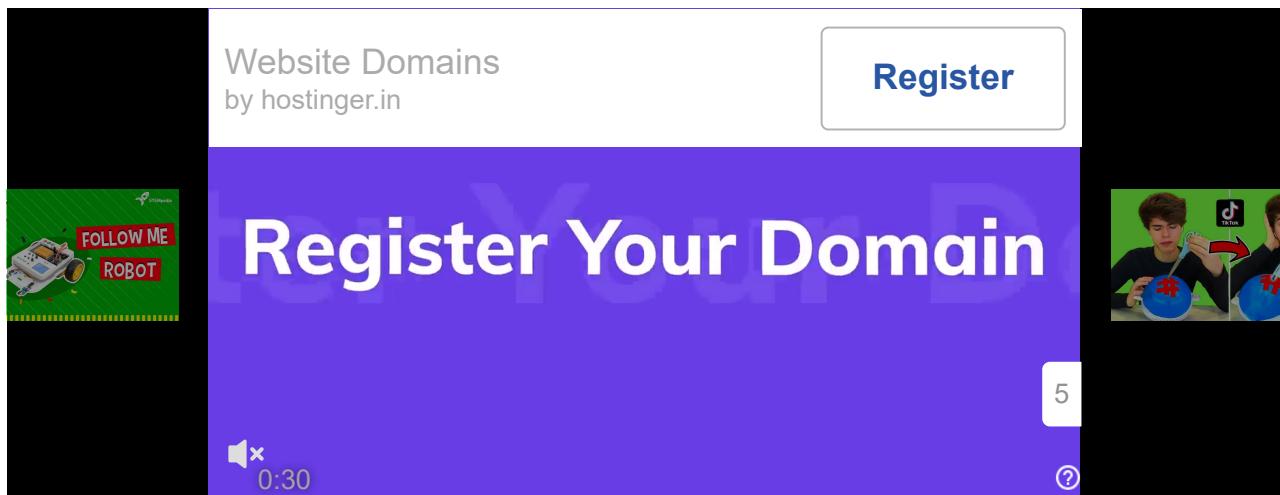


# Overview of Patent Act, 1970 in India.

September 23, 2020 by **Law Corner**

A patent is a prerogative granted by the government to the inventor to exclude others to use, make and sell an invention may be a specific period of time. A patent is additionally available for improvement in their previous Invention.



The main motto to enact jurisprudence is to encourage inventors to contribute more in their field by awarding them exclusive rights for his or her inventions.

In modern terms, the patent is typically mentioned because the right granted to an inventor for his Invention of any new, useful, non-obvious process, the machine, article of manufacture, or composition of matter.

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There are three basic tests for any inventions to be patentable.

1. The invention must be Noble.
2. The invention must be non-obvious
3. The invention must be useful in bona fide manner.

According to The patents act, 1970, Patents Rights are granted for inventions covering a new and inventive process, product or an article of manufacture that are able to satisfy the patent eligibility requirement of having novelty, inventive steps, and are capable of industrial application.

The Indian Patent Act, 1970 strikes a balance between the rights of the applicant and his obligation to the society granting the rights. Some salient features of the Act include product and process patent, the term of the patent as 20 years, patent examination conducted on request, fast track mechanism for quick disposal of appeals, pre-grant and post-grant opposition allowed, protection of biodiversity and traditional knowledge, and, the publication of applications after 18 months of the date of filing of the patent application.

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Sections 3 and 4 of the Indian Patents Act, 1970 clearly mentioned the exclusions regarding what are often patented in India. There are certain criteria which need to be fulfilled to get a patent in India. They are:

1. **Patent subject:** The most important consideration is to determine whether the Invention relates to a patent subject matter. Sections 3 and 4 of the Patents Act list non-patentable subject matter. Unless the Invention comes under any provision of Section 3 or 4, it means it consists of a topic for a patent.
2. **Novelty:** Innovation is an important criterion in determining the patent potential of an invention. Under Section 2(l) of the Patent Act, a novelty or new Invention is defined as “no invention or technology published in any document before the date of filing of an application, anywhere within the country or the world”. The complete specification, that is, the topic matter has not fallen into the general public domain or isn’t a part of the state of the art”.
3. **Inventive steps or non-clarity:** Under Section 2(j) of the Patents Act, an inventive step is defined as “the characteristic of an invention that involves technological advancement or is of economic importance or both, as compared to existing knowledge, and invention not obvious to an individual skilled

within the art." this suggests that the invention shouldn't be obvious to a person skilled within the same field where the invention cares. It should not be inventive and obvious for a person skilled in the same field.

**4. Capable of industrial application:** industrial applicability is defined in section 2(ac) of the Act, The invention is capable of being made or used in industry. This basically means the invention cannot exist within the abstract. It must be capable of being applied in any industry, which suggests that it must have practical utility in respect of patent.

## **Patent Rules Amendment:**

In 2016, The Patent (Amendment) Rules, 2016 came into force on 16th May 2016. The category of Startups as the patent application has been introduced, wherein Startup has been defined in the Rules as an entity (private limited company/partnership/LLP) where: (a) More than five years have not been completed from the date of its incorporation/registration, and, (b) The turnover (any financial year of the past five years) is not above 25 crores.

In 2018, The Patents (Amendment) Rules, 2018 were published on the 4th of December, 2018. As per these rules, for International applications, documents will be allowed to be submitted only via electronic submission. The transmittal fee has been removed while filing international patent applications through e-PCT. In addition, the preparation of the certified copies of the priority documents and re-transmission through WIPO DAS has been made free.

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The patent applicants are eligible for filing a request for expedited examination extended to contain female applicants, applicants eligible for PPH program participation, small entities and government undertakings substituting as applicants. In addition, the pre-grant opposition has to be decided by a bench comprising of two members, and a third member will be assigned to the bench to arrive at a final decision, where there are different opinions on the issue.

In 2019, The Patent (Amendment) Rules, 2019 were published on 17th September 2019. As per rule 6(1A), the mandatory filing requirement of the original documents has been waived off and filing the scanned copies of any original documents would be sufficient. Also, as per rule 7, which is applicable for startups also, every time a document requiring a fee is to be filed, both the 'small entity' and 'startup' applicants are required to submit Form 28.

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