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BRIDGING THE INNOVATION GAP: EVALUATING THE CASE FOR UTILITY MODELS IN INDIA'S IP FRAMEWORK

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ABSTRACT

The fundamental idea behind Utility Models is that patents are often unsuitable in situations where innovations primarily arise from craftsmanship aimed at addressing specific but limited needs. In recent years, India's intellectual property framework has managed to strengthen its position within the legal system, despite facing various challenges and limitations. However, a crucial question arises: has the Indian industry truly been able to leverage IPR laws for its growth? Evidence suggests that it is mostly large national and multinational corporations that have reaped the benefits of India's IPR regime. This is largely due to the high threshold of inventiveness required under patent law, coupled with a complex, technical, and expensive application process, which remains out of reach for smaller industries.

Within the current legal structure, innovators of modest or frugal inventions find it difficult to secure patents, as the requirement of a higher level of inventiveness excludes them. This gap highlights the need for an alternative system. A Utility Model protection regime serves as a supplementary mechanism designed to safeguard inventions with a moderate degree of inventiveness.

Accordingly, this paper seeks to lay the groundwork for a legal framework that balances the rigidity of the patent system with the flexibility of a Utility Model system, which could stimulate innovation in India. It also explores the feasibility of enacting a separate law dedicated to Utility Model protection, with the aim of fostering economic growth and technological advancement.

Keywords: craftsmanship, patents, strengthen, business sector.

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1. INTRODUCTION

In today's globalized context, one of the most significant drivers of development has been innovation. Since the diffusion of innovations following the Industrial Revolution, intellectual property systems—and particularly patent regimes—have served as essential tools for encouraging technological advancement.

Although intellectual property rights have evolved significantly over the centuries, this core arrangement has remained consistent. By granting IPRs, the government ensures that inventors have the legal authority to prevent others from using the outcomes of their creative efforts without permission. This legal monopoly allows inventors to exploit their inventions and reap economic rewards for a limited period, providing strong incentives to invest time and resources in innovation.

Without such protection, the creations of inventors, artists, musicians, and authors could be easily copied and exploited at minimal cost by others. This lack of safeguards would hinder creators from fully benefiting economically from their work and could lead to under-investment in creative and innovative activities, below socially optimal levels. Therefore, to safeguard the rights of inventors and artists, intellectual property laws were established and have been incorporated into the legal systems of nearly all countries[1].

Nevertheless, there exists a delicate balance between encouraging innovation and ensuring that its benefits are widely shared across society[2]. The concept of intellectual property rights (IPRs) has been debated throughout history, and in today's globalized economy, these discussions have become increasingly contentious. IPRs are widely recognized as influential in a country's economic development, yet economic theory suggests that their impact can be either positive or negative in accelerating overall growth[3].

The effect of IP rights on economic development is complex and influenced by multiple factors. Research indicates that the effectiveness of IPRs in promoting economic growth largely depends on the specific circumstances of each country[4]. Studies show that, unlike developed

[1] Christopher May & Susan K. Sell, *Intellectual Property Rights: A Critical History* (2006).
[2] Thomas Cottier & Petros C. Mavroidis, *Intellectual Property: Trade, Competition, and Sustainable Development: The World Trade Forum*, Vol. 3 (2003), https://scholarship.law.columbia.edu/books/148.
[3] Brigitte Binkert, Why the Current Global Intellectual Property Framework under TRIPs Is Not Working, *Intellectual Property Law Bull.* 143 (2006).
[4] Keith E. Maskus, Intellectual Property Rights and Economic Development, 32 *Case W. Res. J. Int'l L.* 471 (2000), https://scholarlycommons.law.case.edu/jil/vol32/iss3/4.

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nations, developing countries often prefer weaker IPR protection during the early stages of economic growth[5]. As a country's economy matures and its technological capacity expands, the demand shifts toward higher-quality products, creating a greater incentive to support innovations protected by intellectual property[6].

2. LITERATURE REVIEW

Keith E. Maskus (2000)[7]have examined the connection between intellectual property rights and economic development. Their analyses suggest that while strong patent systems can promote foreign investment and technology transfer, they may simultaneously hinder local innovation if domestic inventors lack the resources or capacity to meet patent standards.

N. Kumar (2002)[8] similarly argue that overemphasis on global IPR harmonization under the TRIPS Agreement has often marginalized small-scale innovators in developing economies.

