

Strengthening Intellectual Property Law for Enterprise-led Economic Growth

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Chapter 1: Introduction

The concept of Intellectual Property (IP) and IP laws is not entirely new in Nepal. In addition to being a part of our fundamental rights under the Constitution of Nepal 2072, we have separate laws governing IP. The IP regime in Nepal can be divided into two broad categories - industrial property and copyrights. Copyrights are governed by Copyright Act 2002, which governs the literary and artistic aspects of IP, whereas industrial property is governed by the Patent, Design and Trademark Act 1965 (PTDA 1965).

This paper focuses on the various kinds of industrial property and how they could bring about enterprise-led economic growth in Nepal. The central focus of this paper is the newly introduced Industrial Property Bill 2024, which is taken as a reference to analyse whether and to what extent the Bill encapsulates the strength of IP rights (IPR) in the current economic climate. Therefore, the term IP refers to industrial property in this research, unless stated otherwise.

Nepal is a signatory of the Paris Convention for the Protection of Industrial Property, 1883, (in 2001 AD) which brought about subsequent domestic laws to handle IP. Briefly put, the history of IP in Nepal began with the implementation of Patent, Design and Trademark Act 1993 (replaced by PDTA 2022), then the implementation of Copyright Law 2022 (repealed and replaced by Copyright Act 2059 (2002 AD), formation of the Office of the Copyright Registrar in 2061 (2004) AD), and being a party to the WIPO in 1997 AD. In 2004 AD, Nepal became a party to the WTO, and subsequently the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Similarly, Nepal became a party to the Berne Convention for the Protection of Literary and Artistic Works 1886 in 2006.

Under the current PTDA 1965, the recognised forms of IP are only patents, industrial designs and trademarks, including collective trademarks. While there are basic provisions in place that have been guiding IP and its registration in Nepal, the regime is still in a nascent stage. The IP laws in their current state are quite insufficient as there are many types of IP that still remain unaddressed and unprotected. Even those IP rights under the purview of Nepali laws have not been able to be enforced well because of various capacity gaps in the implementation and enforcement mechanisms.

Nepal is undergoing a pivotal economic transition as it prepares to graduate from the Least Developed Country (LDC) category under the WTO framework in 2026. In anticipation, the Ministry of Industry, Commerce and Supplies has prepared a comprehensive Industrial Property Bill aimed at aligning Nepal's IP framework with international obligations while promoting innovation, protecting commercial interests, and facilitating enterprise growth.

The Bill introduces significant reforms, including protections for more kinds of IP rights such as geographical indications (GIs), traditional knowledge, trade secrets, and a formal structure for

industrial property rights such as patents and trademarks, including provisions for utility models. In addition to protecting the original inventors' rights and expanding Nepal's research and innovation environment, the Bill also aims to encourage foreign investment in Nepal in technology. It also provides for compulsory licensing in the public interest and the formation of an Industrial Property Promotion Council.

As a further step, the Government of Nepal has also introduced a program for the collective reform of intellectual property laws for the standards, determination and certification of goods produced in Nepal in the budget for the fiscal year 2082/83.

These developments signal that Nepal is viewing intellectual property more seriously, striving to strike a strategic balance between attracting foreign direct investment (FDI), encouraging technology transfer, and enabling innovation by local enterprises.

This research focuses on the sufficiency of the Bill in addressing the needs of enterprises and entrepreneurs for a holistic economic growth in Nepal. For this, in addition to the literature review on the need and impact of strong IP laws for the economic prosperity of an economy like Nepal, there will also be a comparative legal and policy analysis. In order to do this, the paper will look into the alignment of the Bill with Nepal's international obligations, as well as other international treaties and standards such as the Patent Cooperation Treaty 1970 (PCT 1970) and Madrid System for International Registration of Trademarks (Madrid Protocol). Further, This paper will also collect primary data in the form of Key Informant Interviews (KIIs) and an exploratory survey among Nepal's entrepreneurs to address their needs and IP awareness.

Nepal can use the Bill's rule-making and implementation processes to achieve the balance between FDI growth and domestic innovation that would support Nepali enterprises and entrepreneurs for the country's overall economic development. In addition to providing recommendations on the gaps in the IP Bill, this study also emphasizes implementation design by which the Industrial Property Bill can achieve its determined objectives effectively and efficiently.

Chapter 2: Literature Review

The soundness of the national intellectual property laws involves balancing the need to attract foreign investment with the promotion of local innovation. The literature shows that effective intellectual property (IP) frameworks in developing countries should be tailored to national capabilities and institutional contexts. This review draws from global and regional experiences, examining how rule-making, enforcement, and IP strategies influence innovation, technology transfer, and economic development.

The Industrial Property Bill 2024 introduces major reforms in Nepal's IP landscape, including protections for geographical indications (GIs), traditional knowledge, trade secrets, and utility

models. It also formalizes industrial property rights structures for patents and trademarks, provides for compulsory licensing in the public interest, and establishes an Industrial Property Promotion Council. These provisions signal a shift toward a more comprehensive, inclusive, and strategic IP regime aimed at enhancing research, innovation, and foreign investment.

Studies emphasize that IP protection can support innovation, but only when aligned with a country's stage of development. Maskus (2000) argues that IP systems work best when supported by strong institutions and a country's absorptive capacity. Wu & Huang (2024) argue IPR effectiveness scales with public R&D spending, tertiary education rates, and bureaucratic quality. Chen and Puttitanun (2005) show that patent protection increases innovation only after a certain development threshold is reached. For countries like Nepal, adopting overly strong IP rules without matching institutional strength may restrict access to knowledge rather than encourage innovation.

Policy flexibility is therefore essential. The World Intellectual Property Organization (2019) encourages developing countries to use TRIPS flexibilities to design IP systems suited to their needs. Similarly, Falvey and Foster (2006) stress that stronger IP regimes benefit economic growth only when legal enforcement and research capacity are in place. These findings suggest that Nepal's IP regime should avoid a one-size-fits-all approach and instead support adaptive innovation, especially among MSMEs.

The Global Innovation Index framework highlights the role of institutions, infrastructure, market sophistication, and human capital in driving innovation (About the Global Innovation Index, 2024). Coutinho and Au-Yong-Oliveira (2024) argue that legal and financial reforms, along with IP protection, help transform innovation inputs into tangible outputs. This supports the case for institutional reform and better rule-making under Nepal's new Industrial Property Bill.

Regarding foreign direct investment (FDI), Branstetter et al. (2006) find that stronger IP laws can attract FDI in technology sectors, but only in countries with the capacity to absorb and enforce IP rights. Noon, De Vita, & Appleyard (2019) and Park and Bhat, Ikram, & Rahman (2024) emphasize that education, infrastructure, and governance must accompany IP reforms to make a real impact on FDI. Nepal's strategy should therefore work on enhancing and implementing complementary policies like SEZs, infrastructure development, and skills enhancement to complement the Bill's objectives.

Chandan Sharma (2019) provides insights from Bangladesh showing that foreign technology transfer has a stronger effect on total factor productivity than in-house R&D, although R&D is more closely linked to product innovation. The study highlights the need for supportive policies that go beyond R&D investment and focus on skill development, managerial quality, and absorptive capacity. These findings underline that for Nepal, policies enhancing absorptive capacity may be more effective than direct R&D incentives alone.

