations in providing meaningful protection to intellectual property rights holders. It highlights the challenges of using international agreements to shape local criminal enforcement norms, particularly in a field like criminal law, which has a long history and is influenced by various cultural, philosophical, and traditional factors. The author suggests that as countries continue to develop higher international intellectual property enforcement standards, they should consider these challenges. Overall, the article raises important questions about the effectiveness of international agreements in shaping criminal enforcement norms and highlights the complexities involved in the context of China's legal system.

Peter K. Yu (2014) in this work -"**The First Decade of TRIPS in China**" by explores China's intellectual property developments in its first decade of WTO membership. The article begins by highlighting China's accession to the WTO and its compliance with the TRIPS Agreement. It discusses the minimum standards for intellectual property protection and enforcement outlined in the TRIPS Agreement, covering areas such as copyrights, patents, trademarks, and more. The article focuses on China's pre-accession reforms, where the country overhauled its intellectual property system and amended its copyright, patent, and trademark laws to conform to WTO standards. The amendments included provisions for compulsory licenses, judicial review of patent invalidations, expanded subject matter for trademarks, and enhanced enforcement measures.

During the first few years of WTO membership, China maintained a low profile in the international trading body. This was due to domestic challenges and the need to implement the commitments made upon accession. The article explains that China's low profile in the WTO benefited the country by allowing it to focus on implementing its commitments and addressing domestic issues. The article also discusses China's limited interest in international intellectual property norm-setting during this period, including its rare submission to the Committee on Technical Barriers to Trade. However, it highlights the recent U.S.-China WTO dispute over intellectual property rights and China's increased assertiveness in the international intellectual property arena. In conclusion, "The First Decade of TRIPS in China" shows how China transformed from a passive follower of international intellectual property norms to a more active participant, taking on the roles of both a norm shaker and a norm maker. It explores China's pre-accession reforms, its low profile in the WTO, and its evolving stance on intellectual property rights within the international framework.

Kamila Trojanová (2015) in this work "**The Intellectual Property Rights in China's Trade Policy**" the author provides an overview of China's position and strategy regarding IPRs in its trade policy. The author highlights that IPRs are crucial assets in international business and trade, and governments' trade policies play a significant role in their protection and enforcement. The article discusses China's membership in the World Intellectual Property Organization (WIPO) since 1980 and its accession to the World Trade Organization (WTO) in 2001, which binds China to the TRIPS. China's trade policy also involves comprehensive regional trade agreements (RTAs) that cover the regulation of IPRs.

The existing literature on China and IPRs can be categorized into two groups. The first group focuses on the international perspective, analyzing the impact of political negotiations and China's accession to the WTO on the development of its domestic IPRs regulation. The second group focuses on

domestic IPRs regulation, enforcement issues, and business concerns related to IPRs in China. The article suggests that China's changing economy and trade policy developments may lead to a shift in its role in international IPRs negotiations. It highlights China's domestic patent regulation as an example, where amendments were made based on China's own innovation strategy and the needs of its domestic companies. It examines China's role in multilateral negotiations on IPRs protection and enforcement, as well as the IPRs-related provisions in China's bilateral RTAs. The article identifies four groups of China's effective RTAs concerning IPRs. Some RTAs lack specific IPRs regulations, while others include separate chapters on IPRs but with varying degrees of substantive regulation. The analysis reveals that China's position in IPRs negotiations are pragmatic, focusing on specific categories of IPRs, such as geographical indications and genetic resources. In conclusion, the article highlights the importance of IPRs in China's trade policy and its evolving role in international IPRs negotiations. It suggests that China's strategy and position in IPRs negotiations may significantly impact the agenda of multilateral and regional trade negotiations. The article provides insights into China's interests and priorities in IPRs protection and enforcement, which can inform future research and debates on China's role in trade negotiations.

Stephen J. Ezell and Robert D. Atkinson (2015) – The report “**False Promises: The Yawning Gap between China’s WTO Commitments and Practices**” this report examines the significant gap between China's commitments as a member of the World Trade Organization (WTO) and its actual practices. Although there were great hopes for China's adherence to liberalised trade and adoption of market-based economic principles, the nation has aggressively sought innovative mercantilism in order to gain a decisive advantage in high-tech industries. In order to address China's trade practises, the paper suggests a strategy of "constructive confrontation" after examining the shortcomings in the initial projections of China's WTO membership. It makes suggestions on how America and Europe might deal with and defeat Chinese innovation mercantilism.

The report starts by highlighting that, nearly 15 years after joining the WTO, China's vision of a rules-governed, market-based global trade system has not materialized. Instead, China has used non- tariff barriers and hasn't completely complied with its WTO obligations, such as restricting market access, requiring technology transfer in order to get access, and continuing to subsidise state-owned businesses and export-related industries. To address the situation, the report suggests adopting a policy of constructive confrontation with China, moving from a legalistic engagement to a results- oriented approach. Holding China responsible for particular objectives such as lowering its surplus on the global current account and switching to productivity-led growth is part of this. To better

comprehend the effects of other nations' economic initiatives, the paper also suggests establishing a National Industrial Intelligence Council and an Office of Globalisation Strategy under the US Trade Representative's Office.

To counter Chinese forced technology transfer, the report proposes legislation allowing firms to coordinate actions regarding technology transfer and investment. It recommends implementing laws requiring Chinese companies that licence technology in the US to follow the same rules as US companies do in China, as well as amending the CFIUS's mandate to accommodate modern state capitalism. The report emphasizes the need to cut off scientific cooperation with China until it abates technology mercantilist practices and to include strong provisions against forced technology transfer in bilateral trade and investment treaties. Lastly, the report calls for increased investigation and prosecution of IP theft, imposing severe sanctions against foreign companies that misappropriate American IP, and comprehensive sequestration of imported goods using stolen or pirated IP.

In conclusion, the report exposes the gap between China's WTO commitments and its practices, highlighting the need for a more confrontational approach to address China's innovation mercantilism. The recommendations aim to protect US and European interests while promoting fair and rules-based global trade.

Mingde li (2015) - In this work -Current IP Issues in China: Analysis of Development Phases and Utilization Strategies this article examines the development of IPR in China, focusing on three phases: the establishment of IPR laws, enforcement efforts, and the emphasis on utilization. In the first phase, China enacted trademark, patent, copyright, and unfair competition laws, aligning them with the TRIPS Agreement requirements. However, these laws remained mostly theoretical and lacked effective implementation. The second phase saw increased attention on IPR enforcement, driven by criticism from transnational companies, foreign leaders, and domestic stakeholders. Despite efforts to amend laws and enhance enforcement, challenges persist.

