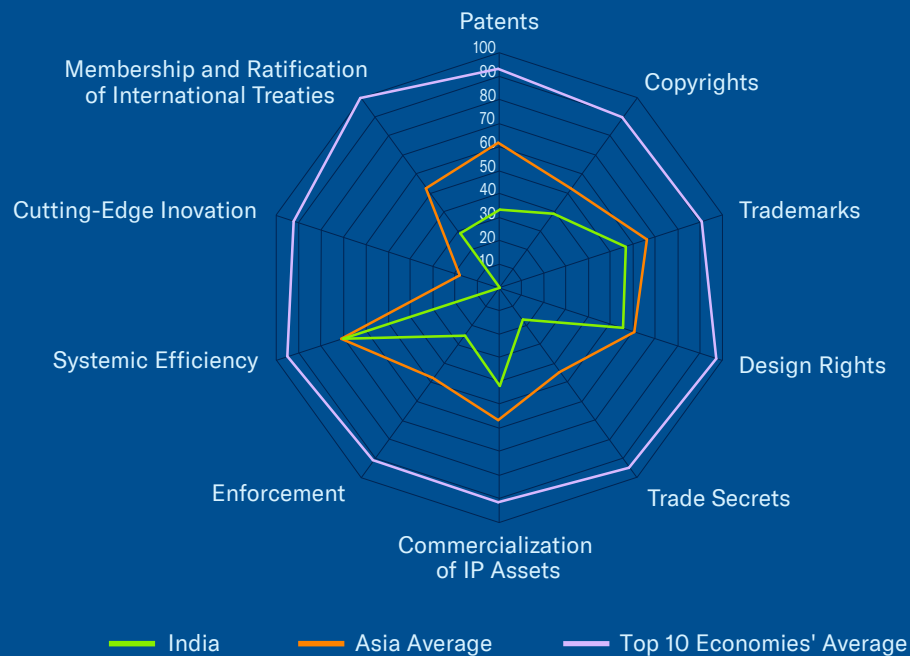




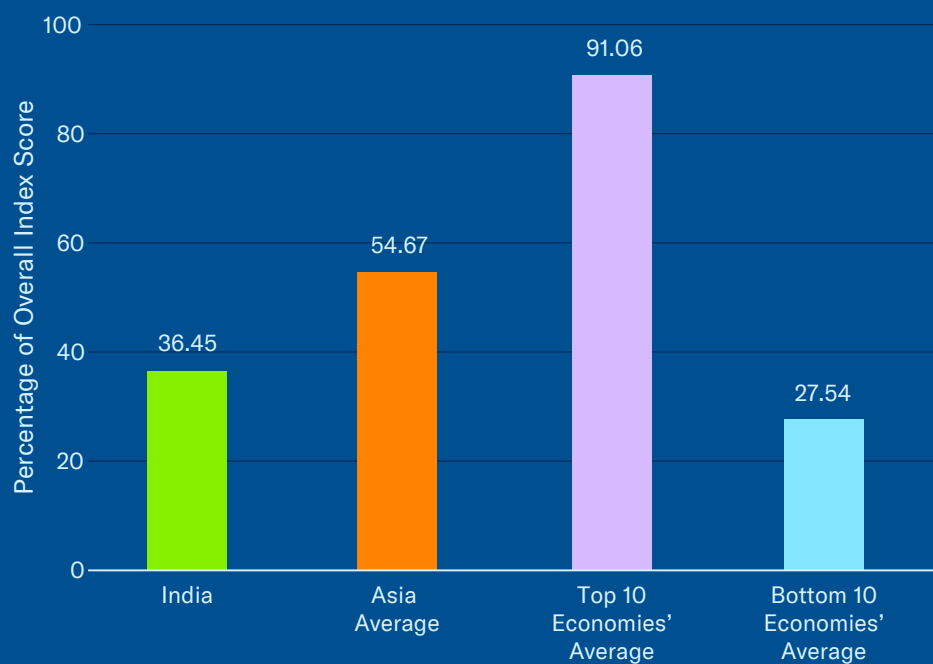
India

Rank
43/55

Category Scores



Overall Score in Comparison





Key Areas of Strength

- Updated 2024 Patent Rules improve the existing pre-grant opposition procedure and compliance requirements under Form 27
- Continued strong efforts on copyright piracy through issuing of dynamic injunction orders
- 2019 precedential case law on online trademark infringement and damages
- PPH program with the JPO is a positive step
- Generous R&D and IP-based tax incentives
- Global leader on targeted administrative incentives for the creation and use of IP assets for SMEs
- Strong awareness-raising efforts on the negative impact of piracy and counterfeiting
- Capacity building and the number of examiners increased

Key Areas of Weakness

- No special IP incentives for orphan medicinal product development
- 2021 dissolution of the Intellectual Property Appellate Board, combined with the long-standing issue of an underresourced and overstretched judiciary, raises serious concerns about rightsholders' ability to enforce their IP rights in India and to resolve IP-related disputes
- Barriers to licensing and technology transfer, including strict registration requirements
- Limited framework for the protection of biopharmaceutical IP rights
- Patentability requirements are outside international standards
- No RDP or patent term restoration for biopharmaceuticals is available
- Lengthy pre-grant opposition proceedings
- Previously used compulsory licensing for commercial and nonemergency situations
- Limited participation in international treaties
- No patent linkage or effective patent enforcement mechanism is in place

Indicator	Score	Indicator	Score
Category 1: Patents Rights and Limitations		Category 7: Enforcement	
1. Term of protection	1.00	29. Direct government intervention in setting licensing terms	0.25
2. Patentability requirements	0.00	30. IP as an economic asset	0.50
3. Patentability of CII	0.75	31. Tax incentives for the creation of IP assets	1.00
4. Plant variety protection	0.74	Category 8: Systemic Efficiency	
5. Pharmaceutical-related enforcement	0.00	32. Physical counterfeiting rates	0.34
6. Legislative criteria and use of compulsory licensing	0.00	33. Software piracy rates	0.42
7. Pharmaceutical patent term restoration	0.00	34. Civil and preceudural remedies	0.25
8. Membership of a Patent Prosecution Highway	0.50	35. Pre-established damages	0.25
