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Challenges in Enforcing Intellectual Property Rights in India

Pragya Mehta

India's IP statute books read like a well-drafted brief — patents, trademarks, copyrights, and geographical indications are all accounted for, and largely TRIPS-compliant. The trouble starts after the ink dries. A registered right in India is not the same as a *protected* one, and the distance between the two is measured in years, rupees, and a fair amount of institutional fatigue.

The Enforcement Gap

Registration confirms that a right exists. Enforcement decides whether it means anything. In India, that second job is split across courts, customs officials, online platforms, and administrative bodies that rarely move in sync — which is why relief so often arrives after the infringing goods have already been sold, the pirated file already shared, or the counterfeit shipment already cleared. IP enforcement in India isn't broken so much as it's *slow* — and in commercial terms, slow is its own kind of broken.

Delay in the Courts

The abolition of the Intellectual Property Appellate Board in 2021 pushed a fresh wave of IP disputes onto already-congested High Courts¹ — institutions built for the general docket, not for claim construction or prior-art analysis. The Delhi High Court's response, a dedicated

¹Tribunals Reforms Act, 2021, No. 33 of 2021, INDIA CODE (Aug. 13, 2021).

Intellectual Property Division launched in 2022, was a genuinely smart fix.² It is also, at present, a fix that exists in exactly one High Court out of twenty-five.³

That gap matters because infringement doesn't wait for a hearing date. A delayed injunction lets a counterfeit brand establish shelf presence; a postponed order lets a pirated film finish its run online before anyone can stop it. In IP law more than most fields, a remedy delivered late is close to no remedy at all.

Borders That Don't Quite Hold

Customs is meant to be the first line of defence, and on paper it's well-armed — the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 give officers the power to detain and seize suspect shipments.⁴ The gap is operational: officers are frequently undertrained in distinguishing counterfeit goods from genuine parallel imports, and the customs recordation database still isn't integrated with the Trademark or Patent Registry.⁵ The result cuts both ways — legitimate consignments get wrongly held up, while counterfeit shipments slip through because nobody flagged them in time.

Piracy Moves Faster Than Litigation

If counterfeiting is infringement in physical form, piracy is its faster, more elusive digital sibling. A 2024 industry report by MUSO put India's share of global piracy traffic at just over 8% — second only to the United States.⁶ Courts have responded with real tools: dynamic “John Doe” injunctions and site-blocking orders have shut down individual piracy operations effectively. The problem is tempo. A blocked domain reopens under a new name within days; a taken-down stream resurfaces on Telegram within hours. Litigation, built for deliberation, is structurally not built for that pace.

²Delhi High Court Intellectual Property Rights Division Rules, 2022, Notification No. 13/Rules/DHC (Del. H.C., Feb. 24, 2022).

³High Courts, E-COMMITTEE, SUPREME COURT OF INDIA, <https://ecommitteesci.gov.in/high-courts/> (last visited July 12, 2026) (listing all 25 High Courts of India).

⁴Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007, Notification No. 47/2007-Customs (N.T.) (May 8, 2007) (India).

⁵Enforcement Challenges in Indian IPR Courts: Customs, Delays & Remedies, IP & LEGAL FILINGS (2025), <https://www.ipandlegalfilings.com/enforcement-challenges-in-indian-ipr-courts-customs-delays-remedies/>.

⁶MUSO, 2024 Piracy Trends and Insights Report (May 2025), <https://www.muso.com/hubfs/MUSO%202024%20Piracy%20Trends%20and%20Insights.pdf>.

Cost as the Quiet Gatekeeper

For India's startups and SMEs — the very sector the government's IP policy claims to champion — enforcement carries a second cost beyond time: money. The government's own Scheme for Facilitating Startups Intellectual Property Protection subsidises filing and prosecution costs, but by its own terms stops at the point of grant — it does not extend to litigation or enforcement once someone infringes.⁷ Litigation, technical evidence, and repeated hearings remain a private expense, and for a smaller rights holder, that expense can outweigh the value of the right itself. Infringers understand this arithmetic too — which is exactly why they rarely target the companies large enough to fight back.

A quick reality check, though: India isn't uniquely bad at this. A median U.S. patent suit with \$1–10 million at stake costs roughly \$2 million to litigate through trial⁸ — comparative scholarship on IP enforcement across major jurisdictions confirms that litigation cost is a near-universal bottleneck, not a peculiarly Indian one.⁹ China, for its part, remains on the same USTR “Priority Watch List” as India for persistent IP enforcement gaps.¹⁰ Every major IP system trades off speed, cost, and consistency somewhere. India's particular trade-off just happens to fall hardest on its own smallest innovators.

Where ADR Earns Its Place

This is precisely where arbitration and mediation deserve more real estate than they currently get in IP disputes. India's own law already points this way: the Commercial Courts Act, 2015 classifies IPR disputes as “commercial disputes” and makes pre-institution mediation mandatory before such a suit can even be filed, unless urgent interim relief is genuinely at stake.¹¹ Where parties have an ongoing commercial relationship, or where confidentiality matters more than a published judgment, a negotiated settlement can resolve in months what

⁷Department for Promotion of Industry and Internal Trade, Scheme for Facilitating Startups Intellectual Property Protection (SIPP), Ministry of Commerce and Industry, Government of India (2016, as amended), https://ipindia.gov.in/frontend/pdf/patents/323_1_Scheme_for_facilitating_start-ups.pdf.

⁸American Intellectual Property Law Association, Report of the Economic Survey 2023, at 61.

⁹Suryansh Mishra, IPR Enforcement: Strategies and Challenges in Different Jurisdictions, 2(7) INT'L J. LEGAL RSCH. & ANALYSIS 17 (Oct. 2024).

¹⁰Office of the U.S. Trade Representative, 2025 Special 301 Report on Intellectual Property Protection and Enforcement 2 (Apr. 29, 2025).

¹¹Commercial Courts Act, 2015, No. 4 of 2016, §§ 2(c)(xvii), 12A (India), as inserted by the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018, No. 28 of 2018.

litigation would stretch into years. ADR won't touch mass piracy or bad-faith counterfeiting — there's no mediating with an anonymous IPTV operator — but for licensing disputes, franchise disagreements, and vendor conflicts, it is very often the more commercially rational route.

The Reform Is Real, Just Uneven

None of this is static. The Patents (Amendment) Rules, 2024 compressed examination timelines with the explicit aim of bringing India's patent pendency closer to the 18–24 month range seen at the USPTO and EPO.¹² The Delhi High Court's IP Division has already built a body of precedent on questions ranging from divisional-application amendments to the “safe distance” obligations a defendant inherits once an injunction is granted.¹³ These aren't cosmetic gestures — they're evidence that when institutions choose to specialise, results tend to follow reasonably quickly.

Closing Thought

An IP regime isn't measured by the elegance of its statute book but by how reliably it protects a small designer's trademark against a counterfeit, or a debut filmmaker's work against a pirate site, on an ordinary Tuesday. India has the legal architecture to do this. What it needs now is enforcement machinery that moves at the same speed as the infringement it's meant to stop — because right now, the law is fast to write and slow to defend, and that gap is where most of the real damage happens.

¹²Patents (Amendment) Rules, 2024, G.S.R. 211(E) (Mar. 15, 2024) (India).

¹³*Syngenta Ltd. v. Controller of Patents & Designs, C.A. (COMM.IPD-PAT) 471/2022* (Del. H.C. Oct. 13, 2023); *Luxembourg Brands S.A.R.L. v. G.M. Pens Int'l Pvt. Ltd.*, 254 (2018) DLT 603 (Del.).