The third phase emphasizes the utilization of IPR to promote economic and social development. China accepted high standards for IPR protection after joining the WTO, leading to the formulation of a national IPR strategy focused on creation, utilization, protection, and management of IPRs. Party congresses and government documents have emphasized the importance of innovation, utilization, and protection of IPRs. To support IPR utilization, China established specialized IP courts in Beijing, Shanghai, and Guangzhou, with intermediate courts adjudicating civil and administrative cases related to patents, plant varieties, circuit layouts, technical secrets, and computer programs. The IP

courts aim to encourage technological creations and utilization by providing effective protection and specialized trial judges.

The article concludes by highlighting that while China has met the minimum standards for IPR protection set by the TRIPS Agreement, it continues to face challenges in enforcing those standards. Additionally, the focus on IPR utilization poses a new task for China's IP system, which should not only prioritize protection but also promote economic and social development. The effective utilization of IPRs remains a complex task for China and a potential topic for the future multilateral trading system.

Jayashree Watal (2015) in this book chapter –“**Patents: An Indian Perspective**” the chapter provides an insightful account of India's position in the negotiations of the Agreement on TRIPS Agreement. The chapter offers a recollection of the author's involvement in the TRIPS negotiations from 1989 to 1990, with a specific focus on India's defensive interests regarding patent provisions.

The chapter begins by providing background information on India's negotiating position, highlighting the revision of India's patent law in 1970 and the opposition to any changes in the law. It explains the challenges India faced due to its low trade-to-GDP ratio and the politically powerful groups opposing changes to the patent law, which aligned with the interests of the generic drugs industry and public perception of national interest. The author recalls India's limited offensive trade interests at the time and the lack of significant demands to make in other areas of the Uruguay Round negotiations. This further complicated India's position, as it lacked bargaining power. The chapter emphasizes the significance of bilateral negotiations, which became the counterfactual to the failure of the TRIPS negotiations.

Furthermore, the chapter highlights the broader international context during the Uruguay Round, where developing countries failed to weaken the Paris Convention and faced challenges regarding compulsory licenses. It explores the differences among developing country delegations and their varying priorities in the negotiations. Similarly, differences among developed country delegations are discussed, with North-North differences persisting until the end. The chapter also addresses the lack of expertise in intellectual property policy in developing country capitals and the core demand for stronger intellectual property rights protection coming from private sector entities in certain developed countries.

In conclusion, "Patents: An Indian Perspective" provides valuable insights into India's defensive stance during the TRIPS negotiations and the challenges it faced in balancing the interests of the

generic drugs industry, public opinion, and national interests. The chapter sheds light on the complex dynamics of the negotiations and the broader international context that influenced India's position. Intellectual property rights.

The National Academy of Customs, Indirect Taxes, and Narcotics' (2016) the book "**Enforcement of IPRs at Border**" focuses mostly on the protection of intellectual property rights (IPRs) at the border, particularly in relation to Indian customs processes. It emphasises the role of customs authorities in preserving intellectual property rights and provides as a thorough reference to the legal and procedural issues of intellectual property protection.

The book is divided into 4 major parts which are as follows

Part I: What is Intellectual Property (IP)? The basic concepts of intellectual property and the different rights that are connected to it, such as copyright and industrial property, are explained in detail in this section. It explains the various IPR categories and their importance.

Part II, Border Measures under TRIPS, Under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement, the function of border controls is discussed in this section. It includes things like making it illegal to import or export goods that violate intellectual property rights, fines for those who do so, parallel imports, and special regulations pertaining to industrial designs, patents, trademarks, geographical indications, and copyright.

Part III, The Right Holder's Bond and Security to Be Provided: This section explores the bonding and security requirements and processes that apply to right holders under the law, specifically with regard to safeguarding their intellectual property. It highlights stringent time constraints, the seizure of goods that violate intellectual property rights, and the creation of intellectual property rights (IPR) cells in every Custom House.

Part IV, Automatic Recordation and Targeting System (ARTS) for India's IPR Protection The importance of the Automated Recordation and Targeting System (ARTS) for protecting intellectual property is covered in this chapter. It provides information on how right holders can submit notices and what happens when infringing items are intercepted. For clarity, it also includes a flowchart.

Kai Min (2019)- In this article-"**The Perfection of Chinese Criminal Legislation of Intellectual Property Rights**" the author discusses the rapid development of intellectual property rights in China, the growth of intellectual property crimes, and the need for improvement in China's

intellectual property criminal legislation. The article identifies three main problems in the current legislation: a limited scope of protection, an unscientific penal system, and high prosecution criteria.

Firstly, the article points out that the current intellectual property criminal law in China focuses only on traditional areas of intellectual property rights, such as trademarks, patents, copyrights, and trade secrets, leaving out newer types of intellectual property. The selective protection for related intellectual property infringements also leads to gaps in the law. Moreover, some provisions set subjective elements unreasonably, resulting in improper expansion or narrowing of penalties. Secondly, the penalties for intellectual property crimes in China are deemed unscientific, as they lack qualification penalties, and the statutory penalty provisions vary significantly in different provinces. This inconsistency in sentencing affects the protection of intellectual property rights. Thirdly, the standards for prosecution of intellectual property crimes are considered too high. The requirement of "larger amount" or "serious plots" as conditions for establishing intellectual property crimes makes it challenging to prosecute and protect intellectual property effectively.

To address these issues, the article proposes several solutions. It suggests that China should adjust the scope of protection of intellectual property criminal law, incorporating new types of intellectual property rights and criminalizing serious infringements. The Penal system should follow the principle of "reducing punishment for minor crimes and increasing punishment for serious crimes" and consider increasing statutory penalties, expanding fines, and introducing qualification penalties. Additionally, the standards for prosecution of intellectual property crimes should be improved, lowering prosecution standards for private rights while maintaining or raising standards for crimes involving national interests.

In conclusion, the article highlights the need for China's intellectual property criminal legislation to adapt to the evolving intellectual property landscape and recommends appropriate adjustments to the scope of protection, penal system, and prosecution standards for more effective protection of IPR.

