

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

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## **Enforcement of IPR Laws in the Post-TRIPS Regime: A Comparative Study of India and China**

The development of international intellectual property laws has transformed over the years to keep pace with the changing needs of global commerce, innovation, and creative industries. Beginning with foundational treaties like the Paris Convention of 1883, which laid the groundwork for harmonizing patent and trademark protection, and the Berne Convention of 1886, which safeguarded authors' rights across borders, these frameworks were built on principles of fair treatment and standardization. Key agreements such as the Madrid Agreement and Hague Agreement simplified cross-border registration for trademarks and industrial designs, promoting efficiency for businesses operating internationally. The Nice Agreement streamlined trademark classification, while the Lisbon Agreement and Rome Convention expanded protection to geographical indications and performers' rights, respectively. The establishment of the World Intellectual Property Organization further institutionalized these efforts, offering a global platform for administering and enforcing IP rights. Subsequent treaties, such as the Patent Cooperation Treaty and the Trademark Law Treaty, have reduced procedural complexities and encouraged uniform legal practices. In the digital age, agreements like the WIPO Copyright Treaty and the Beijing Treaty on Audiovisual Performances have adapted to protect creators' rights in an increasingly connected world. Together, these milestones reflect the evolving nature of IP law, ensuring that innovation and creativity are protected across borders and that international cooperation remains at the heart of the global IP regime.

The TRIPS Agreement, signed in 1994 under the World Trade Organization (WTO), stands as a pivotal legal instrument that harmonizes IP protection globally. By establishing minimum standards for various forms of IP Patents, Trademarks, Copyrights, Trade Secrets and others, TRIPS seeks to balance the interests of IP creators and users. This framework has been essential in promoting global trade by encouraging technological innovation and facilitating the transfer of technology across borders. Importantly, TRIPS includes flexibilities for developing nations, allowing them to adapt IP protections to suit their socio-economic contexts. For instance, provisions for compulsory licensing enable the production of generic medicines during health crises, while the delayed implementation of some standards allows developing countries time to strengthen their domestic systems. The Dispute Settlement Body (DSB) of the WTO plays a critical role in enforcing compliance with

international trade rules, including IP standards set by TRIPS. By offering a structured, rules-based process for resolving disputes, the DSB has created a level playing field for both developed and developing nations. Unlike traditional power-based negotiation methods, the DSB provides legal certainty, and its ability to authorize retaliatory measures acts as a deterrent against non-compliance.

India reformed its Patent, Trademark, and Design laws following TRIPS, enhancing protections and promoting innovation. The Indian Patents Act was amended to introduce product patents for pharmaceuticals, while the Trademark Act of 1999 expanded definitions and created a unified system for registration. Similarly, China's revisions to its Patent and Trademark Laws strengthened protections for patents and trademarks, expanded registrable signs, and improved the registration process. Both countries now possess robust IP frameworks, but challenges persist in enforcement, particularly in curbing counterfeit markets that exist within and extend beyond their borders.

China's rapid industrial growth has positioned it as a global manufacturing hub, but it also faces challenges with counterfeiting, often linked to cultural practices like Shanzhai Culture (Copy-cat Culture). On the other hand, India has focused on developing a more structured legal framework to combat counterfeiting, which affects sectors and luxury goods. Both nations have made significant economic transformations, with China moving towards a market economy in the late 1970s and India liberalizing its economy in the 1990s. These reforms have cemented their roles as major players in the global economy, but counterfeiting and IP infringement remain significant issues in both countries.

Despite these reforms, both India and China have faced disputes under the WTO's DSB, reflecting ongoing struggles in fully complying with international IP standards. Counterfeiting remains a pressing issue in both countries, impacting legitimate businesses and consumers. These counterfeit products are not just confined to domestic markets they have significant international reach, requiring enhanced legal measures for effective enforcement.

To combat these issues, both nations must focus on refining their enforcement mechanisms, increasing penalties for infringement, and fostering greater collaboration between public and private sectors. Public awareness campaigns can help consumers understand the risks associated with counterfeit goods, while international cooperation can enhance the

harmonization of IP laws. By continually improving their legal frameworks, India and China can better protect intellectual property, foster innovation, and promote fair trade on the global stage.