Thomas Cottier and Petros C. Mavroidis (2003)[9] discuss how the German and Japanese models provide shorter-term, low-cost protection that complements patent law and fosters innovation diversity.

Lionel Bently & Brad Sherman (1997)[10] traced the historical evolution of Utility Models in the United Kingdom, demonstrating that such systems have long served as a bridge between informal innovation and formal patent protection.

3. RESEARCH METHODOLOGY

This research adopts a doctrinal and comparative legal research methodology to analyze the feasibility and potential benefits of introducing a Utility Model protection system in India. The study relies on a combination of qualitative legal analysis, policy evaluation, and comparative assessment of international frameworks including The Patents Act, 1970; relevant rules,

[5] Robert E. Evenson & Larry E. Westphal, Technological Change and Technology Strategy, in *A Handbook of Development Economics* 2209, 2228–36, 2288 (Jere Behrman & T. N. Srinivisan eds., 1995).
[6] Keith E. Maskus, Intellectual Property Rights and Economic Development, 32 *Case W. Res. J. Int'l L.* 471 (2000), https://scholarlycommons.law.case.edu/jil/vol32/iss3/4.
[7] Keith E. Maskus, *Intellectual Property Rights in the Global Economy* (Peterson Inst. for Int'l Econ. 2000);
[8] Nagesh Kumar, *Intellectual Property Rights, Technology and Economic Development: Experiences of Asian Countries* 34(3) *Econ. & Pol. Wkly.* 209 (2002)
[9] [1] Thomas Cottier & Petros C. Mavroidis, *Intellectual Property: Trade, Competition, and Sustainable Development* 123 (2003)
[10] [1] Lionel Bently & Brad Sherman, *Intellectual Property Law* 245 (1997).

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regulations, and government notifications; international treaties such as the Paris Convention and TRIPS Agreement; and judicial precedents interpreting inventiveness and novelty under Indian law to examine how such a regime could bridge the gap left by the current patent system. Some other secondary sources include academic journals, WIPO and WTO publications, research papers, policy documents, reports from IP India, books on intellectual property law, and working papers addressing Utility Model protection mechanisms.

4. UNDERSTANDING THE CONCEPT OF UTILITY MODELS

A utility model system is a form of intellectual property designed to protect "minor inventions" through a framework similar to the patent system[11]. This concept emerged from international recognition that incremental improvements to existing products—though not meeting full patentability criteria—can significantly contribute to a country's domestic innovation ecosystem[12]. Utility models grant inventors an exclusive right, enabling them to prevent others from commercially exploiting the protected invention without authorization, albeit for a shorter duration than patents.

Utility model systems involve less stringent requirements and a more liberal interpretation of "inventiveness," making the application process simpler and the term of protection shorter. This approach primarily addresses the needs of domestic innovators, such as micro, small, and medium enterprises (MSMEs)[13]. The characteristics of utility model inventions provide flexibility that can foster a more innovative environment, including: enabling artisans to protect innovations that do not meet the strict novelty and inventive step requirements of patent law; increasing the economic role of traditional innovators and artisans; acting as a catalyst for higher levels of innovation; being more affordable than patents; and serving as a source of data on innovative activity and technological management experience.

Both external and internal factors—such as a country's technological absorptive capacity, its institutional framework for supporting domestic research and development, and the availability of economic incentives—affect the implementation and effectiveness of utility model protection systems. Similar to patents, utility models safeguard the functional aspects of a

[11] WIPO, Utility Models, https://www.wipo.int/patents/en/topics/utility_models.html.
[12]Uma Suthersanen, Utility Models and Innovation in Developing Countries, UNCTAD-ICTSD Project on IPRs and Sustainable Development (2006).
[13] H. Dernis, D. Guellec & B. Van Pottelsberghe, Using Patent Counts for Cross-Country Comparisons of Technology Output, 27 *STI Rev.* 129 (2001).

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product. In countries like Germany and Japan, the utility model system has played a notable role in promoting industrial development and supporting domestic innovation.

4.1 DEVELOPMENT OF UTILITY MODELS

Intellectual property rights (IPRs) have traditionally been regarded as a sovereign matter, which explains why the same type of IP may have distinct characteristics across different national systems. A utility model is often described as a patent-like right for protecting inventions, yet the concept lacks a universally accepted definition or global consensus. Generally, utility models are understood as short-term registered rights granted for inventions that do not meet the inventive step requirements of standard patent law. Different jurisdictions may refer to them as "small patents," "innovation patents," or "second-tier protection[14]."