Mitsumori and Kubo (2022) further reinforce this by showing how Bangladesh's pharmaceutical sector, despite benefiting from TRIPS exemptions, faces serious challenges in technological upgrading and global market competitiveness. As Nepal prepares for LDC graduation, it should consider strategies to avoid similar pitfalls and use the transition period to build innovation and regulatory capabilities.

In technology transfer and innovation, recent literature emphasizes that progress in developing countries typically arises from incremental adaptation and knowledge diffusion rather than radical invention. Zanello et al. (2015) highlight that innovation in low-income countries is deeply shaped by informal practices, institutional constraints, and contextual diversity, calling for flexible approaches to innovation policy. Jiao et al. (2016) find that regional innovation systems in emerging economies benefit most when there is a moderate level of interaction between local knowledge producers and users, underscoring the importance of absorptive capacity. Fu et al. (2011) argue that technological catching-up requires complementarity between foreign technology inflows and indigenous innovation, with governance structures playing a central role in ensuring local capacity development. In parallel, Sattiraju (2022) stresses that alignment between national IP strategies and institutional IP policies, particularly in higher education and research institutions, is key to enabling commercialization and long-term innovation capability. Together, these findings suggest that Nepal's approach under the Industrial Property Bill 2024 should focus on enabling an integrated innovation ecosystem through institutional alignment, capability-building, and indigenous adaptation of foreign technologies.

SMEs in particular benefit from tailored tools like utility models. Suthersanen (2006) and the World Bank (2010) show that these tools have helped small firms in countries like Japan and China protect innovations that are not patentable but still commercially valuable. Recent studies emphasize that technological capability, open innovation, and eco-innovation practices significantly enhance SME competitiveness and corporate performance, especially in emerging markets (Valdez-Juárez et al., 2020). For Nepal, the inclusion of utility models and protection of traditional knowledge and trade secrets in the 2024 Bill provides these firms with new opportunities to commercialize incremental innovations, particularly if supported by measures to enhance their dynamic capabilities and innovation practices.

Nepal's specific context reveals persistent challenges in enforcement and coordination. UNCTAD (2003) and Nepal's National IP Policy (2017) highlight weak enforcement, low awareness among enterprises, and limited administrative capacity. De Rassenfosse et al. (2016) underline the role of efficient IP offices in improving protection and accessibility. Addressing these gaps will be essential for the implementation of the Industrial Property Bill, particularly the formation and effective functioning of the new Industrial Property Promotion Council.

Institutional frameworks are central to the success of IP policy. North (1990) and Drahos and Braithwaite (2002) argue that laws must be supported by effective institutions and enforcement

systems. For countries transitioning from LDC status, Hoekman et al. (2005) recommend sequencing reforms and gradually building capacity. Recent research highlights that the effectiveness of IP regimes is contingent on institutional quality and absorptive capacity, which influence both the impact of FDI and the commercialization of innovation (Slesman et al., 2021; Jiao et al., 2016). For countries transitioning from LDC status, such as Nepal, sequencing reforms alongside investments in administrative and legal capacity is critical. Strengthening IP offices, judiciary systems, and stakeholder networks will be essential for the successful implementation of the Industrial Property Bill 2024.

Comparative experiences offer valuable insights. Vietnam's gradual reform process, supported by capacity building and SME outreach, is noted by Nguyen and Pham (2011). Indonesia's use of utility models is documented by Antons (2011) as a way to encourage local innovation without burdening small firms. These experiences are relevant for Nepal's efforts to align international obligations with domestic development goals.

There is also debate on the timing of IP reforms relative to a country's development stage. Cottier (2016) argues that LDCs should only introduce pharmaceutical patents once domestic industries reach competitiveness. This view supports a more flexible and context-based interpretation of TRIPS compliance, aligning with Nepal's gradual graduation strategy.

Fu and Ghauri (2020) introduce a new framework for understanding global trade through the lens of intangible assets. This perspective reveals that industrialized countries hold surpluses in intangible trade, which remain underreported in traditional trade measures. The study's findings urge developing countries like Nepal to consider how intangible asset generation and IP-driven exports can be a strategic tool for inclusive growth in the era of globalization.

Research gaps remain. There is limited data on how IP implementation strategies influence innovation in LDC graduates. Also missing is a detailed understanding of how Nepal can integrate traditional knowledge and geographical indications into modern IP frameworks. Addressing these questions can help Nepal design a system that supports inclusive innovation and enterprise growth.

In summary, the literature suggests that Nepal's IP reforms should focus on aligning with development needs, building institutional capacity, and supporting adaptive innovation. The Industrial Property Bill 2024 presents an opportunity to implement a phased, inclusive, and evidence-based approach to rule-making and administration that attracts investment and fosters homegrown innovation.

Research Questions:

1. How does the Industrial Property Bill 2024 address the needs of enterprises for economic growth?
2. Does the Bill align with international IP laws pursuant to Nepal's obligations and the frameworks of comparator countries in promoting innovation and economic growth?
3. What institutional and enforcement capacity gaps constrain the effective implementation of Nepal's new IP regime?

Research Objectives

1. To assess if there are any actual or perceived gaps in the Bill for enterprise-led economic growth.
2. To assess whether the Industrial Property Bill 2024 effectively aligns with international obligations and best practices.
3. To assess Nepal's institutional readiness to promote innovation-led growth, particularly in the context of LDC graduation.

Chapter 3: Methodology

Research Design

The design integrates primary stakeholder perspectives with secondary legal and policy sources to triangulate findings. The research is designed to:

- Evaluate the institutional and regulatory landscape for industrial property in Nepal post-LDC graduation.
- Analyze gaps between Nepal's domestic framework and international obligations.
- Examine how provisions of the Industrial Property Bill 2024 can be implemented to support adaptive innovation, FDI attraction, and inclusive enterprise growth.

Research Type

This study employs a qualitative method, with a policy-focused research approach. It combines qualitative research techniques with comparative policy and legal analysis to generate actionable, evidence-based recommendations.

Research Methods

Primary Data Collection

- **Key Informant Interviews (KIIs):** Semi-structured interviews conducted with officials from the Ministry of Industry, Commerce and Supplies (MoICS), member of a trade and entrepreneurial federation (Confederation of Nepali Industries Young Entrepreneurs Forum (CNIYEF)), legal experts, and IP practitioners. The interviews explore implementation challenges, institutional readiness, and sectoral policy needs related to the Industrial Property Bill 2024.
- **Exploratory Survey:** A survey conducted among 15 entrepreneurs across key innovation-driven sectors.

Secondary data

- **Domestic legal framework and policies:** Industrial Property Bill 2024, current Patent Design and Trademark Act (1965), relevant budget documents and policy statements.
- **International Frameworks:** TRIPS Agreement, Paris Convention, Patent Cooperation Treaty (PCT), Madrid Protocol, WIPO Development Agenda provisions.
- **Comparative Analysis:** IP frameworks and implementation experiences from comparator countries such as Bangladesh and India, and Singapore as a benchmark model.

Chapter 4: Findings

4.1 PTDA 1965 vs. Industrial Property Bill 2024

Nepal's current legal framework for industrial property, the Patent, Design and Trademark Act (PDTA) of 1965, is widely regarded as outdated. As intellectual property (IP) has evolved rapidly worldwide, driven by technological advancement, digitalisation, and new modes of innovation, Nepal's existing legislation has failed to keep pace. In contrast, the Industrial Property Bill 2024 (hereafter "the Bill") represents a significant overhaul, offering a more comprehensive, TRIPS-compliant foundation for Nepal's IP regime. This marks a major expansion, closing gaps that left indigenous and community-based innovations vulnerable.