Lawrence Page (2019) in his article **Goodbye Shanzhai: Intellectual Property Rights and the End of Copycat China** provide a perceptive examination of how intellectual property rights (IPR) are developing in China and how this is affecting the international economic landscape. This article explores the transition from a culture of copying, known as "Shanzhai," to a burgeoning innovation economy in an era marked by China's fast economic development. It focuses on the consequences for Australian enterprises and the global community. The abstract of the paper establishes the scene by recognizing the critical significance of China's changing innovation and intellectual property

policies, especially for foreign players looking to interact with the Chinese market. This study will next look at the political ideas and policies that produced the phenomenon of "Shanzhai" culture and its origins in Chinese society. It also explores how supply and demand dynamics contribute to China's reputation as the "factory of the world."

After exploring the cultural and historical roots of copycat culture, the author skilfully moves on to assess its social and economic implications. The merits and disadvantages of China's conventional production and innovation strategies are presented in this analysis in a nuanced manner. In doing so, the article highlights the intricate and diverse aspects of China's economic development. Lawrence also skilfully illustrates how China is evolving from the world's factory to a creative powerhouse, emphasizing the part IPR policy changes have played in this change. Regarding China's path to become a global leader in innovation, the sections on judicial and legislative reforms provide insightful information about the political and legal landscape. The extensive conversation over the reform of intellectual property laws is especially pertinent since it highlights China's initiatives to conform to international norms, which will help it become even more of a leader in innovation globally. China's rising role as an innovation giant in the global economy is highlighted in the conclusion, which summarizes the paper's main thesis. The author presents a strong case for China's IPR laws and protections and their upward trend. "Goodbye Shanzhai, hello innovation superpower," the paper's headline declares, giving readers hope for China's dedication to promoting innovation and protecting intellectual property.

In summary, Lawrence provides a stimulating examination of how China's economy is shifting from imitation to innovation in his study. A thorough comprehension of the subject matter is provided via the well-structured information and compelling narrative. Although further empirical data and case studies could deepen the research, this review nevertheless values the paper's insights and clarity.

Matthew R. Maher (2019) - The author in this work "**A Brief Analysis of the Chinese Intellectual Property Regime**" provides an in-depth examination of China's intellectual property rights regime and the challenges it faces. The paper begins by acknowledging the historical roots of intellectual property rights in China, which were not given serious legal consideration until the mid-1980s. Despite having a comprehensive bureaucracy dedicated to protecting intellectual property, China still faces issues of widespread violations and counterfeiting, with a significant percentage of seized counterfeit goods originating from the country.

The paper aims to explore the reasons behind the rampant violations of intellectual property in

China. It discusses how intellectual property rights are essential for promoting innovation and growth, both on an individual and societal level. The article also highlights the different forms of intellectual property, including patents, trademarks, copyrights, and trade secrets, and the importance of uniform laws in protecting these rights. Trademark counterfeiting is emphasized as a significant issue with far-reaching consequences beyond luxury goods. Counterfeit products encompass a wide range of items, from consumer goods to critical products like vaccines, posing significant risks to public health and safety. Additionally, the profits from counterfeiting are known to finance illegal activities, including terrorism.

The paper delves into the history of intellectual property rights in China, from the ancient branding practices to the development of laws after the Cultural Revolution. It examines the challenges of enforcement, particularly in the case of trademark counterfeiting, and the involvement of various Chinese actors, including politicians, public servants, and the general population. The Chinese Communist Party's role in shaping intellectual property policies and its impact on the country's economy are discussed from both national and local perspectives. The complex motivations of different actors, such as balancing economic stability and development, are analyzed to gain insights into effective enforcement measures.

Finally, the article explores the need for the international community to hold China accountable for protecting Intellectual property. It suggests using international institutions and economic statecraft while emphasizing relationship building, public education, and mutual understanding to bring about a positive change in China's perspective on intellectual property rights. In conclusion, the article highlights China's efforts in establishing an intellectual property system but acknowledges the challenges it faces in enforcing these rights. It calls for a collective approach from both China and the international community to address the issues of Intellectual Property violations and counterfeiting, fostering an environment where creativity and innovation can thrive without fear of theft or imitation.

WHO, WTO and WIPO (2020) in this book "**Promoting Access to Medical Technologies and Innovation**" The intricate interactions between health, trade, and IP in the context of medical technologies are thoroughly examined in this book. The COVID-19 pandemic necessitates urgent worldwide cooperation, and the second edition of the book examines the core elements of medical technologies and their effects on public health.

The first section of the book emphasises the importance of global cooperation in the fields of public

health and medical technologies, as well as the importance of policy coherence and the function of important institutions like the World Health Organisation (WHO), World Intellectual Property Organisation (WIPO), and World Trade Organisation (WTO). Additionally, it talks about the influences on public health policy and the global burden of disease. The policy context for action on innovation and access is examined, including the intersection of public health policy with Intellectual Property, trade, & other policy dimensions. The book discusses concerns of genetic resources, conventional knowledge, and conventional medicine as well as the economics of innovation and access to medical technologies.

The innovation aspect of medical technology is investigated, with a focus on current R&D trends and historical patterns of medical research and development (R&D). It talks about the obstacles in certain fields like cancer treatments and orphan pharmaceuticals as well as the role of the public sector in research, the price of medical R&D, incentive models in the innovation cycle. The sharing of influenza viruses and the availability of vaccinations within the context of Intellectual Property rights are also examined in the book. The book's main area of attention is the access dimension of medical technologies, and it looks at both the factors that affect access within health systems and how access is measured. The regulations relating to generic medications, price limits, taxes, finance, manufacturing, technology transfer, regulatory systems, and the problem of subpar and fake medical items are all covered in this article. The book also discusses how to get access to medical supplies for diseases like HIV/AIDS, TB, antibiotic resistance, non-communicable diseases, vaccines, and medical equipment.

The analysis of the factors affecting access that are related to Intellectual Property includes the pre- and post-grant review processes, patent data, and the interaction with public health policy. The book also looks at other trade-related access factors, like international trade, tariff information on health products, and competition law and policy. In summary, "Promoting Access to Medical Technologies and Innovation" provides a comprehensive analysis of the interplay between health, trade, and Intellectual Property in the context of medical technologies. It offers valuable insights and recommendations for promoting access to medical technologies while balancing innovation, affordability, and public health considerations.