The idea of utility models can be traced back over 150 years. One of the earliest examples is the United Kingdom's Utility Designs Act of 1843. In the early nineteenth century, inefficiencies in Britain's patent system and design protection laws led to the enactment of two separate laws: the Ornamental Designs Act of 1842 and the Utility Designs Act of 1843[15]. While the Ornamental Designs Act safeguarded decorative designs applied to manufactured items, the Utility Designs Act focused on protecting the shape or configuration of functional manufactured articles.

By the end of the 19th century, the utility model framework was first formally established in Germany in 1891[16]. This system primarily benefited domestic innovators, who accounted for approximately 85% of the applications[17]. While utility models were required to satisfy the same standards as patents in terms of novelty and utility, the threshold for inventive step was lower[18]. Notably, processes and biotechnological inventions were excluded from utility model protection, and grants were issued promptly without substantive examination. Inspired by the German model, Japan introduced its own utility model protection system in 1905, which closely mirrored Germany's framework, though it has undergone multiple amendments over

[14] M. D. Janis, Second Tier Patent Protection, 40 *Harv. Int'l L.J.* 151, 169 (1999).
[15] Lionel Bently & Brad Sherman, The United Kingdom's Forgotten Utility Model: The Utility Designs Act of 1843, 3 *Intell. Prop. Q.* 265 (1997).
[16] F. Machlup & E. Penrose, The Patent Controversy in the 19th Century, 10 *J. Econ. Hist.* 1 (1950).
[17] Rupinder Tewari & Mamta Bhardwaj, Mapping Patents and Research Publications of Higher Education Institutes and National R&D Laboratories of India, 2018, at 27–36.
[18] German Utility Model Act (Gebrauchsmustergesetz) § 1(1).

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time[19].

Currently, Japanese utility model law protects only devices based on the shape or construction of articles, or combinations of articles, that contribute to industrial development[20]. Under this system, applications are not substantively examined, and protection is granted almost immediately upon registration and publication.

In China, the Patent Law enacted in 1984 governs the granting of invention patents, utility models, and industrial designs. Both invention patents and utility models are collectively referred to as patents[21]. Historically, the number of utility model applications has consistently exceeded applications for invention patents and industrial designs, with the system being utilized predominantly by domestic innovators rather than foreigners.

Recognizing the importance of utility models, the European Commission in 1997 proposed legislative measures to establish Community Utility Models, following extensive consultations initiated by a Green Paper in 1995[22]. However, these proposals were withdrawn in 2005 on certain grounds. While some European Union countries maintain a utility model system, others, including the United Kingdom, Sweden, and Luxembourg, do not.

Similarly, South Korea introduced its utility model protection system in 1908, followed by Brazil in 1923. Beyond China and South Korea, several other developing countries in Asia—including Taiwan, Mongolia, Vietnam, Malaysia, Thailand, Indonesia, and the Philippines—have also implemented utility model systems to support local innovators. According to WIPO, approximately 80 countries currently provide utility model protection. These nations include Albania, Angola, Argentina, ARIPO member states, Armenia, Aruba, Australia, Austria, Azerbaijan, Belarus, Belize, Brazil, Bolivia, Bulgaria, Chile, China (including Hong Kong and Macau), Colombia, Costa Rica, the Czech Republic, Denmark, Ecuador, Estonia, Ethiopia, Finland, France, Georgia, Germany, Greece, Guatemala, Honduras, Hungary, Indonesia, Ireland, Italy, Japan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Malaysia, Mexico, OAPI member

[19] N. Kumar, *Technology and Economic Development: Experiences of Asian Countries* (Commission on Intellectual Property Rights 2002).
[20] Japanese Utility Model Act, § 1.
[21] Patent Law of the People's Republic of China, https://www.wipo.int/edocs/lexdocs/laws/en/cn/cn006en.pdf
[22] Commission of the European Communities, *Green Paper: The Protection of Utility Models in the Single Market*, COM(95) 370 final (July 19, 1995), https://www.wipo.int/edocs/lexdocs/laws/en/cn/cn006en.pdf.

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states, Peru, the Philippines, Poland, Portugal, the Republic of Korea, the Republic of Moldova, the Russian Federation, Slovakia, Spain, Taiwan, Tajikistan, Trinidad & Tobago, Turkey, Ukraine, Uruguay, and Uzbekistan[23].