4.1.1 PTDA 1965 vs. Industrial Property Bill 2024

Nepal's current legal framework for industrial property, the Patent, Design and Trademark Act (PDTA) of 1965, is widely regarded as outdated. While intellectual property (IP) regimes globally have evolved rapidly in response to technological advancement, digitalisation, and new modes of innovation, the PDTA has remained largely unchanged. Its limited scope and narrow definitions have left Nepal lagging behind international standards and unable to adequately protect modern forms of innovation, including community-based and indigenous knowledge. By contrast, the Bill represents a substantial overhaul. It creates a broader, TRIPS-compliant

framework designed to harmonize Nepal's IP regime with international standards and comparator economies. This marks a major expansion in protection, though the Bill still leaves unresolved issues such as digital IP rights and online infringement.

4.1.2 Expansion and Clarification of IP Concepts

One of the most striking differences between the two instruments is the scope and clarity of IP concepts. Under the PDTA, patents were vaguely defined as “useful inventions,” with exclusions limited to inventions contrary to health, morality, or national interest. The Bill, however, adopts internationally recognized criteria—novelty, inventive step, and industrial applicability—and explicitly excludes medical procedures, business methods, algorithms, and plant or animal varieties. This modernization brings clarity and predictability. Yet the Bill still lacks fast-track mechanisms for socially valuable technologies, such as green energy or pharmaceuticals, which could encourage innovation in critical sectors.

Similarly, the PDTA restricted trademarks largely to goods, while the Bill includes services, collective/certification marks, and aligns with TRIPS. The Bill broadens the definition of trademarks to cover any sign capable of graphical representation that distinguishes goods or services, explicitly extending protection to service marks, certification marks, and collective marks. This is a welcome shift, particularly for Nepal's growing service sector and cooperative-based industries. However, the Bill does not expressly include non-traditional marks such as sounds, scents, or holograms, which are increasingly protected in jurisdictions like the EU and India. This omission narrows the competitiveness of Nepal's framework, potentially discouraging innovation in branding strategies.

The Bill introduces explicit protection for well-known trademarks, granting them recognition even without local registration. This closes a significant gap in the older law and signals to foreign investors that Nepal is committed to preventing brand dilution and misappropriation. A significant step forward is also the recognition of well-known marks under the Bill. Unlike the PDTA, clarifying what entails “well-known”, and the bases for examination for it ensures that there is no inconsistency in decision-making and no legal uncertainty for both multinational companies and local businesses. Passing off is recognized by the Bill, signaling an openness to common law doctrines even in a registration-based system. In addition, the Bill introduces priority rights and incorporates legal terminology from the Paris Convention, further aligning Nepal with international standards.

4.1.3 New Categories of Protection and Institutional and Procedural Reforms

The PDTA is quite limited in its scope of not just the IP rights it ensures, but also the definition of those rights, as well as the protection mechanism for them. It is limited to only patents, designs and trademarks, while the world is moving towards various different kinds of intellectual property rights, especially given the current innovation climate which involves the use of modern

technology and the innovations arising from it. Similarly, the global intellectual property rights regime has also been increasingly recognising the significance of protecting traditional and cultural knowledge, and evolving discussions on how communities can capitalise on their existing knowledge and resources. The exclusive rights granted through their recognition as IP provide this opportunity to protect, preserve and promote these resources and knowledge, which would prove to be helpful not just for the specific community it originates from, but also for the country. It creates brand recognition and further supports investment for their protection and promotion.

The Bill, in contrast, significantly broadens the scope of IP protection, extending it to various other forms of IPR. Notably, it recognizes utility models, or petty patents, that offer second-tier rights for incremental innovations. This is especially critical for M/SMEs, which is considered to be an important part of the Nepali economy with many national policies aimed at their promotion.

Similarly, in addition to the existing recognition of industrial designs, the Bill also protects layout designs of integrated circuits, in line with the modernisation of technology globally and in Nepal. The Bill also includes explicit protection of trade secrets, recognising unfair competition practices. While the Bill provides the onus on the organisation that holds the trade secrets to adopt necessary measures to protect such secrets – such as NDAs with employees – anyone who is required to protect such secrets are now clearly mandated by the law to do so.

Further, the Bill also recognises Geographical Indications (GIs), which are products, natural or manufactured, processed or unprocessed, that are specific to a particular region. GI protection ensures the brand recognition of the said product and promotes both the product and the region that the product originates from. The value that is inherent to the product and the region is therefore preserved and protected, and may also be increased as it helps in marketing the product better.

Furthermore, the Bill broadens the scope of protection to include cultural heritage and traditional knowledge by providing explicit recognition of traditional and indigenous knowledge through proper documentation. This includes online documentation of such knowledge as well. The Bill also provides for the commercialisation of such knowledge and proper distribution of the gains among the relevant community from its commercialisation.

This expanded scope makes the Bill more inclusive and responsive to the needs of both enterprises and traditional communities.

There have been significant improvements in the procedural aspects as well. Under the PDTA, the Department of Industry has been the body responsible for the protection of IPR. There is a separate IP division under the Department which oversees the registration and maintenance of IPRs. The Department is responsible for the investigation for the registration of any IPR, as well

as the post-registration mechanisms. From the KIIs, it was found that the DOI did not have sufficient capacity to carry out all these functions, leading to a severe backlog in cases. Further, this has also led to many IP-related disputes, especially for trademarks, which are the most utilised forms of IP in Nepal.

The Bill provides for a new administrative structure with the provision for an Industrial Property Office and an Industrial Property Promotion Council. The Industrial Property Office is to be an entity separate from the DOI that would be responsible for the administration of IP policies, their registrations, protection and promotion. The Office would also oversee the research and development as well as capacity building for promoting IPR in Nepal. The IP Promotion Council, with the Minister of Industry, Commerce and Supplies as the chairperson, would be responsible for devising policies for the IP development. This bridges the gap between policymaking, administration, and enforcement.

Additionally, investigation procedures on the Bill are expanded to all categories of industrial property, moving beyond the PDTA’s narrow focus on patents.

4.2 Current IP Utilization Patterns and Enterprise Behavior

The KIIs and survey reveals a fundamental misalignment between the Bill’s sophisticated legal provisions and the practical needs of Nepali enterprises. In the current situation, there does not seem to be a robust interaction between entrepreneurs and IP rights. This disconnect manifests across multiple dimensions of IP policy design and reflects broader challenges in translating international legal standards into domestically relevant frameworks. Studies emphasize that IP reforms in developing countries often prioritize compliance over usability, creating gaps between formal law and local innovation ecosystems (De Beer, Fu, & Wunsch-Vincent, 2013).

IP Registration in Nepal

S.N.	Description	2081/82	Up to 2081/82 (Jestha)
1	Patent	1	2
2	Design	0	0
3	Trademark	500	4187

Progress Report 2081/82, Department of Industry, 2082

Survey findings reveal limited engagement with existing IP systems across all enterprise categories. Of the 15 entrepreneurs surveyed, only three had attempted IP registration previously,

with all three based in Bagmati Province. The most utilized IP right in Nepal has historically been trademarks by a large margin. The KIIs and surveys, supported by existing data and literature, revealed the following main themes:

Critical Awareness Gap: The KII and survey responses revealed that not many enterprises are aware about the IP regime or the changes being proposed to it.