Abhilasha Bhatia (2021) in her work **TRIPS and IPR Regime in India**, the paper start with laying out the background information needed to comprehend India's TRIPS compliance and its implications. The article outlines the legal changes India made to comply with the TRIPS agreement. It examines important laws, beginning with the 1957 Copyright Act. The importance of defending

intellectual property rights is emphasised by this statute, which covers a number of copyright protection issues. We also discuss trademark infringement and the exclusive rights afforded to registered brand owners under the Trademarks Act of 1999. In the paper, another important piece of legislation is the Patent Act of 1970. It highlights how the TRIPS agreement has affected India's patent system. As a component of the World Trade Organisation (WTO), the TRIPS agreement has a big impact on how nations defend and uphold intellectual property rights. This talk focuses on how TRIPS has altered the patent landscape in India.

The Doha Declaration, a crucial component of the TRIPS agreement that acknowledges the significance of global health in pharmaceutical patents, is also mentioned in the report. It expresses the worries of emerging nations, including India, about having access to necessary medications. The article also discusses "TRIPS Plus," a clause that refers to stronger intellectual property protection requirements than those required under TRIPS. It talks about how these clauses might cause issues for underdeveloped nations. The paper's main focus is on the TRIPS agreement's disadvantages in India. Concerns about the elimination of the conventional knowledge protection system, increased costs of medications as a result of product patents, and possible difficulties in research and development are highlighted. The report also emphasises the necessity of international pharmaceutical companies working with research and innovation departments in emerging nations such as India. The paper concludes by highlighting the TRIPS agreement's worldwide reach and its implications for intellectual property rights. In light of the evolving field of intellectual property protection, it highlights the part emerging nations must play in defending their rights and making the most of their labour, capital, and intellectual growth potential. Overall, the report provides insightful information about how India's intellectual property law has been transformed by TRIPS, as well as the potential and difficulties it poses.

Hana Onderkova (2021)-in her work **Compulsory Licencing in India and Changes Brought to It by the TRIPS Agreement** the research offers a thorough analysis of the idea of compulsory licencing, its significance, and the changes brought about by the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. A vital legal weapon, compulsory licencing permits a third party to manufacture a patented product without the patent owner's permission in an effort to stop the exploitation of exclusive patent rights, which may jeopardise fair competition or public health. The misuse of patent rights is examined in this article, including how they might be used to impede the growth of local industries, impose unjust terms or conditions, control prices, or deny licences that would otherwise require the granting of compulsory licences.

In an effort to create a worldwide patent regime, the TRIPS Agreement, a WTO agreement, mandated that member countries combat patent misuse. The agreement lays out the requirements for compulsory licences, including non-exclusive, non-assignable usage for the member's home market, sufficient compensation, and efforts to secure a licence from the patent owner. The paper focuses on how India's patent laws have been significantly impacted by the TRIPS Agreement and its experience with it. India did not grant product patents prior to joining TRIPS, which left novel and inventive medications without patent protection. India changed its patent rules to accept product patents after joining TRIPS, providing patentees greater freedom over drug availability, quantity, and cost. This resulted in the inclusion of extensive clauses for compulsory licencing to stop the infringement of patent rights.

The article highlights that forced licences are only granted in cases when patent owners do not meet public requirements or do not make their patented products properly accessible. It also discusses the conditions for granting compulsory licences under Indian patent law. The Indian Patent Office considers things such the third party's attempts to secure a licence, their capacity to serve the public interest, the type of invention, and the advantages it offers the general public. The research delves into particular instances of mandatory licences in India, such the one granted by Natco Pharma to Bayer for Nexavar, a cancer medication that became more reasonably priced. It does highlight the fact that these regulations have only been applied sparingly and in extreme circumstances. It does, however, draw attention to the fact that these regulations have only been seldom and exceptionally applied. It describes how applications for mandatory licences for other drugs—such as those for diabetes and cancer—were turned down because there wasn't enough evidence to support them or because the public may gain more from them.

In conclusion, Onderkova's study provides a thorough analysis of India's mandatory licencing system, its development as a result of the TRIPS Agreement, and the intricate variables influencing its implementation. It draws attention to the vital role that compulsory licencing plays in preventing the misuse of patent rights, guaranteeing public access to necessary medications, and fostering innovation and public health.

Mayank Rai (2021) in his work “**The Impact of The TRIPS Agreement on Indian IP Laws and Their Implementation**” the research paper explores the significant effects of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement on the administration of Indian intellectual property (IP) laws, with a focus on the Indian Patent Act of 1970. With its diversified economic and social context, India was impacted greatly by the TRIPS Agreement, which

profoundly changed global intellectual property legislation, especially in the area of patents. India had freedom in drafting its patent laws prior to TRIPS. However, a minimum threshold of patent protection was imposed by TRIPS, which required that all new inventions, including pharmaceuticals, have 20 years of protection from the date of filing. As a result, the Indian Patent Act, 2005 was modified to remove clauses allowing India to manufacture generic medications and to include product patents for medicines. As a result, the study looks into how TRIPS affects innovation, healthcare access, and the Indian patent system. While pharmaceutical corporations found it easier to get patents after Section 3(d) was removed, the cost of medications increased. Moreover, the restricted reach of mandatory licencing inhibited creativity. Despite obstacles, India has implemented steps to improve access to reasonably priced medications while balancing its commitments under TRIPS with local policy objectives. Strengthening IP infrastructure, increasing awareness, fostering innovation, striking a balance between IP protection and the public interest, and fostering international cooperation are among the suggestions for improved TRIPS implementation.

Jie Hong, Jakob Edler, and Silvia Massini (2022) –In this work "**Evolution of the Chinese Intellectual Property Rights System: IPR Law Revisions and Enforcement**" the paper examine the development and enforcement of IPR laws in China. The authors discuss how China's adoption of an open-door policy in 1978 led to the establishment of an IPR legal system to support its transition to a market economy. China joined international conventions and treaties for IPR protection and made revisions to its patent, trademark, and copyright laws to comply with the standards set by the Agreement on TRIPS of the WTO.

The authors highlight the contrasting views on the quality of IPR protection in China. Some scholars argue that China has made significant progress in improving IPR protection, while others contend that weak enforcement remains a major issue. The article aims to fill a gap in the literature by analyzing the actual revisions made to IPR laws in China and their enforcement using local data sources.

The authors provide an overview of the Chinese IPR system's evolution and review each wave of revisions to the Patent Law, Trademark Law, and Copyright Law. They introduce a five-dimensional assessment scheme to analyze the degree of changes in each revision. The first wave of revisions in the 1990s improved the quality of Patent and Trademark Laws, partly due to pressure from the US government. The second wave of revisions from 2000 to 2007 aimed to comply with TRIPS requirements and brought China's IPR protection closer to international standards. The article also discusses the enforcement of IPR laws in China, focusing on the dual administrative and judicial

tracks. Data on IPR enforcement suggest a strengthening of the system after 2008, with an increase in the number of cases handled by administrative departments and courts.