9. Patent opposition	0.00	36. Criminal standards	0.25
Category 2: Copyrights and Limitations		37. Effective border measures	0.25
10. Term of protection	0.47	38. Transparency and public reporting by customs	0.00
11. Exclusive rights	0.50	Category 9: Cutting-Edge Innovation	
12. Expeditious legal remedies disabling access to infringing content online	1.00	39. Coordination of IP rights enforcement	0.25
13. Cooperative action against online piracy	0.25	40. Consultation with stakeholders during IP policy formation	1.00
14. Limitations and exceptions	0.00	41. Educational campaigns and awareness raising	1.00
15. TPM and DRM	0.25	42. Targeted incentives for the creation and use of IP assets for SMEs	1.00
16. Government use of licensed software	0.25	43. IP-intensive industries, national economic impact analysis	0.25
Category 3: Trademarks Rights and Limitations		Category 10: Membership and Ratification of International Treaties	
17. Term of protection	1.00	44. IP incentives for orphan medicinal product development	0.00
18. Protection of well-known marks	0.50	45. IP incentives for orphan medicinal product development, term of protection	0.00
19. Exclusive rights, trademarks	0.25	46. Restrictions on the effective use of existing IP incentives for orphan medicinal product development	0.00
20. Frameworks against online sale of counterfeit goods	0.50	Category 5: Trade Secrets and the Protection of Confidential Information	
Category 4: Design Rights and Limitations		23. Protection of trade secrets (civil remedies)	0.25
21. Industrial design term of protection	0.60	24. Protection of trade secrets (criminal sanctions)	0.25
22. Exclusive rights, industrial design rights	0.50	25. Regulatory data protection term	0.00
Category 6: Commercialization of IP Assets		Category 10: Membership and Ratification of International Treaties	
26. Barriers to market access	0.25	47. WIPO Internet Treaties	1.00
27. Barriers to technology transfer	0.50	48. Singapore Treaty on the Law of Trademarks and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks	0.50
28. Registration and disclosure requirements of licensing deals	0.00	49. Patent Law Treaty and Patent Cooperation Treaty	0.50
		50. Membership of the International Convention for the Protection of New Varieties of Plants, act of 1991	0.00
		51. Membership of the Convention on Cybercrime, 2001	0.00
		52. The Hague Agreement Concerning the International Registration of Industrial Designs	0.00
		53. Post-TRIPS FTA	0.00