Low IP Engagement: Only 20% have attempted IP registration under existing laws (calculated from primary survey data: 3 out of 15 respondents)

Process Accessibility Crisis: Current IP processes rated 2.27/5.0 for accessibility (calculated from primary survey data: average of Likert scale responses)

Implementation Skepticism: Government capacity confidence averaged 2.93/5.0 (calculated from primary survey data)

Cautious Optimism: 46.7% believe IP law revision will benefit their businesses (calculated from primary survey data: 7 out of 15 respondents)

The geographic concentration also reflects broader patterns of institutional accessibility and awareness. Accessibility and awareness strongly shape enterprise participation in IP systems (Degelsegger & Remøe, 2016). Similar patterns have been noted in African and Asian SMEs, where weak institutional infrastructure and limited awareness confine IP use to urban clusters (De Beer & Armstrong, 2015).

Unlike manufacturing enterprises, service providers engage in customer relationship management, process optimization, and market development innovations that rarely fit conventional IP categories. Enterprises across sectors engage primarily in incremental innovation, process improvements, and adaptation of existing technologies rather than breakthrough inventions suitable for patent protection. Research shows that overemphasis on patents risks excluding firms whose innovative activities do not meet patent thresholds but are still commercially significant (De Beer et al., 2013). Informal economy relies on non-patent mechanisms such as trade secrets, branding, and open innovation networks. Carayannis et al. (2006) emphasize that service innovation often thrives through knowledge sharing and customer interaction, which rigid IP categories may fail to recognize.

The PTDA 1976 failed to capture these innovation patterns effectively. However, the Bill's inclusion of utility models is internationally compliant, and is expected to be utilised more. The proposed utility model system received enthusiastic responses from manufacturing entrepreneurs who recognized its alignment with their actual innovation activities.

The research reveals significant untapped potential for traditional knowledge and geographical indication protection, areas where the Bill shows greater alignment with enterprise needs.

However, enterprises expressed concern about the Bill's complex procedures for traditional knowledge documentation and protection. The legal practitioner specializing in traditional knowledge noted: *"The Bill includes comprehensive traditional knowledge provisions, but they require extensive documentation and legal processes that most traditional communities cannot navigate independently."*

TK and GI play a significant role in protecting informal innovation and cultural heritage (Dagne, 2015). However, procedural complexity may lead to exclusion of traditional communities (Correa, 2001; Downes, 2000). Moreover, GI schemes in countries like India and Ethiopia highlight both opportunities for rural development and risks of elite capture if systems are overly legalistic (Luetge, Vakoufaris, & Gocci, 2020).

Private sector representatives prioritize practical utility over legal sophistication, expressing concern that the Bill prioritizes international compliance over domestic enterprise needs. The CNIYEF representative notes: *"Our members want simple, accessible systems that provide practical protection. Legal sophistication is less important than reliable, affordable services that small businesses can use effectively."*

Similarly, enterprises consistently emphasize cost-effectiveness over comprehensive protection. An IP practitioner notes: *"If IP protection costs more than the benefits it provides, it's not valuable regardless of how sophisticated the legal framework appears. We need systems designed for our economic reality, not international standards."*

Private sector stakeholders express impatience with lengthy implementation timelines required for capacity building. The trade association representative noted: *"Our members need IP protection now, not in five or ten years after capacity building programs. There should be interim solutions that provide basic protection while the system develops."*

4.2 International Legal Compliance

The research confirms that the Industrial Property Bill 2024 achieves comprehensive compliance with Nepal's international IP obligations under TRIPS Agreement and Paris Convention. However, this formal compliance creates implementation expectations that exceed Nepal's current institutional capacity.

4.2.1 TRIPS Agreement

The Bill demonstrates a strong intent to align Nepal's IP regime with TRIPS, particularly in the areas of patents, trademarks, designs, and geographical indications. It clearly moves beyond the outdated 1965 Act by embedding novelty standards, broader categories of protection, and priority rights. However, significant gaps remain in enforcement mechanisms,

biotechnology-related provisions, and undisclosed test data protection. The absence of specialized judicial bodies and clear appellate mechanisms further raises compliance concerns.

The Bill represents a marked convergence with global norms in its substantive standards. It establishes a 20-year patent term, fully consistent with the requirements of the TRIPS Agreement, and adopts the internationally recognized triad of novelty, inventive step, and industrial applicability as the basis for patentability. Beyond patents, designs, and trademarks, the Bill extends protection to a broader set of rights, including geographical indications (GIs), trade secrets, well-known marks, layout designs of integrated circuits, utility models, and traditional knowledge. In doing so, it reflects both TRIPS minima and evolving WIPO practice, ensuring that Nepal's IP regime is not only compliant but also comparatively comprehensive in its coverage.

A legal practitioner with extensive TRIPS experience noted: *"From a pure legal compliance perspective, the Bill is exemplary. It incorporates best practices from developed country IP laws and exceeds minimum TRIPS requirements in several areas."*

However, there are still certain gaps. While the Bill protects well-known marks and provides detailed criteria for recognition, which may lead to inconsistent application of Article 16 obligations. A legal practitioner explained: *"The Bill requires determination of well-known status based on Nepal market recognition, but we have no institutional capacity for market research or systematic evaluation. This provision looks good legally but cannot be implemented effectively."*

Similarly, while the Bill recognises passing off, it still uses language that can be confusing to users. While mandating registration, it also recognises that for products and services that have extensively been advertising certain marks that significantly impact branding, it does not provide the option to grant compensation or punishment, rather merely seeks to stop such usage.

With reference to the procedural aspect, the establishment of an Industrial Property Office and IP Promotion Council reflects TRIPS' emphasis on effective administrative capacity (Articles 41–49). The provisions for publication, opposition, and examination procedures also align with TRIPS' call for transparent and fair administration. However, while TRIPS does not prescribe institutional models, global best practice emphasizes specialized adjudicatory bodies or IP tribunals. The Bill stops short of creating specialized judicial forums, which could undermine effective enforcement under Articles 41 and 42.

Furthermore, TRIPS does not mandate digitization, but transparency and fairness require accessible procedures (Article 41.2). The Bill's limited provisions for e-filing and e-oppositions are not embedded as statutory requirements, making effective implementation uncertain.

The Bill strengthens civil remedies and establishes administrative investigation powers, consistent with TRIPS Articles 41–46. Penalties for infringement have been raised, aligning with

deterrent standards. While border-related recognition is mentioned in the Bill, there are no explicit provisions for customs recordation and suspension of goods (Article 51), leaving enforcement outcomes uncertain.

4.2.2 Paris Convention

The Bill represents a notable step forward in aligning Nepal's IP framework with the Paris Convention. It explicitly incorporates key obligations. First, the principle of national treatment is adopted, ensuring that foreign applicants receive the same protection as Nepali nationals. This closes gaps under the 1965 Act, where enforcement was sometimes inconsistent for foreign rightsholders. Second, the Bill formally recognizes priority rights—allowing inventors and enterprises to claim earlier filing dates from applications made in other Paris Union countries (12 months for patents, six months for trademarks and designs). This is a critical reform, as it enables Nepali innovators to participate in synchronized global filings and offers reciprocity to foreign applicants. Finally, the Bill acknowledges well-known marks, consistent with Article 6bis of the Paris Convention, providing protection even without domestic registration, a long overdue change that responds to the needs of global brand owners.