In the final section, the authors discuss how the need to comply with TRIPS requirements drove IPR law revisions in China and reshaped its IPR regime. They conclude that, after a solid foundation of IPR legislation was established in the early 2000s, subsequent revisions clearly demonstrated stricter enforcement of IPR laws. The findings suggest that the Chinese government has a strong willingness to improve its IPR system to stimulate innovation and achieve economic transformation. Overall, the article provides a comprehensive analysis of the evolution of the Chinese IPR system, examining revisions to IPR laws and their enforcement. It sheds light on the progress made by China in improving IPR protection and highlights the government's efforts to strengthen the system.

The second part of the article focuses on the 'Dual-Track' IPR protection system in China, which combines both administrative and judicial protection for IPR. The administrative track involves the supervision of IPR implementation and dispute resolution through administrative departments. The State Intellectual Property Office (SIPO) and the Trademark Office handle national patents and trademark registration, respectively. In 2018, the China National Intellectual Property Administration (CNIPA) was established to optimize IP registration and protection.

The judicial track strengthens IPR laws and deals with infringement and litigation cases. Over the years, Intellectual Property tribunals were established in various levels of courts to handle IPR cases. Special Intellectual Property Courts were established in major cities like Beijing, Shanghai, and Guangzhou to enhance IPR protection. The Hainan Free Trade Port also established an Intellectual Property Court.

The article then analyzes the enforcement of IPR laws in China. While IPR laws have improved over the years, enforcement has faced challenges. The number of patent infringement dispute cases and trademark infringement cases increased with the revisions of Patent Law and Trademark Law, respectively. However, enforcement against counterfeit patents decreased, despite efforts to crack down on IPR infringement. The Copyright Law revision led to an increase in copyright infringement cases and confiscation of pirated goods, but the number of cases declined in recent years. In terms of judicial enforcement, the number of IPR-related civil and criminal cases increased over time. The establishment of Intellectual Property Courts and IP tribunals contributed to this growth. Criminal cases peaked in 2012 due to an emphasis on IPR enforcement by the State Council.

In conclusion, the 'Dual-Track' IPR protection system in China has witnessed improvements in both administrative and judicial enforcement. While challenges persist, the system aims to strike a balance

between protecting IPR and promoting technological development.

Katrin Muehlfe and Mei Wang (2022), in their article **Intellectual Property Rights' Protection: A China-Centered Perspective** explores the intricate realm of intellectual property rights (IPR) in China and provides insightful information about the evolution of IPR legislation in the nation and the various variables affecting its application. An outline of the main ideas covered in the paper will be given, along with some critical critique.

The article starts out by outlining the background history of intellectual property rights (IPR) legislation in China, following its development from China's membership in the World Intellectual Property Rights Organization (WIPO) in the 1980s. Although enforcement has frequently been criticized as being inadequate, the subsequent entry into the World Trade Organization (WTO) in 2001 sparked considerable reforms in IPR rules, bringing them into compliance with international norms. The article continues by examining the several elements that influence how IPR protection is applied in China. One of the main motivators is economic progress, with more developed economies typically advocating stronger intellectual property rights protection because of the predominance of creative business practices and knowledge-intensive exports. One of the main topics covered in the essay is the impact of culture on IPR protection. It implies that China's attitude toward originality and imitation has been affected by its cultural legacy, which is firmly anchored in Confucianism. Chinese ideas on creativity are said to be more expansive and inclusive, taking into account ideas about "adaptive creativity." Not only that, but Chinese culture has always valued imitation, as demonstrated by customs like "Shanzhai". The article highlights the function of institutions and how they have changed over time as an additional aspect influencing the use of IPR. Three main mechanisms—path dependence, long-term processes, and institutional transitions—shape institutional changes. The influence of these processes changes depending on contextual conditions and they play a role in the growth of IPR legislation. One important component of IPR protection that is highlighted is the role of third-party actors, both political and economic. Political players, like as other nations, have the ability to put pressure on an IPR regime in a given nation. Multinational corporations and other economic actors have an impact on IPR enforcement, compliance, and regulation. The paper stands out due to its emphasis on how the Chinese population views intellectual property rights. It looks into the perceptions of IPR among Chinese consumers and producers. The study draws attention to the socio-demographic, moral, and ethical factors that shape people's opinions and intents to buy things that are fake or pirated.

The paper also discusses how public attitudes vary throughout cultures and geographical areas,

emphasizing how specific causes of intellectual property rights infringement can be very different. Research on comparative studies highlights the commonalities and distinctions between China and other nations. The paper concludes by giving a thorough summary of the development of IPR legislation in China and the numerous elements affecting its application. It sheds insight on how the general public views intellectual property rights (IPR) and emphasizes the importance of institutions, economics, culture, and third-party actors. It does, however, allow for more study into the regional and cultural subtleties of IPR views, which will advance our knowledge of these processes both in China and elsewhere.

Shreya Patil (2022) in her work, **Role of the TRIPS agreement and its scope in India**, the article highlights how the TRIPS Agreement recognises the relationship between intellectual property and trade and provides a framework for innovation, intellectual property, technology transfer, and the public good. It highlights how important it is to have a fair system of intellectual property. The Agreement establishes minimal requirements for the protection of intellectual property, including industrial designs, trademarks, patents, copyrights, and more.

The article emphasises how, in the Indian context, India joined the TRIPS Agreement and the WTO in 1995. India had strong intellectual property regulations before TRIPS, such as the Trademarks Act, Copyright Act, and Patents Act. However, TRIPS brought about a number of important adjustments and duties, which forced India to modify its intellectual property laws to conform to global norms. The study report emphasises how India has been working to abide by TRIPS while also using its flexibilities to protect public health and advance access to reasonably priced medications. One of the biggest challenges yet is striking a delicate balance between innovation, public health, and the preservation of traditional knowledge. The study explores the TRIPS Agreement's provisions regarding patents, copyrights, trademarks, industrial designs, geographical indications, and dispute resolution, among other topics. It talks about how these factors, such as the protection of well-known trademarks, copyright protection for digital works, and the shift from process patents to product patents for pharmaceuticals, have affected India's intellectual property landscape. The significance of TRIPS in fostering innovation, economic expansion, and job creation is also discussed in the article. It draws attention to how the agreement helps WTO members by levelling the playing field in terms of intellectual property rights enforcement and piracy prevention.