Percentage of Overall Score: 36.45%

Total Score: 19.32

Spotlight on the National IP Environment

Past Editions versus Current Score

India's overall Index score remains unchanged at 19.32 out of 53 indicators.

Patent Rights and Limitations

9. Patent opposition:

In 2024, some notable positive developments occurred with respect to patent opposition proceedings. As noted last year, in 2023, the Controller General published the “Draft Patents (Amendment), Rules, 2023” for public consultation. The proposed changes included some improvements to the existing pre-grant opposition mechanisms, including introducing more defined timelines as well as vesting more discretion with the Controller General as to whether a filed opposition should be considered. In March 2024, most of these changes came into effect with an updated Patent Rules published. Notably, the new rules now grant the Controller General the power to decide whether an opposition filing provides a “*prima facie*” case against the relevant patent application and should be accepted and considered. The changes also introduce filing fees for opponents; until now, opposition filings were at no charge. The new rules also make changes to Form 27. Historically, patent holders were required to file this form annually and to provide information on the extent to which a granted patent has been worked by patentees and/or licensees. The updated Form 27 has now removed the annual filing requirement and has replaced it with a three-year requirement. Rightsholders are also no longer required to report on the approximate value of the patented technology. The pre-grant opposition mechanism in India has long been criticized for adding significantly to the already lengthy patent prosecution timelines.

Although more wholesale reform of the pre-grant opposition mechanism and complete elimination of the Form 27 filing requirement would have been better, nevertheless, the changes introduced in the 2024 Patent Rules are positive developments. The Index will continue to monitor these developments in 2025.

Copyrights and Limitations

14. Scope of limitations and exceptions to copyrights and related rights:

AI and machine learning technologies are important areas of future economic activity as advances in computational power and new technological advancements allow for scientific breakthroughs and innovation to take place through the analysis of large volumes of data and information. In fact, a foundational lawsuit in India could affect how the country handles IP rights related to large language models. OpenAI is currently facing a copyright lawsuit in India, initiated by ANI Media and supported by other major publishers. The case involves allegations that OpenAI used copyrighted content without permission to train its AI models, including ChatGPT. At the time of research, the Delhi High Court was set to begin detailed hearings in the first quarter of 2025. Given the existing dynamics of the internet and the volume of infringing content available online—much of it made available without rightsholders' permission or even their knowledge—as well as the ability of scraping technologies to access rightsholders' content without their permission, it is essential that traditional safeguards enshrined in decades of copyright law and legal practice be strictly adhered to and that rightsholders can enforce their rights, both in India and around the world.

The Minister of State for Commerce and Industry, Som Parkash, acknowledged the challenges that the development and application of these technologies pose to copyright industries and creators, stating, “The exclusive economic rights of a copyright owner... granted by the Copyright Act, 1957 obligates the user of Generative AI to obtain permission to use their works for commercial purposes if such use is not covered under the fair dealing exceptions.” At the time of research, no draft addressing AI-specific legislation had been published. The Index will continue to monitor these developments in 2025.

Trade Secrets and the Protection of Confidential Information

23. Protection of trade secrets (civil remedies); and 24. Protection of trade secrets (criminal sanctions):

As has been noted in previous editions, Indian statutory law does not provide specific protection for trade secrets or confidential information for civil or criminal infringement. The current applicable statute for civil cases is the 1872 Contract Act and existing case law. With respect to criminal infringement, the Information Technology Act 2000 provides limited potential recourse and only in relation to computer-related offenses such as unauthorized access to computer systems, accessing of data, and hacking. Although common law provides a measure of protection—and there is some judicial precedent—overall rightsholder’s ability to effectively enforce and protect their trade secrets in India is limited. This lack of adequate protection has been recognized by the Indian Government. For example, the 2016 *National Intellectual Property Rights Policy* emphasized the need to introduce a legislative framework for the protection of trade secrets and confidential information.