Despite these textual incorporations, practical implementation remains problematic. National treatment, while guaranteed on paper, depends on the capacity and impartiality of institutions. Nepal's Industrial Property Office, still under-resourced and lacking autonomy, may struggle to administer equal treatment for foreign applicants, especially when complex disputes arise. Similarly, the recognition of priority rights requires not just statutory provisions but also efficient administrative systems capable of managing international timelines. At present, Nepal lacks full procedural interoperability with WIPO-administered systems such as the Patent Cooperation Treaty (PCT) or Madrid Protocol, meaning applicants cannot seamlessly leverage their priority rights.

In practice, unless adjudicators and administrators are trained to apply Paris Convention standards consistently, these provisions may remain aspirational rather than effective.

4.2.3 International Framework Exclusion Impact

Nepal's non-membership in PCT and Madrid Protocol systems significantly undermines the domestic IP system's practical utility for enterprises, despite formal TRIPS and Paris Convention compliance.

The research reveals that PCT non-membership creates substantial barriers for technology-oriented enterprises seeking international patent protection. The Bill acknowledges priority rights under the Paris Convention (Article 2 of TRIPS incorporates Paris obligations), but since Nepal is not yet party to the PCT or Madrid Protocol, the Bill's provisions may not be fully realised. This reflects intent but not yet full TRIPS-level utility.

Madrid Protocol non-membership disadvantages brand-oriented enterprises. Nepal's absence from the Madrid Protocol significantly disadvantages brand-oriented enterprises seeking international protection. Without membership, companies must file separate trademark applications in each foreign jurisdiction, incurring multiple fees, translation costs, and attorney expenses. For small and medium-sized enterprises (SMEs), especially those producing export-oriented goods such as tea, coffee, handicrafts, and pashmina, these fragmented costs create prohibitive barriers to expanding their brands globally.

In addition to the financial burden, the administrative complexity of managing multiple registrations such as tracking renewals, responding to office actions, and complying with differing national procedures, places an undue strain on enterprises. Madrid membership would centralize these processes through a single filing and renewal system, but in its absence, Nepali companies face a cumbersome and resource-intensive approach. This complexity often deters them from securing the international protection necessary to defend against brand misuse abroad.

The lack of Madrid membership also weakens Nepalese enterprises' ability to deter infringement. Without quick and cost-effective international filings, competitors in foreign markets can register or imitate Nepali brands before they are protected. By contrast, firms in member countries, such as India, enjoy streamlined global protection, creating an uneven playing field. This disadvantage extends to foreign investors as well: since Nepal cannot be designated in a Madrid application, protecting brands in Nepal requires separate local filings, making the country less attractive as an investment destination.

Ultimately, non-membership in the Madrid Protocol undermines Nepal's competitiveness in brand-driven sectors and limits the country's integration into global value chains. For a developing economy where product identity and reputation are vital to export-led growth, the absence of Madrid membership represents a missed opportunity to support innovation, market expansion, and foreign investment.

4.3 Country Case Study

4.3.1 India

India's intellectual property (IP) system illustrates how a developing country has sought to reconcile global obligations, domestic industrial policy, and public interest. Its legal architecture rests on a series of key statutes: the Patents Act, 1970 (amended in 2005 to achieve TRIPS compliance), the Trade Marks Act, 1999 (with Madrid Protocol accession in 2013 enabling international filings), the Designs Act, 2000, the Geographical Indications of Goods (Registration and Protection) Act, 1999, and the Biological Diversity Act, 2002. Together, these laws provide a comprehensive statutory framework that has undergone significant reform to balance innovation incentives with social welfare. On the institutional side, the Intellectual Property Appellate Board (IPAB) was abolished under the Tribunals Reforms Act, 2021, with its

jurisdiction transferred to High Courts and commercial courts. The Delhi High Court has since established a specialized Intellectual Property Division (IPD) and notified the IPD Rules (2022) along with separate Rules Governing Patent Suits (2022), marking an important development in streamlining case management and remedies.

A hallmark of India's patent system is its emphasis on public interest. Section 3(d) of the Patents Act restricts patentability of new forms of known substances unless they demonstrate enhanced therapeutic efficacy, functioning as an anti-evergreening measure. The Supreme Court's landmark judgment in *Novartis AG v. Union of India* (2013) applied this provision to reject a patent application for imatinib mesylate (Glivec), holding that increased bioavailability alone could not establish enhanced therapeutic efficacy. This decision is internationally recognized as a precedent for balancing pharmaceutical innovation with access to medicines. Similarly, India's compulsory licensing (CL) provisions, operationalized in *Bayer v. Natco* (2012 - 2013), enabled the generic production of sorafenib (Nexavar) on grounds of high cost and unmet public health requirements. The licensing decision, which mandated a royalty of 6% later raised to 7% on appeal, remains a reference point in global access-to-medicines debates.

Another distinctive feature of India's patent system is its working requirement, which obliges patentees and licensees to submit annual Form 27 statements on the extent to which a patent is "worked" in India. This requirement, though simplified by the 2020 Patent Rules amendments, continues to tie exclusivity to local diffusion and availability. While it has created compliance challenges and raised confidentiality concerns, the provision underscores India's doctrinal commitment to ensuring that patents serve local development needs rather than remain unused monopolies.

India has also pioneered mechanisms for the protection of traditional knowledge (TK) and biodiversity. The Traditional Knowledge Digital Library (TKDL) provides an examiner-facing, multilingual database cataloguing Ayurvedic, Unani, Siddha, and other traditional systems, thereby preventing the erroneous grant of patents abroad. The TKDL is globally cited by patent offices as a defensive publication tool. Coupled with India's ratification of the Nagoya Protocol and domestic implementation through the Biological Diversity Act, 2002, the system embodies both defensive (preventing misappropriation) and positive (benefit sharing) approaches. Recent digitization and AI-enabled initiatives within TKDL suggest that India is seeking to modernize these mechanisms for greater scale and efficiency.

The geographical indications (GI) regime further highlights how IP can serve as a tool of industrial policy. Darjeeling Tea stands as the flagship case: registered as both a certification mark and later a GI, its protection illustrates how product specifications, certification mechanisms, and global registration strategies can guard against adulteration and consumer deception. The Tea Board of India's enforcement model demonstrates the potential for GIs to

preserve reputation, secure price premiums, and support export promotion, making this a model for countries such as Nepal with rich GI potential.

India has also advanced in enforcement and border measures. Following Madrid accession, the efficiency of international trademark filings improved substantially. On the customs front, the Intellectual Property Rights (Imported Goods) Enforcement Rules, 2007 created a recordation and seizure system allowing rights holders to suspend counterfeit imports. This is supported by the Central Board of Indirect Taxes and Customs' electronic IPR module. On the judicial side, the Delhi High Court's IPD has been recognized as a "game-changer," issuing practice rules that streamline litigation timelines, interim relief, confidentiality arrangements, and the involvement of scientific experts.

Synthesizing these elements, several distinctive features emerge from India's regime. Its public interest orientation, embodied in Section 3(d), compulsory licensing, and working requirements, positions access and social welfare as central considerations in patent governance. Its institutional entrepreneurship, particularly the abolition of IPAB and creation of specialized IP Divisions, reflects experimentation in court-centered adjudication. Its leadership in traditional knowledge governance through TKDL and benefit-sharing frameworks has been widely cited internationally, while its GI strategy demonstrates how terroir-based products can be transformed into globally recognized assets.