India's use of the "mailbox" provision for pharmaceutical patents is an intriguing point raised. This clause guaranteed access to reasonably priced generic medications by allowing India to continue awarding only process patents for pharmaceuticals until 2005. This research paper discusses the

difficulties and arguments surrounding TRIPS, namely how to strike a balance between public health and intellectual property rights, what constitutes a patent, and how to enforce the law. It highlights India's involvement in global talks around TRIPS-related matters. Finally, the article addresses a noteworthy case that included the granting of a mandatory licence for the cancer medication Nexavar: Bayer Corporation v. Union of India (2012). India's resolve to use TRIPS rules to guarantee access to necessary medications was strengthened by this case, which established a precedent for the issuance of compulsory licences based on affordability and public health considerations. In conclusion, the study paper provides a thorough analysis of the TRIPS Agreement, its influence on the intellectual property laws of India, as well as the potential and problems it raises.

Special 301 Report (2023) by the U.S. Trade Representative (USTR) assesses how well U.S. trade partners protect and enforce intellectual property (IP). The USTR is working to enhance American competitiveness, innovation, and the economy by ensuring strong intellectual property protection and enforcement, which includes this report. Ambassador Tai reiterated the administration's commitment to working with trading partners to support innovators, artists, and brands while highlighting the value of intellectual property protection for American businesses and workers. The report, which covers more than 100 trading partners, is the outcome of in-depth investigation and stakeholder involvement. The 2023 Special 301 Report highlights a number of important points, including:

Regarding intellectual property rights, Belarus has been placed on the Watch List because of its laws allowing the unauthorised use of works protected by copyright from other countries whose citizens have engaged in "unfriendly actions." This gives rise to questions regarding the illicit exploitation of intellectual property and possible financial gain for the Lukashenka government.

- **Bulgaria and Online Piracy:** Due to insufficient efforts to rectify shortcomings in the examination and litigation of online piracy cases, Bulgaria has been placed on the Watch List. In 2023, an Out-of-Cycle Review will be carried out to evaluate the state of this field.
- **Russia's Invasion of Ukraine:** Because of Russia's unannounced invasion of Ukraine in February 2022, the evaluation of Ukraine is still on hold.
- **The WTO's Reaction on COVID-19:** The WTO's Ministerial Decisions from June 2022 about intellectual property rights and the COVID-19 epidemic are mentioned in the report. In order to comprehend market dynamics, the United States has asked for an inquiry into COVID-19 diagnostics and treatments and supports the current WTO deliberations.

- **China's Intellectual Property Rights:** The report recognises that China has modified its intellectual property rules. However, questions remain regarding the effectiveness and suitability of these steps, in addition to matters pertaining to technological transfer, trade secrets, counterfeiting, and online piracy.
- **Online and Broadcast Piracy:** The research emphasises the continuous issues surrounding online piracy, such as stream-ripping, illegal streaming devices, and material distribution without authorization.
- **Engagement on a Bilateral Level:** To address issues related to IP protection and enforcement, the USTR is actively interacting with a number of trading partners. This include, among other nations, Algeria, Argentina, China, India, and Indonesia.

The report provides a thorough analysis of international IP protection and enforcement and acts as a foundation for bilateral discussions and collaboration with trading partners. It lists the nations where IP is a major concern and describes the USTR's approach to resolving these problems. The Special 301 Report emphasises how crucial it is to safeguard intellectual property rights in order to foster innovation and the American economy.

8. Implications of Reviewed Literature

After an extensive review of various research papers and books from diverse sources, it is observed that there is a lack of specific research or studies on the current research topic. Until now, no comprehensive research had been undertaken on the implications of Patent, Trademark, and Design laws in India and China, specifically with a focus on counterfeit goods. Therefore, this research aims to fill that gap and explores the subject matter in detail.

This study not only focuses on the basic aspects of IPR laws but also delves into the examination of other laws that might undermine the effectiveness of IPR laws, providing a fresh perspective. It analyses the loopholes in China's IPR laws concerning the TRIPS Agreement, going beyond the traditional scope of IPR laws. The research also covers the Customs Laws in India and China with regards import and export of pirate goods. Furthermore, the research aimed to investigate the role of the WTO Dispute Settlement System in relation to the TRIPS Agreement and analyses how complaints are resolved by the WTO. Therefore, this study is novel in its specific focus on the patent, trademark, and design laws of India and China, as well as the impact of the WTO's TRIPS Agreement.

In addition to the doctrinal research, this study also includes a non-doctrinal component, to assess the enforcement of IPR amongst Start-ups and Small Entities in Gujarat. By combining both

doctrinal and non-doctrinal approaches, this research aims to provide comprehensive insights into the subject matter, contributing to a deeper understanding of the IPR landscape in India and China and its interaction with the TRIPS Agreement.

9. Scheme of the Study

Chapter 1: Introduction

The Chapter One of the thesis is the introductory chapter highlighting the objectives of the study, hypothesis of the study, significance of the study, rational and scope of the study, methodology adopted literature review and references.

Chapter 2: Origins and Evolution of the WTO

Chapter Two of the thesis provides an in-depth exploration of the historical context of the IPR Laws at the international level and its development since the 19th century. The Paris Convention for the Protection of Industrial Property is explained in the first section of the chapter as a fundamental treaty for the protection of Intellectual Property. Additionally, it explains and summarises the essential aspects of the Madrid Agreement Concerning the International Registration of Marks.

Further, the objectives, operations, and organisational structure of the World Intellectual Property Organisation (WIPO) are then discussed. The Role of WIPO in Protecting and promoting IPR is analysed. Also, the evolution of WTO followed by the GATT negotiations and the making of TRIPS is elaborated. The importance of trade and Intellectual Property interactions is highlighted while outlining the WTO's principles, goals, and responsibilities.

The chapter concludes by underscoring the significance of Intellectual Property in society, its evolution, and the assurance provided by international agreements like TRIPS. It acknowledges that as societal needs change, the TRIPS Agreement and other IP laws administered by WIPO will continue to evolve and adapt. Overall, this chapter establishes a foundation for understanding the global framework of Intellectual Property protection and its critical role in promoting innovation and creativity.

