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# Protecting our Jugaad: Implementation of a Utility Model regime in India

■ Nupur Lamba

**I**n the year 2017, a famous colloquial Hindi word, “Jugaad” found its way into the Oxford Dictionary. The official definition being “a flexible approach to problem-solving that uses limited resources in an innovative way”. India being the land of “Jugaad”, practical examples of the same can be found amid children playing on busy city streets, in the form of a Science project, in use by a farmer ploughing a lush field, ice cream vendors attaching motors to their cart and in various other astonishing ways. People all over the country are adopting innovative ways to quickly solve everyday problems and with such surprising creativity, the said phenomena is often called “Jugaad engineering”. The widespread use of this phenomena in everyday lives of the rich, poor, literate and illiterate alike, goes to show that one does not require strict academic knowledge or a professional degree for small creations that solve everyday problems.

These small innovations, are often protected from unauthorized exploitation under various names in different parts of the world. They are commonly referred to as “Utility Models” and in some other jurisdictions as “petty-patents”, short term patents etc.

Before going on to discuss the need to implement such a regime in India, it is important to understand the basic concept of Utility Model and how is it different from Patent.

## WHAT IS A UTILITY MODEL?

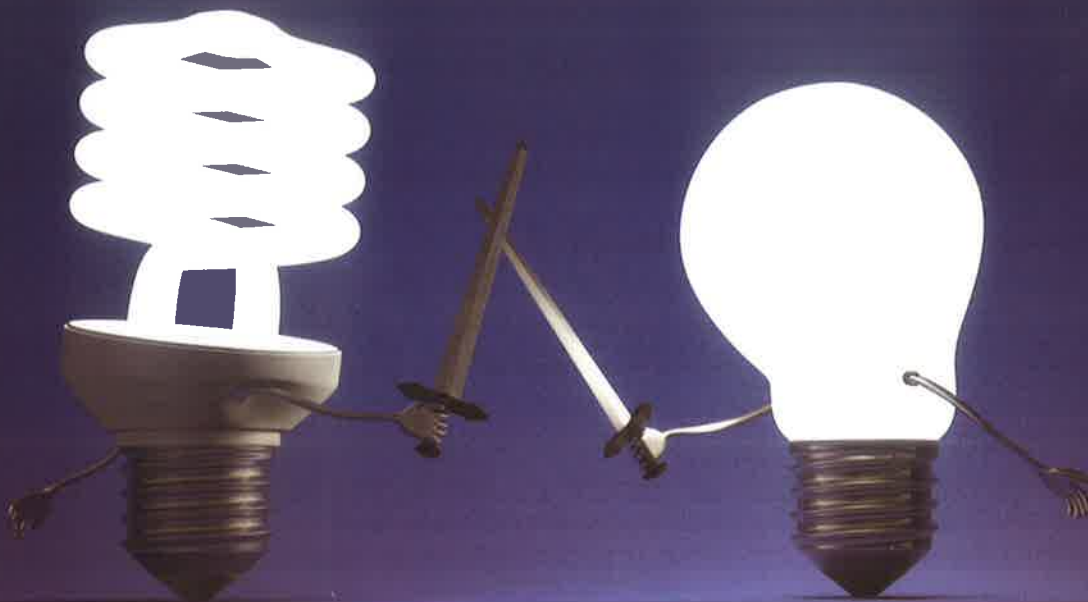
Utility Model is essentially an offshoot of the patent protection regime. It is a patent-like intellectual property protection accorded to small innovations which is generally cheaper to obtain, requires less inventive step, acquired faster, and involves less stringent patentability requirements. Utility model is a framework for providing limited protection to those innovations which may not meet the standards prescribed in the Patents Act and yet are commercially exploitable and of immense utility to the society.