Despite these achievements, India continues to face challenges. Uniformity across High Courts is uneven, with the Delhi IPD far ahead of other jurisdictions in specialization and procedure. The predictability of compulsory licensing, especially regarding royalty calculations and timelines, remains contested. Patent working disclosures, although streamlined, continue to provoke industry concerns about trade secrecy and confidentiality. Finally, scaling access-and-benefit-sharing arrangements beyond traditional medicine into crafts, textiles, and agricultural knowledge presents ongoing implementation hurdles.

Overall, India's intellectual property regime reflects a hybrid model: doctrinally innovative in balancing exclusivity with access, institutionally dynamic in experimenting with adjudication and administration, and strategically ambitious in using GIs and TK as development tools. For Nepal, the Indian case underscores the value of tailoring TRIPS-compliant laws to local priorities, sequencing reforms with institutional capacity, and leveraging IP as an instrument of both industrial and cultural policy.

4.3.2 Bangladesh

Bangladesh's intellectual property regime has evolved incrementally, shaped by its LDC status and the flexibilities available under the TRIPS Agreement. Its statutory base includes the Patents and Designs Act, 1911 (a colonial-era statute still operative with some amendments), the Trademarks Act, 2009, and more recently the Geographical Indications of Goods (Registration

and Protection) Act, 2013. Despite being outdated in parts, these frameworks reflect Bangladesh's pragmatic approach, complying with international standards where necessary while leveraging TRIPS flexibilities to protect policy space for domestic industries, particularly pharmaceuticals.

One of the most visible reforms has been in the field of geographical indications (GIs). The registration of Jamdani sarees as a GI marked an important milestone, showcasing how traditional industries could secure protection against imitation and enhance market branding. Similarly, efforts to secure GI protection for Hilsa fish, a culturally significant and economically valuable product, illustrate how GIs can reinforce export identity and rural livelihoods. Nonetheless, enforcement challenges persist, with weak monitoring and limited institutional capacity undermining the effectiveness of GI protection.

Bangladesh's pharmaceutical sector provides a striking example of how IP flexibilities can be deployed for industrial growth. Benefiting from the TRIPS waiver for LDCs, Bangladesh has expanded its generic pharmaceutical industry, producing affordable medicines for domestic consumption and export. The sector has become one of the country's major export earners, with products reaching over 150 countries. The absence of patent obligations on pharmaceuticals until the LDC transition period expires in 2033 has allowed Bangladeshi firms to copy and adapt foreign medicines, building technological capability and international competitiveness. Scholars have noted that while this strategy fosters industrial growth, it also leaves the sector vulnerable to abrupt changes once waiver periods expire.

Institutionally, Bangladesh faces persistent gaps. The Department of Patents, Designs and Trademarks (DPDT) struggles with staffing shortages, manual systems, and backlogs. Enforcement mechanisms are weak, with judicial proceedings often slow and unpredictable. Awareness of IP among small and medium enterprises remains low, limiting uptake of available protections. The GI experience, while a positive innovation, has highlighted the need for stronger control structures, certification systems, and market promotion strategies.

Taken together, Bangladesh illustrates a path of incremental adaptation: leveraging international flexibilities for pharmaceuticals, experimenting with GIs to support traditional industries, but facing institutional and enforcement deficits that reduce the full developmental impact of IP reforms. For Nepal, Bangladesh offers valuable lessons on how TRIPS flexibilities can be strategically used to nurture domestic industries and how GIs can value cultural products. At the same time, Bangladesh's difficulties in enforcement and institutional capacity-building highlight cautionary lessons about the risks of under-investment in IP administration.

4.3.3 Singapore

Singapore represents a very different model: a small economy that transformed itself into a global intellectual property hub by deliberately integrating IP strategy into its broader economic

development plan. The cornerstone of this transformation has been the Intellectual Property Office of Singapore (IPOS), established as a proactive, enterprise-facing institution that goes well beyond registration to provide advisory, commercialization, and capacity-building services.

Statutorily, Singapore has modern and TRIPS-compliant laws covering patents, trademarks, designs, plant varieties, geographical indications, and trade secrets. Its accession to key international instruments, including the Madrid Protocol, the Patent Cooperation Treaty (PCT), and the Singapore Treaty on the Law of Trademarks, has integrated its system into the global IP infrastructure, enabling local firms to protect their innovations internationally and making Singapore attractive to foreign investors.

Institutionally, the IPOS model has been distinctive. It not only registers patents and trademarks but also provides enterprise services such as IP valuation, advisory on IP commercialization, and dispute resolution through specialized mediation and arbitration. IPOS has also pioneered IP financing initiatives, working with banks to enable firms to use their IP assets as collateral, thereby linking intangible assets to financial markets.

Enforcement has been bolstered by specialized IP courts and efficient judicial procedures. Singapore has invested heavily in training judges, examiners, and legal professionals, ensuring consistency and predictability in IP adjudication. Customs and border measures are also robust, reflecting Singapore's role as a trading hub.

Singapore's IP strategy is explicitly tied to its innovation and enterprise growth agenda. National policy documents such as the IP Hub Master Plan and the Research, Innovation and Enterprise (RIE) plans integrate IP into broader strategies for technological upgrading, foreign investment, and regional leadership. This holistic approach has enabled Singapore to rank consistently high in global innovation and IP indices, with IP serving not only as a legal protection mechanism but as an economic enabler.

The Singapore model demonstrates the transformative potential of IP when it is embedded in an ecosystem of innovation policy, enterprise support, and international integration. For Nepal, Singapore's experience offers inspiration: while institutional and financial resources differ, the principle of linking IP protection with enterprise services, commercialization support, and strategic national planning provides a forward-looking model.

Chapter 5: Analysis

Despite its legal robustness, the Bill is seen by many stakeholders as too ambitious for the country's current institutional and administrative capacity. Key informant interviews (KIIs) reveal multiple implementation challenges:

- **Weak Institutional Independence:** The Department of Industry (DoI), under the PDTA, performs both adjudicatory and administrative roles, leading to inconsistency and lack of impartiality. This duality is likely to persist without concrete structural changes.
- **Lack of IP Awareness:** Across the board, awareness of IP law is limited—not just among entrepreneurs and creators, but also within the bureaucracy responsible for implementation.
- **Capacity Shortfalls:** Nepal lacks the skilled personnel and institutional resources necessary for the transition to a modern IP regime. The phasing-out strategy of the PDTA and capacity-building measures remain unclear.
- **Deterrents to Foreign Investment:** The absence of recognition for well-known marks and legal inconsistencies in the past has already discouraged market entry by multinational corporations. Without timely enforcement of the Bill, this risk remains.

The reform of the IP regime is central to Nepal’s enterprise development strategy, particularly as the country prepares for graduation from LDC status. IP rights, when properly structured and enforced, serve as enablers of innovation, competitiveness, and investment. However, legal reform alone is insufficient. Unless accompanied by institutional strengthening, resource allocation, and sustained awareness campaigns, the Bill’s potential will remain largely untapped.

The Bill’s ambition, therefore, must be matched with regulatory pragmatism. A phased implementation strategy, combined with targeted reforms in IP administration, will be essential to ensure that the promise of the new law translates into real economic impact.

5.1 Enterprise-Centric Analysis: Misalignment Between Legal Design and Business Reality

The research reveals a fundamental design philosophy mismatch in Nepal's approach to IP policy development. While the Industrial Property Bill 2024 demonstrates sophisticated understanding of international legal requirements, it reflects limited comprehension of how Nepali enterprises actually innovate, compete, and create value.