Chapter 3 Intellectual Property Protection in International Trade: The TRIPS Agreement

The Third chapter of the thesis provides an in-depth analysis of the TRIPS Agreement. The chapter begins with an introduction, followed by an exploration of the nature and scope of obligations under the TRIPS Agreement. It delves into the essence of the agreement and discusses key principles such as National Treatment and Most-Favored Nation treatment. The TRIPS Agreement's minimal

requirements for industrial designs, patents, and trademarks are then examined in detail

Another significant topic covered in the chapter is IPR enforcement under the TRIPS Agreement. It focuses on fundamental obligations and explores civil and administrative processes, including fair and equitable processes, evidence, and a range of remedies like injunctions, damages, and other legal options. The chapter also covers criminal processes, the acquisition and maintenance of Intellectual Property Rights, temporary measures, particular border security needs, and associated inter-party procedures. It covers institutional arrangements, final provisions, transitional arrangements, and dispute prevention and settlement processes.

The chapter concludes by discussing the effects of the TRIPS Agreement on the world of Intellectual Property. The importance of continual assessment and striking a balance between the interests of right holders and the general public are emphasised in context of TRIPS Agreement. For the TRIPS Agreement to continue to be applicable and useful in fostering innovation and creativity on a global scale, it calls for ongoing discussion, collaboration, and adaptation.

Chapter 4: India's TRIPS Compliance: Intellectual Property and International Commitments

The Fourth chapter of the thesis examines into the legislative steps taken by India in relation to IP legislation prior to and after its membership in the TRIPS Agreement. The chapter begins by studying India's existing statutory provisions before to entering the TRIPS Agreement in order to lay the groundwork for comprehending the future developments. The chapter then delves into the legislative changes that happened in India's Intellectual Property laws as a result of its admission to the TRIPS Agreement. It summarises the changes made to align India's Intellectual Property framework with international standards. The researcher examines these modifications in light of trademark, patent, and design laws, offering light on the ramifications of the amendments. Furthermore, the chapter looks into the changes made to civil and administrative procedures and remedies, which are critical in the efficient enforcement of Intellectual Property rights. India implemented measures to strengthen its enforcement mechanisms in conformity with the provisions specified in Part 3 of the TRIPS Agreement.

The chapter also discusses India's efforts to address Intellectual Property infringement, notably its submission to the WTO on Articles 51-60 of the TRIPS Agreement. The introduction of an Automated Recordation and Targeting System inside the Customs Department demonstrates India's commitment to combating infringements on Intellectual Property rights. Overall, India's legislative trajectory, both before and after joining the TRIPS Agreement, demonstrates the country's commitment to developing a robust Intellectual Property environment. By harmonising its legislation

with TRIPS norms, India portrays itself as a responsible global partner in Intellectual Property rights protection and enforcement. These policies are critical for supporting innovation, cultivating creativity, and propelling the country's economic development. A brief overview National IPR policy 2016 is also presented.

Chapter 5: China's Approach to Protection of Intellectual Property Rights under TRIPS

The Fifth chapter of the thesis focuses on China's legislative initiatives and changes in IP legislation in relation to its membership in the TRIPS Agreement. The chapter presents by exploring the legislative provisions in China prior to its accession to the TRIPS Agreement, laying the groundwork for comprehending the subsequent changes. The chapter then dives into the legislative developments in Chinese IP legislation since its accession to the TRIPS Agreement. It provides an overview of the adjustments made to harmonise China's IP framework with international standards. The researcher examines these modifications in the context of trademark, patent, and design Laws, tracking the specific amendments that have been made. Also, the chapter delves into the changes made to civil and administrative procedures and remedies stated in Part 3 of the TRIPS Agreement in order to bolster Intellectual Property rights enforcement in China.

Furthermore, the chapter looks at the gaps in Chinese Intellectual Property legislation. It explores the operation of the Chinese legal system in respect to Intellectual Property regulations, including an overview of People's Republic of China Criminal Law and the importance of Judicial Interpretation. Infringement laws under the Patent Act and the Trademark Act are also addressed. The chapter goes on to discuss Intellectual Property enforcement and the role of the Chinese Customs Department. It goes over the Ex-Officio Action process and the notion of Action upon Request under the People's Republic of China Customs Regulations on the Protection of Intellectual Property Rights (RCCPIPR). It also reveals the flaws in China's border forces and their compliance with TRIPS Article 59.

The research findings highlight both hopeful and worrisome aspects of China's TRIPS implementation, particularly in connection to trademark, patent, and design laws. While China has made tremendous progress in harmonising its legislation with international standards, enforcement efforts continue to fall short in some areas. Furthermore, China's Customs regulations on Intellectual Property Rights do not completely meet with the TRIPS Agreement's criteria, having a scope for the import and export of counterfeit goods. This not only negatively impacts other economies but also infringes upon the Intellectual Property Rights of legitimate owners.

The enforcement of Intellectual Property Rights remains a big concern, as there appear flaws in the

current system that allows infringers to avoid heavy penalties. The current criminal enforcement system that imposes only minor penalties, failing to effectively prevent Intellectual Property infringements have also been studied.

Chapter 6: Resolving Trade Disputes: The WTO's Dispute Settlement Mechanism

This chapter discusses the Dispute Settlement Mechanism (DSM) of WTO. The chapter begins with an introduction to DSM and its significance in resolving conflicts between countries over trade issues. It is thoroughly examined how the Panel, which is in charge of looking into disputes and providing recommendations, operates as part of the Dispute Settlement Body (DSB). It also looks at the Appellate Stage, in which Panel rulings are subject to review. In order to highlight the actions that the prevailing party may take in the event that the report is not followed, the execution of DSB rulings is examined.

The next section of the chapter concentrates on the participation of China and India in the DSM process. It analyses instances where India and China serve as the complainant, respondent, or a third party. Also, highlighted is the connection between China and India as potential litigants. The role of India as a respondent and a third party in trade disputes is further examined. In conclusion, the chapter emphasizes the importance of the Dispute Settlement Mechanism in ensuring fair and equitable trade practices between countries. It underscores the significance of compliance with DSB decisions for maintaining a stable and cooperative international trade environment.

Chapter 7: Analysing the Findings: A Data Examination

The Seventh chapter examines the data collected by the researcher. The outcome of the Non- Doctrinal study undertaken by the Researcher to assess the enforcement of IPR amongst innovators and manufacturers in several towns in Gujarat. The study sought to explore the issues that innovators and manufacturers have in safeguarding their IPR and to recommend strategies to remedy any found gaps or challenges. The chapter outlines the survey's objectives, which include identifying any gaps in knowledge or misconceptions about IPR and its protection among Start-ups and Small Entities in Gujarat, understanding the specific challenges faced by innovators in protecting their Intellectual Property, and establishing a baseline for future studies on IPR awareness and enforcement amongst innovators and manufacturers.