The basic differences between a Patent and a Utility model are as follows:

- i. Utility Model is granted to an invention, which mainly has novelty but less of inventive step, while a patent requires the invention to be novel and have industrial application
- ii. Marginal improvements are protected



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under Utility Model while Patent requires new invention or a substantial improvement;

iii. Term of protection of Patent is for 20 years, while for Utility Model it is 7-10 years from date of filing;

iv. Unlike Patents, Utility Models do not require substantive examination procedure, and is therefore faster;

v. The Utility model system provides a greater degree of freedom and choice to innovators. In many countries, patent applications can be converted to Utility Model applications and vice-versa. Thus, when an application for a patent is refused on grounds of lack of inventive

step, the applicant can seek protection of his invention as a Utility Model.

### **WHY SHOULD INDIA HAVE A UTILITY MODEL REGIME?**

The primary objective of patent law is to encourage development and innovation by conferring control over innovations to individuals/creators for a limited period of time. In other words, it is an incentive for the creators, who have invested their effort, time and energy in coming up with innovations. Even though India is developing at a fast pace and the number of developments and innovations are at a rise, the nation is still far behind in filling local patents. This is usually on account of the fact that the everyday small inventions, though extremely

unique and useful, cannot meet the strict patentability criteria.

In developing countries like India, SMEs (Small and Medium Enterprises) and MSMEs (Micro, Small and Medium Enterprises) have obtained a prominent position and are providing employment to a large number of people, making significant contribution towards the economic growth of the country. SMEs and MSMEs, and even individuals are often inventing different products, with marginal improvement or less novelty criteria, which form the backbone of these enterprises; however, these products often fail to get Patent protection owing to the strict eligibility criteria. This makes their inventions



vulnerable as it can be used by anyone for commercial gains. Therefore, in order to protect such inventions, Utility Model seems to be the ideal solution.

Most of the countries which have recognized "Utility Model" in their IP protection regime, have done so to promote and encourage innovators by providing protection for innovations, which are unable to meet the patent threshold requirements. Such encouragement is likely to augment the role of small-scale innovators in economic development of the Nation and help them stay in the business without being affected by the entry of foreign industries. Even the Indian cinema has tried to bring this aspect into public attention and provided encouragement, through celebrated movies such as 3 Idiots.

Since there is no Utility Model or similar protection in India, local entrepreneurs or companies are often adversely affected. They have to often face unfair competition because of copied ideas, unfair market practices, losses, etc. and are unable to reap any benefits of their innovations.

## WHY IS UTILITY MODEL NOT ADOPTED IN INDIA?

Several developed and developing nations such as Germany, Japan, South Korea and Malaysia, amongst others, have adopted utility model to encourage innovations. But, despite the various advantages of utility model, India is yet to introduce it. As per an argument put forward by the Department of Industrial Policy and Promotion (DIPP) in its discussion paper in 2011, it is feared that the introduction of less-stringent form of IP protection, i.e. the utility model could lead

to ever-greening of patents. The main concern regarding the less stringent criteria of such a regime is that anyone can take an already existing product, tweak the design to make it more efficient and get a utility patent. Undoubtedly, this is one of the major concerns owing to which, a Utility Model regime is yet to be introduced in India.

## CONCLUSION

Even though, the evergreening aspect cannot be overlooked altogether, there are several other aspects that need to be considered. A number of innovations go untapped and eventually get lost in the oblivion because they are not able to reach the high standards required to obtain patent. In addition, utility model promises the SMEs as well as small innovators protection and reward for their innovations without necessitating the need to meet such high standards.

Furthermore, the "Make in India" initiative launched by the Government with the aim to transform the country into a global design and manufacturing hub provides a motivational push to innovators, however does not provide adequate protection from undue exploitation. These inventions need encouragement in the form of protection and this is where the need of utility model steps in.

Therefore, just like other developing countries that have adopted utility models and similar IP regimes to encourage innovations, it is now imperative for Indian policy makers to risk their apprehensions and align with the fast paced economic growth of the Country and include protection regimes for small innovation. [w](#)



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