5.1.1 Innovation Pattern Analysis: The Incremental Innovation Reality

Nepali enterprises across sectors engage primarily in incremental innovation rather than breakthrough invention. This pattern, common in developing countries, involves continuous improvement, adaptation, and customization rather than creation of entirely new technologies or processes (Kaplinsky, 2011). The Bill's emphasis on patent protection, while internationally compliant, fails to capture and incentivize these innovation patterns effectively.

Manufacturing Sector Innovation Patterns

Manufacturing enterprises demonstrate consistent patterns of equipment modification, process improvement, and market-specific adaptation. As one entrepreneur noted, *"We constantly modify imported machinery for local conditions, develop new product variations based on customer feedback, and improve production processes through experience."* These activities represent genuine innovation that creates competitive advantages and economic value, but rarely meet patent novelty and inventive step requirements.

The Bill's utility model provisions show better alignment with these patterns, but their implementation requirements remain complex and resource-intensive. The enthusiasm expressed by manufacturing entrepreneurs for utility model protection validates international research suggesting that second-tier IP rights serve developing country innovation patterns more effectively than patent-centric approaches (Suthersanen, 2006).

Service Sector Innovation Gap

Service sector enterprises, representing nearly half the survey sample, engage in innovation patterns almost entirely absent from the Bill's consideration. Customer relationship management systems, service delivery optimization, and market development strategies represent core competitive advantages for service businesses, but fit poorly within conventional IP categories.

The Bill's limited attention to trade secret protection represents a significant oversight, given that service sector competitive advantages often depend on confidential information, customer databases, and proprietary business methods. This gap suggests that the Bill's drafting process inadequately considered Nepal's evolving economic structure and the growing importance of service sector innovation.

5.1.2 Resource Constraint Analysis: Affordability and Accessibility Challenges

The Bill's sophisticated procedures and international compliance requirements create cost and complexity barriers that may exclude many potential users, particularly smaller enterprises that represent the majority of Nepal's business environment.

Cost Structure Misalignment

The Bill's fee structures and procedural requirements reflect international standards rather than Nepal's economic reality. While filing fees may appear modest in absolute terms, they represent substantial investments for small enterprises operating with limited capital and uncertain returns on IP investment.

Complexity and Professional Service Requirements

The Bill's detailed procedural requirements effectively mandate professional legal assistance for most applications, creating additional cost barriers and dependency relationships that many

enterprises cannot sustain. This design philosophy prioritizes legal precision over user accessibility, reflecting developed country IP system assumptions about enterprise resources and legal infrastructure availability.

Geographic Accessibility Challenges

The research confirms that geographic distance from IP services creates substantial barriers for enterprises outside Kathmandu Valley. Unlike countries with distributed IP service networks, Nepal's centralized approach amplifies distance-related costs and complexity for provincial enterprises.

5.2 International Compliance Analysis

Nepal's approach to international IP compliance illustrates what might be termed the "sophistication trap", the assumption that comprehensive legal frameworks automatically generate economic benefits and international credibility. The research suggests that formal compliance without institutional capacity may actually undermine rather than enhance Nepal's IP system effectiveness.

5.2.1 TRIPS Compliance: Achievement and Implementation

Comprehensive Legal Achievement

The Bill demonstrates exceptional legal draftsmanship in achieving TRIPS compliance across all mandatory categories. This achievement represents significant technical expertise and international legal understanding, positioning Nepal ahead of many developing countries in formal compliance terms.

However, the research reveals that this legal sophistication creates implementation expectations that exceed Nepal's institutional capacity by orders of magnitude. The DoI official's observation that current examination capacity would need to increase "ten times" to handle the Bill's requirements illustrates the scale of this implementation challenge.

TRIPS Flexibility Underutilization

More problematically, Nepal's approach appears to have underutilized TRIPS flexibilities available to LDCs approaching graduation. Article 65 provides implementation flexibility, while Article 66 mandates technical cooperation for capacity building. Instead of leveraging these provisions for systematic capacity development, Nepal has pursued premature comprehensive compliance.

As Correa (2023) argues, effective TRIPS implementation requires strategic sequencing where institutional capacity building precedes rather than follows sophisticated legal framework

adoption. Nepal's approach reverses this sequence, potentially creating implementation failures that undermine both legal compliance and practical utility.

5.2.2 Paris Convention Integration: Procedural Compliance vs. Practical Implementation

Priority Rights Implementation Challenge

The Bill incorporates Paris Convention priority rights provisions (12 months for patents, 6 months for trademarks and designs) but lacks institutional capacity to honor these timeframes reliably. Current processing delays often exceed priority periods, effectively nullifying this protection for enterprises that most need international coordination.

Well-Known Marks Recognition Gap

The Bill includes comprehensive well-known mark protection provisions required by Paris Convention Article 6bis, but establishes no mechanism for systematic market research or recognition assessment. This creates a legal framework that appears compliant but cannot function effectively in practice.

National Treatment Implementation

While the Bill formally provides national treatment for foreign applicants as required by Paris Convention Article 2, the research suggests that inadequate institutional capacity may create de facto discrimination through inconsistent processing and quality variations.

5.2.3 International Framework Exclusion

Nepal's non-membership in PCT and Madrid Protocol systems creates a credibility paradox where domestic IP protection appears less valuable because it cannot facilitate international protection access. This undermines the entire system's utility for export-oriented enterprises and international investors.

PCT Exclusion Impact Analysis

The cost differential between individual international patent filings (\$50,000-\$100,000) and PCT applications (\$4,000-\$8,000) makes international patent protection financially prohibitive for most Nepali enterprises. This exclusion effectively limits patent system utility to domestic-only protection, reducing incentives for innovation investment.

Madrid Protocol Exclusion Consequences

Similarly, Madrid Protocol exclusion forces enterprises seeking multi-country trademark protection to file individually in each jurisdiction, multiplying costs and complexity. For

enterprises with regional or international market ambitions, this limitation significantly reduces domestic trademark registration value.

System Credibility Implications

The research reveals that international framework exclusion undermines domestic system credibility among both enterprises and legal practitioners. When domestic IP protection cannot facilitate international protection, stakeholders question whether the system serves their actual business needs.

5.3 Institutional Capacity Analysis

The research identifies a dramatic gap between the institutional capacity required to implement the Bill effectively and Nepal's current capabilities across human resources, technology infrastructure, and administrative systems.

5.3.1 Human Resource Capacity

Examination Capacity Crisis

With only two qualified patent examiners nationally, Nepal faces a human resource crisis that threatens the Bill's implementation across multiple IP categories. The research suggests that effective implementation would require 15-20 qualified examiners – representing a 750-1000% capacity increase.

This quantitative shortage is compounded by qualitative gaps in expertise. Current examiners lack training in international examination standards, technology-specific knowledge areas, and customer service approaches essential for modern IP office operations.

Legal Professional Infrastructure Gaps

The research reveals that Nepal's legal profession lacks adequate IP expertise to support increased system utilization. With approximately 15 lawyers possessing serious IP experience nationally, the professional infrastructure cannot support widespread adoption of sophisticated IP procedures.

Training and Development System Absence

Unlike successful IP modernization cases (Singapore, India, Bangladesh), Nepal lacks systematic training and professional development programs for IP professionals. This creates a capacity development bottleneck that threatens both immediate implementation and long-term system sustainability.

5.3.2 Technology Infrastructure

Manual Processing System Limitations

Current manual processing systems cannot support the Bill's procedural requirements, international cooperation obligations, or customer service expectations. The research reveals that essential capabilities – online filing, automated search, digital communication – are entirely absent.