4.2 SCOPE OF PROTECTIONS OF UTILITY MODELS COMPARED WITH PATENTS

The term "utility model" lacks a universally accepted definition, and there is no international treaty requiring member countries to implement a utility model system within their national frameworks. The TRIPS Agreement does not address utility models. Nevertheless, many countries provide protection for minor and incremental innovations either through a sui generis system or by incorporating flexible provisions within their patent laws.

Utility model protection goes by different names in various jurisdictions: in Australia, it is called an "innovation patent"; in Malaysia, a "utility innovation"; in France, a "utility certificate"; and in Belgium, a "short-term patent." Given this lack of uniformity, the term "utility model" is generally used as a generic reference to patent-like protection for inventions that do not meet the standard patentability criteria but are granted protection without substantive examination and for a shorter duration[24]. For this reason, utility models are also referred to as innovation patents or utility innovations in countries such as Australia and Malaysia[25]. Conversely, nations like Hong Kong, Ireland, and Slovenia provide short-term patents that confer rights equivalent to regular patents. The Paris Convention recognizes utility models as a category of industrial property, highlighting their status within the broader framework of intellectual property[26].

If a designated country provides such protection, an inventor can seek it for their invention. From a technical standpoint, all inventions require protection and encouragement, and the term "utility model" refers to a form of protection granted to specific inventions, such as devices, articles, or other engineering products[27]. These inventions generally lack the complexity

[23] World Intellectual Property Organization, *Protecting Innovations by Utility Models*, https://www.wipo.int/sme/en/ip_business/utility_models/where.htm
[24] Uma Suthersanen, *Utility Models and Innovation in Developing Countries*, ICTSD Issue Paper No. 13 (2006), https://www.unctad.org/en/docs/iteipc20066_en.pdf.
[25] World Intellectual Property Organization (WIPO), Collection of Laws for Electronic Access (CLEA) Database, https://www.wipo.int/clea/en/.
[26] A.F. Quecan, Reforming the Patent Industry from the Small Business Perspective, 11 *J. Eng'g & Pub. Pol'y* (2007), https://www.wise-intern.org/journal/2007/index.html.
[27] World Intellectual Property Organization, *Patent Drafting Manual*,

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needed for patentability and often have a short commercial lifespan, typically designed to address local innovation needs[28]. Utility models usually exclude certain categories, including processes, biotechnological inventions, discoveries, scientific theories, and aesthetic creations.

Under German Utility Model Law, protection is granted to inventions that are new, involve an inventive step, and are capable of industrial application. The overlapping features and interconnections between patents and utility models create a distinction—or dichotomy—between the two systems. According to patent jurisprudence, a patent may be granted for items that meet specific criteria, including:

a) Comprises patentable subject matter
b) Is novel (satisfies the novelty requirement)
c) Involves an inventive step (meets the non-obviousness requirement)
d) Is capable of industrial application (fulfills the utility requirement)
e) Is disclosed clearly and completely in the application (meets the disclosure requirement)[29]

The criterion of "inventive step" or "non-obviousness" marks a key distinction between patents and utility models. An invention is considered lacking inventiveness if it would be obvious to a person skilled in the relevant field of technology—for instance, mere changes in size, making a product portable, reversing parts, altering materials, or substituting equivalent components. While utility models and patents share many similarities, they differ significantly in the threshold of inventiveness. Unlike other IPRs that primarily protect aesthetic or expressive aspects, both utility models and patents safeguard the functional aspects of technical inventions.

While designs and trademarks protect aesthetic or brand-related aspects, statutory limitations prevent them from safeguarding technical details or functional features of an invention.

In practice, utility model protection is often sought for incremental innovations that may not

https://www.wipo.int/edocs/pubdocs/en/patents/867/wipo_pub_867.pdf.

[28] Patent Reform Impact on Small Venture-Backed Companies: Hearing Before the Subcomm. on Small Bus. of the H. Comm. on the Judiciary, 110th Cong. (2007) (statement of John Neis, CFA, Managing Dir., Venture Investors), https://www.nvca.org/pdf/House-SBPatent-Testimony.pdf.

[29] World Intellectual Property Organization, *Conditions to be Met to Obtain Patent Protection*, https://www.wipo.int/patents/en/faq_patents.html.