Chapter 8: Conclusion and Suggestions -

The Eight chapter of the study presents the conclusion and suggestions on the study. The conclusion of the study is drawn on the basis of Objectives and Hypothesis formulated by the Researcher. The

chapter provides concluding remarks with respect to the entire study and also aims to provide probable suggestions. The probable outcome of the study is presented as under.

Probable Outcome of the Study

- India's IPR laws relating to Patent, Trademark and Designs indicates a strong alignment as that of international standards, laid down by TRIPS. This outcome portrays India's proactive commitment to adhering to global norms for the comprehensive protection of Intellectual Property. Although, counterfeit market does exist in India still IPR laws are competent enough to address the issues.
- Through the comprehensive examination of China's Patent, Trademark, and Design laws the probable findings indicate there is an existence of specific loopholes that undermine the comprehensive protection of Intellectual Property rights. The probable findings resonate with the hypothesis, underscoring the need for China to address these vulnerabilities and enhance its Intellectual Property framework.
- The research demonstrates that China's Judicial Interpretations have indeed led to the dilution of IPR laws, resulting in limited effectiveness in safeguarding Intellectual Property rights. The probable outcome underscores the tangible impact of judicial decisions on China's Intellectual Property landscape.
- China has not complied with the obligations under the TRIPS Agreement with regards to transparent Judicial System. Further, the Judgements on IPR delivered by the courts are not published which also deviates from the requirements under TRIPS Agreement.
- The study underscores that while significant strides have been taken, certain segments within the respective legal frameworks of India and China requires further attention to ensure comprehensive protection of Intellectual Property.
- It is anticipated to reveal a substantial positive correlation between the effective utilization of the DSM and the promotion of equitable international trade practices within the specific context of India and China. Although DSM of WTO posits a strong framework for dispute resolution but still upon analysing the cases pertaining to India and China its effectiveness is not as strong as expected.
- The probable findings indicate that the inadequacy of China's current border measures, which indeed facilitates the easy import and export of counterfeit goods. The probable outcome highlights the urgency of addressing these vulnerabilities to enhance China's border controls

and protect intellectual property rights more effectively.

- The probable outcome indicates that the border measures in India are robust and favourable to IP owners, making it challenging for counterfeit goods to be imported or exported. This aligns precisely with the hypothesis's assertion and the findings emphasize the effectiveness of India's strategies.
- The probable research findings indicate a lack of awareness regarding protection and enforcement of IPRs amongst innovators and manufacturers in Gujarat underlining the pressing need for improved dissemination of information and education on Intellectual Property Rights in specific groups.

11. References-

1. Crawford Brickley, *Equity Joint Ventures in the People's Republic of China*, University of Pennsylvania Journal of Business Law, Vol. 10.2 (1988)
2. Dr. Yuun Tian, *The Impacts of the Chinese Anti-Monopoly law on IP Commercialisation in China & General Strategies for the Technology-Driven Companies and Future Regulators*, *Duke Law & Technology Review* (2010)
3. Daniel Yan and Malcolm Warner, Sino-Foreign Joint Venture versus Wholly Foreign Owned Enterprises' In The People's Republic Of China, Research Papers In Management Studies, Judge Institute of Management Studies University of Cambridge (November 2001)
4. GU Minkang, "Anti-Abuse of Intellectual Property Rights under the Anti-Monopoly Law", *Frontiers Of Law In China*, 10(3) (2015)
5. Jayashree Watal, *Patents: An Indian Perspective*, Making of the TRIPS Agreement (World Trade Organization, 2015)
6. Jie Hong, Jakob Edler, and Silvia Massini, *Evolution of the Chinese Intellectual Property Rights System: IPR Law Revisions and Enforcement*, *Management and Organization Review* (May 2022)
7. Kamila Trojanová, *The Intellectual Property Rights in China's Trade Policy*, Association for International Affairs (June 2015)
8. Kai Min, *The Perfection of Chinese Criminal Legislation of Intellectual Property Rights*, Proceedings of the 2nd International Conference on Humanities Education and Social Sciences (ICHESS 2019)

9. Koren W. Wong-Ervin, *An update on the Most Recent Version of China's Anti-Monopoly Guidelines on the Abuse of the Intellectual Property Rights*, An Update on the Most Recent Version of China's Anti-Monopoly Guidelines on the Abuse of Intellectual Property Rights (2017)
10. Lawrence Page, *Goodbye Shanzhai: Intellectual Property Rights and the End of Copycat China*, University of Western Australia Law Review, Volume 45 (2019)
11. Matthew R. Maher, *A Brief Analysis of the Chinese Intellectual Property Regime*, Center for Anti-Counterfeiting and Product Protection, Michigan State University, (2019)
12. Peter K. Yu, *The First Decade of TRIPS in China*, Drake University Law School Legal Studies Research Paper Series (2014)
13. Peter K Yu, *Shaping Chinese Criminal Enforcement Norms through the TRIPS Agreement*, Nebraska Law Review (2011)
14. Parmod Malik, *Implication of TRIPS Agreement on India with Special Reference to Pharmaceutical Sector*, Online International Interdisciplinary Research Journal, Volume-III, Issue-VI (Nov-Dec 2013)
15. Stephen J. Ezell And Robert D. Atkinson, *False Promises: The Yawning Gap Between China's WTO Commitments and Practices*, The Information Technology & Innovation Foundation (2015)
16. 2023 Report to Congress on China's WTO Compliance by The United States Trade Representative (February 2023)
17. United States International Trade Commission, *China: Intellectual Property Infringement, Indigenous Innovation Policies and Framework for measuring the effect on the U.S. Economy* (2010)
18. William Hennessey, *Deconstructing Shanzhai—China's Copycat Counterculture: Catch Me If You Can*, Campbell Law. Review (2012).
19. Yeung Nga Man, *Intellectual Property Law and Competition Law in China – Analysis of the Current Framework with comparison with EU Approach*, 2013 IALS Student Law Review, Volume 1, Issue 2 (2014)
20. Yee Wah Chin, *Intellectual Property Rights and Antitrust in China*, IP Protection in China (2009)

21. Zheng Chengsi, *The TRIPS Agreement and Intellectual Property Protection In China*, Duke Journal Of Comparative & International Law (1998)