In a positive development, 2024 saw the introduction of a new draft law on trade secrets. In March, the Law Commission of India (an advisory body to the Government of India) published “The Protection of Trade Secrets Bill, 2024” as part of Report No. 289. The draft contains a workable definition of what constitutes a trade secret, misappropriation of trade secrets, and potential civil recourse such as injunctions and damages. These are much needed and positive first steps in providing a statutory basis to help rightsholders protect their trade secrets, know-how, and confidential information. Unfortunately, the bill as currently drafted contains several negative features. To begin with, Section 6 defines a compulsory licensing regime granting the government broad powers to override and, essentially, confiscate trade secrets in “circumstances of national emergency or extreme urgency involving substantial public interest, including situations of public health emergency, national security etc.” Moreover, the draft law does not include any provisions related to criminal sanctions, including statutory fines and imprisonment, or a definition of such acts either by individuals or legal entities. Also, no reference is made to a defined period of RDP for undisclosed biopharmaceutical test data submitted during sanitary registration. These substantial deficiencies aside, it is nevertheless a net positive development that the Government of India is proposing a new trade secret law. The Index will continue to monitor these developments in 2025.

Incentives for Cutting-Edge Innovation

44. Special market exclusivity incentives for orphan medicinal product development; 45. Special market exclusivity incentives for orphan medicinal product development, term of protection; and 46. Restrictions on the effective use of existing market exclusivity incentives for orphan medicinal product development:

A national policy framework was first developed by the Ministry of Health in 2017 with a finalized *National Policy for Treatment of Rare Diseases* launched in 2021. The policy introduced a national framework and definition of three main groups of rare diseases and a focus on screening and expanding access to low-cost treatments. Although the policy refers to the need for more research and the development of new medicines and treatments for rare diseases, it does not include any reference to or definition of any special IP-based market exclusivity incentives for orphan medicinal product development.

Membership and Ratification of International Treaties

India's score in this category of the Index has increased from 0.00 in the first edition of the Index to now achieving 2.00, or 28.57%, of the total available score. This is notably less than other BRICS economies, including China and Russia. Overall, India is a contracting party and has acceded to the WIPO Internet treaties, the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, and the Patent Cooperation Treaty. India is not a contracting party to the Patent Law Treaty; the Singapore Treaty on the Law of Trademarks; the International Convention for the Protection of New Varieties of Plants, Act of 1991; the Convention on Cybercrime, 2001; or the Hague Agreement Concerning the International Registration of Industrial Designs.

53. At least one post-TRIPS FTA with substantive IP provisions and chapters in line with international best practices:

In March 2024, India and the European Free Trade Association signed a Trade and Economic Partnership Agreement (TEPA). The agreement is the culmination of over 15 years of discussions with 21 separate rounds of negotiations. A positive feature of the agreement is a dedicated IP chapter in Annex 8.A. This is an encouraging development because many 21st-century post-TRIPS FTAs do not include a dedicated IP chapter with meaningful provisions on IP rights. Unfortunately, the TEPA does not conform to the standards of a modern post-TRIPS FTA because the IP chapter does not include substantive IP provisions in line with international best practices and identified in the Index. Indeed, much of the IP chapter is linked to rights defined and specified in TRIPS. In terms of specific gaps in the TEPA, the agreement includes limited copyright provisions with no reference to the challenges that the online environment or infringement represents to rightsholders and limited reference to sector-specific protections, including biopharmaceutical IP rights such as RDP and patent term restoration. Although Article 19(5) of Annex 8.A requires that each party grant its customs authorities the ability to suspend the release of suspected IP-infringing goods on their own initiative, Subclause 7 explicitly exempts goods in transit. As such, no score has been allocated to India under indicator 53.