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satisfy full patentability requirements. The duration of protection for utility models is generally shorter than for patents, ranging from 6 to 15 years depending on the country. Unlike patents, utility model applications in most jurisdictions are not substantively examined before grant, making the process faster and more cost-effective[30]. Utility models are relatively inexpensive to obtain and maintain. Additionally, in some countries, utility model protection is available only for products, and even then, only for specific types of technologies, excluding processes.

4.3 FRAMEWORK OF INTERNATIONAL TREATIES RELATING TO UTILITY MODELS: A COMPARATIVE STUDY

The utility model system is widely acknowledged in various international treaties and conventions governing intellectual property, as outlined below.

A. Paris Convention (1883)

Utility models are classified as a form of industrial property under the Paris Convention. However, the Convention does not provide a specific definition or detailed scope for them. The primary provisions that apply to utility models are the principles of national treatment and the right of priority, which allows a 12-month period for claiming priority. Article 1(2) of the Convention states: "The protection of industrial property has as its object patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition[31]."

B. The TRIPS Agreement (1994)

The TRIPS Agreement, in contrast, obliges all member countries to uphold minimum substantive standards across their intellectual property systems but does not explicitly address second-tier patent systems or utility models, leaving it to individual nations to establish such frameworks. Article 2(1) of TRIPS allows member states to provide more extensive protection as needed under their national laws, while still complying with Article 1(2) of the Paris Convention. Policymakers and legislators often view this approach as a "second-tier patent system" to help foster and strengthen domestic technological capabilities.

C. Other Patent Treaties and Agreements

National utility model systems generally adopt the International Patent Classification

[30] John Richards, *Utility Model Protection Throughout the World*, https://ipo.org/wp-content/uploads/2013/03/Utility_Model_protection.pdf.

[31] Paris Convention for the Protection of Industrial Property art. 4(E)(1)–(2), Mar. 20, 1883, 828 U.N.T.S. 305.

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(IPC) as established by the 1971 Strasbourg Agreement, which aids in the efficient retrieval of patent documents and the conduct of effective novelty searches. Similarly, the Patent Cooperation Treaty (PCT), which allows for patent applications in multiple countries, also recognizes utility model protection. Over 77 developing countries employ utility model systems to promote local innovations that may not qualify for standard patent protection. Historical evidence indicates that implementing such systems contributes to economic development.

4.4 ROLE OF UTILITY MODELS IN INNOVATION AND CREATION IN DEVELOPING COUNTRIES

India's informal economy, or the unincorporated sector, has attracted significant international attention due to its large scale and economic impact. According to the International Labour Organization, approximately 80.9 percent of employment in India is in the informal sector[32], which contributes around two-thirds of the country's GDP. Although largely unregulated, India's unincorporated sector has demonstrated substantial gains in economic productivity and capital accumulation. Innovations in the informal sectors of developing countries often arise not from formal R&D but under constrained conditions. These innovations typically stem from imitation, traditional knowledge, improvisation, and adaptation of existing inventions. Despite being non-original, they possess significant economic potential and can address various socio-economic challenges.

These frugal innovations are also known as "bottom of the pyramid innovations," "below the radar innovations," "emergent innovations,"[33] or in India, "jugaad"[34] .They are typically quick-fix solutions that lack long-term scalability and sustainability. Jugaad has been described as an "innovative fix" or "impoverished solution" commonly employed in everyday Indian life. Despite their improvised nature, many jugaad innovations offer good quality, marketable potential, affordability, and accessibility.

Examples include:

[32] Int'l Labour Org., R. 204 – Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), https://www.ilo.org/employment/units/emp-invest/informaleconomy/WCMS_443501/lang--en/index.htm.
[33]A. Leliveld & P. Knorringa, Frugal Innovation and Development Research, 30 *Eur. J. Dev. Res.* 1 (2018).
[34] P.C. Bansal, Review of *From Jugaad to Systematic Innovation: The Challenge for India*, by Rishikesh T. Krishnan, 46 *Indian J. Indus. Rel.* 383 (2011).

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1. **Onion seed transplanter:** Traditionally, onion seedlings are transplanted manually, a process that is time-consuming, labor-intensive, and inconsistent. The tractor-drawn semi-automatic transplanter simultaneously performs three tasks: transplanting onions, applying fertilizer, and digging irrigation channels[35].
2. **Gas stove switch:** This device automatically turns off a gas stove after a predetermined number of pressure cooker steam whistles. It counts and displays the number of whistles sounded, ensuring safe and convenient cooking[36].

These innovations may lack high-level inventiveness, yet they meet other criteria necessary for patenting. When a legal system—particularly in developing countries—leaves this sector unregulated, it often renders a significant market segment underutilized. Frugal innovations require a specialized legal framework that can provide protection for these non-inventive yet practical creations. It is incumbent upon developing nations to legitimize such second-tier patents by offering an affordable, no-examination protection regime for technical inventions that typically do not meet the rigorous standards of conventional patentability.

5. FRAMING A LAW FOR UTILITY MODEL PROTECTION: CHALLENGES AND LIMITATIONS

Countries that have prioritized enhancing their technical and industrial capabilities to drive economic growth have emphasized protecting micro-innovations. Nations such as Japan, South Korea, and Germany have implemented utility model regimes. The rationale for establishing separate laws to protect utility models stems from the patent system's inability to grant legal rights to innovations or discoveries that do not meet the required thresholds of inventiveness and novelty.

A key argument in favor of legitimizing utility models is that they significantly improve the legal environment for startups. Small and Medium Enterprises (SMEs) play a crucial role in India's economy, contributing approximately 8 percent of GDP, 45 percent of manufactured output, and 40 percent of exports. This sector prvides employment to around 60 million people through 26 million enterprises[37].

[35] Pandharinath Sarjerao More, Tractor Driven Onion Transplanter, National Innovation Foundation–India, https://nif.org.in/innovation/Onion_Transplanter/1.
[36] Davalsab Mahamadgows, *Auto Stopper for LPG Gas Stove*, National Innovation Foundation–India, https://nif.org.in/innovation/auto_stopper/22.
[37] Press Information Bureau, *Report of the Task Force on MSME – 2019*, Ministry of Micro, Small & Medium Enterprises, https://pib.gov.in/newsite/erelcontent.aspx?relid=57553.

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In the past, the Government of India has sought to consider the perspectives of various stakeholders, both supporting and opposing the introduction of utility models. In May 2011, the Department for Promotion of Industries and Internal Trade (DPIIT), under the Ministry of Commerce and Industry, released a Discussion Paper on Utility Models, inviting stakeholders to provide input on whether utility patents should be incorporated into India's IPR framework and, if so, in what form[38]. In recent years, driven by active government campaigns promoting localization, there has been ongoing consideration of the need to recognize and support a broader spectrum of innovative activities in India, including the potential introduction of utility models within the national IPR regime.

In a decentralized market economy like India, both public and private laboratories, as well as individual innovators, have conducted systematic research and development to create newer and more affordable products. However, the number of patent applications filed by domestic entities and the patents granted to them remains relatively low. In contrast, countries such as China, South Korea, Japan, France, and Germany report significantly higher rates of domestic patent filings and grants compared to foreign entities[39]. This situation highlights the need for a dedicated policy to encourage domestic innovators to file and own more patents, thereby enhancing the economic value and commercial potential of intellectual property within the country[40].

With the implementation of TRIPS, India has reinforced its IPR framework despite facing numerous challenges and limitations. The current structure of the IPR regime has largely favored national and multinational companies, given their resources and capacity to produce high-level research outcomes. The utility model system, however, offers an effective mechanism to protect frugal intellectual capital with a lower inventive step threshold. It promotes research, creativity, and innovation among small inventors and SMEs, enhancing their technological contributions and value.

[38] Dep't for Promotion of Indus. & Internal Trade, *Discussion Paper on Utility Models*, https://dipp.gov.in/sites/default/files/Utility_Models_13May2011%20%202.pdf.
[39] D. Ravi Kanth, Global Patent Applications from India Drop to 1,423 in 2015, *LiveMint* https://www.livemint.com/Politics/9A31EOFzMCc9PqTcMOonZL/Global-patent-applications-from-India-drop-to-1423-in2015.html.
[40] Richard Wilder, *Presenting for the WIPO Milan Forum on Intellectual Property and Small and Medium-Sized Enterprises: Fostering the Innovation Potential of SMEs in the Globalization Era—The Role of Patents*, (Feb. 9–10, 2001), https://www.wipo.int/edocs/mdocs/sme/en/wipo_ip_mil_01/wipo_ip_mil_01_1_b.doc.

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The Draft National IPR Policy included provisions for utility models; however, the final version of the policy did not incorporate them[41]. One concern raised against enacting separate legislation for utility models is the potential economic impact of introducing a new law. Critics argue that, since utility models primarily apply to the mechanical and technical sectors, creating a dedicated law for these areas could hinder effective enforcement.

Another structural challenge is the issue of interoperability between patents and utility models. For a stable IP system that protects the functional aspects of industrial applications, it should be possible to convert patent applications into utility models and vice versa. Nevertheless, dual protection would not be permitted.

Similar to patents, utility model rights are territorial in nature. Each utility model application must be filed individually, as there is no equivalent of the PCT for utility models. They generally protect technical inventions but typically exclude processes. Utility models usually provide protection for a shorter duration, typically between six and ten years. This limited term, combined with the expedited registration process, makes utility models an attractive option for inventors. Often, utility model applications do not require a search report. In many countries, the novelty and inventive step of a utility model are only examined if the right is challenged through invalidation or infringement proceedings.

6. FINDINGS AND SUGGESSTIONS

The study finds that India's current patent framework disproportionately benefits large national and multinational corporations. The high threshold of inventiveness, combined with the technical complexity and financial burden of the patent application process, limits accessibility for small and medium enterprises (SMEs), grassroots innovators, and individuals engaged in frugal or need-based innovation. The research highlights a structural gap in India's intellectual property system, where incremental or minor improvements to existing technologies—often crucial for local adaptation—fail to qualify for patent protection. This discourages innovation at the grassroots and informal sector levels. Unlike countries such as Germany, Japan, and China, India lacks a dedicated Utility Model protection system. As a result, innovators with moderately inventive technologies have no formal legal means to safeguard or commercialize their creations effectively. Evidence from comparative jurisdictions shows that the introduction

[41] C.H. Unnikrishnan, New IPR Policy Focuses on Utility Patents, *LiveMint* https://www.livemint.com/Politics/rEsAsIUbregHK6YGSxM8kJ/New-IPR-policy-focuses-on-utility-patents.html.

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of a Utility Model regime can stimulate industrial growth, particularly among SMEs. It can promote affordable innovation and facilitate faster diffusion of technology in developing economies like India. While several government reports and discussions—such as those by the Department for Promotion of Industry and Internal Trade (DPIIT)—acknowledge the need for Utility Model protection, India has yet to translate these policy deliberations into a concrete legislative framework.

Suggestions

- India should consider drafting a comprehensive *Utility Model Protection Act* to complement the Patents Act, 1970. This law should cater to inventions that are new and industrially applicable but do not meet the higher inventive step required for patents.
- The proposed system should ensure a low-cost, fast-track, and less formal registration procedure to encourage participation from SMEs, startups, and individual innovators.
- The Utility Model protection could be granted for a shorter duration (e.g., 7–10 years) without the possibility of renewal, thereby balancing innovation incentives with public access to technology.
- The government, through institutions such as WIPO and NIF (National Innovation Foundation), should promote awareness programs and training workshops to educate grassroots innovators about Utility Model protection.
- The Utility Model system should align with national strategies such as *Make in India* and *Startup India*, enabling innovators to secure protection while fostering an innovation-driven economy.
- Before full-scale implementation, a pilot model could be tested across selected sectors—such as agriculture, mechanical tools, and low-cost technology—to evaluate its effectiveness and impact.

7. CONCLUSION

The author advocates establishing a new utility model regime, similar to those in many other countries, with provisions for interoperability with the national patent system while adhering to international standards. The proposed framework should incorporate the following four key features:

1. A clear definition of the scope of utility model protection, restricted to mechanical devices.
2. A non-examination system for the initial period of protection, followed by a mandatory examination or report for the subsequent stage.

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3. Examination triggered during invalidation or infringement proceedings, conducted prior to litigation.
4. Government initiatives to raise awareness about utility model protection

Many stakeholders support introducing a utility model system in India, particularly to encourage MSMEs, startups, and small innovators to enhance IP creation. Critics, however, raise concerns that such a system could lower innovation standards and potentially undermine the patent environment. Other issues include the lack of substantive examination, which may reduce legal certainty regarding the validity of registered utility models, unclear connections between utility model law and the existing Patents Act, and the risk of diluting safeguards against evergreening of inventions. Some fear that utility models could negatively impact public domain knowledge, reduce the overall quality of patents, and increase IP disputes over time. However, these concerns remain largely speculative. Policy is not merely an idea; it is the practical implementation of ideas. Developing countries like India should avoid being paralyzed by over-analysis when formulating policy.