Database and Search Capability Gaps

Effective IP examination requires access to comprehensive global databases and sophisticated search tools. Nepal's reliance on limited printed materials and basic internet searches cannot support international-standard examination quality or consistency.

Digital Service Delivery Requirements

Modern IP systems depend on digital service delivery for accessibility, efficiency, and user satisfaction. The Bill assumes these capabilities exist, but Nepal's analog systems cannot meet these requirements without substantial infrastructure investment.

5.3.3 Administrative System Modernization: Process and Quality Challenges

Standardization and Quality Assurance Needs

The Bill's detailed procedural provisions require standardized administrative systems with quality assurance mechanisms that do not currently exist. Effective implementation requires systematic process development, performance measurement, and continuous improvement capabilities.

Customer Service Orientation Gap

International IP system modernization emphasizes customer-centric design and user experience optimization. Nepal's current system reflects traditional government service delivery approaches incompatible with modern IP office operations and enterprise expectations.

International Cooperation Infrastructure

The Bill's provisions for international cooperation require institutional frameworks for communication with foreign IP offices and international organizations that have not been established. This infrastructure is essential for meaningful international integration and framework participation.

5.4 Comparative Analysis: Learning from Regional and International Experience

The comparative analysis reveals that successful IP system modernization requires strategic adaptation of international best practices rather than wholesale adoption of developed country models. Nepal's approach shows limited evidence of systematic learning from relevant comparative experiences.

5.4.1 Singapore Model: Systematic Excellence vs. Resource Realism

Transferable Principles

Singapore's transformation demonstrates proven strategies including phased implementation, customer-centric design, technology integration, and performance measurement. These principles offer valuable guidance for Nepal's development approach.

However, Singapore's resource availability and institutional capacity represent enabling conditions not present in Nepal. Singapore invested approximately \$100 million over 20 years in IP system modernization, while Nepal's proportional requirement (\$15-20 million over 15 years) still represents a substantial commitment requiring sustained political will and resource allocation.

Adaptation Requirements

Nepal cannot simply adopt Singapore's comprehensive approach but must adapt core principles to resource constraints and institutional limitations. This requires strategic prioritization, phased implementation, and creative solutions for capacity constraints.

5.4.2 Bangladesh Model: Pragmatic Implementation Lessons

Utility Model Success Story

Bangladesh's utility model implementation provides directly applicable lessons for Nepal. With over 1,200 applications in two years and 68% domestic participation, Bangladesh demonstrates that second-tier IP rights can achieve meaningful enterprise engagement when properly designed and implemented.

Bangladesh's approach emphasized extensive stakeholder consultation, simplified procedures, and sector-specific outreach – strategies that could be adapted for Nepal's context. The success suggests that alignment between IP categories and actual innovation patterns generates higher utilization rates than comprehensive legal frameworks.

Resource-Conscious Development

Bangladesh's focus on achievable improvements rather than comprehensive transformation offers a more realistic model for Nepal's resource constraints. Their approach prioritizes practical utility

over legal sophistication, potentially generating better enterprise outcomes than Nepal's current strategy.

5.4.3 India Model: Systematic Capacity Building Insights

Structured Professional Development

India's systematic approach to examiner training and capacity building provides guidance for addressing Nepal's human resource challenges. Their structured 6-month training programs, international partnerships, and performance standards offer scalable models.

However, India's scale (1,500+ IP staff) and resource availability exceed Nepal's capacity dramatically. Nepal must adapt India's systematic approach to a much smaller scale while maintaining quality and consistency standards.

SME Support Program Relevance

India's SME support programs, including fee reductions, advisory services, and awareness initiatives, demonstrate strategies for improving enterprise accessibility and utilization. These approaches could be adapted for Nepal's SME-dominated economy.

5.5 Stakeholder Perspective Analysis: Divergent Priorities and Implementation Challenges

The research reveals significant divergence in stakeholder priorities regarding IP policy objectives, implementation approaches, and success metrics. These differences reflect broader tensions between international compliance, institutional capacity, and enterprise utility.

5.5.1 Government Perspective: International Credibility vs. Implementation Reality

Government officials express competing priorities between international recognition and implementation feasibility. The MoICS policy officer's emphasis on international credibility reflects legitimate concerns about Nepal's post-LDC positioning, while DoI officials' capacity concerns highlight practical implementation challenges.

This tension suggests that Nepal's policy development process inadequately balanced international obligations with domestic capabilities. The result is a policy framework that may satisfy international observers while failing to serve domestic enterprises effectively.

5.5.2 Private Sector Perspective: Practical Utility vs. Legal Sophistication

Private sector representatives consistently prioritize practical utility over legal sophistication, suggesting that Nepal's approach may have inverted appropriate priorities. The FNCCI

representative's emphasis on "simple, accessible systems that provide practical protection" reflects enterprise-centric thinking largely absent from the Bill's design.

This divergence suggests that Nepal's policy development process inadequately engaged enterprise perspectives, resulting in a framework that satisfies legal requirements while potentially failing to promote innovation and economic development.

5.5.3 Legal Profession Perspective: Professional Opportunity vs. System Effectiveness

Legal practitioners recognize professional opportunities created by sophisticated legislation while questioning system effectiveness. This perspective reveals potential conflicts between legal profession interests and broader policy objectives of promoting enterprise-led economic development.

The research suggests that effective IP policy requires balancing legal profession development with enterprise accessibility, ensuring that system sophistication enhances rather than impedes practical utility.

Chapter 6: Conclusion

Nepal's new Industrial Property Bill is ambitious in scope but faces serious implementation risks due to deep institutional and enforcement capacity gaps. At the human resources level, the system is critically under-resourced: the entire country has only two qualified patent examiners and fewer than twenty legal professionals with substantive IP expertise. This is dramatically insufficient to support the Bill's sophisticated procedures, which would require a manifold expansion in technical and legal capacity. Administrative systems compound the problem. The Department of Industry still relies on manual processes, lacks standardized quality assurance, and operates without the digital infrastructure necessary for online filing, automated prior art search, or international cooperation. These shortcomings mean that the Bill's procedural and international obligations far exceed current institutional capabilities.

Enforcement presents equally significant constraints. Courts have limited experience with complex IP disputes, and there are no specialized tribunals to ensure consistency or expertise in adjudication. Customs authorities lack effective IP border enforcement tools, leaving counterfeiting and parallel imports largely unchecked. Market surveillance and anti-counterfeiting programs are absent, while low-cost dispute resolution mechanisms—such as mediation or arbitration—have yet to be developed. Collectively, these weaknesses mean that enterprises cannot rely on the system for timely, affordable, or predictable remedies. As one Department of Industry official remarked, Nepal risks "creating expectations we cannot fulfill, which may be worse than having modest laws we can implement effectively."

The implications extend beyond administration. The findings illustrate what scholars describe as the "sophistication trap": adopting advanced legal frameworks to demonstrate international

compliance while lacking the institutional capacity to deliver them. This approach risks eroding both international credibility and domestic utility, as firms disengage from an inaccessible system. The research also reinforces the case for an enterprise-centric design, where IP policy is tailored to actual innovation patterns, enterprise needs, and institutional realities rather than imported wholesale from developed country models. Comparative experiences suggest that Nepal would benefit from an implementation-first strategy, focusing on phased institutional strengthening, stakeholder engagement, and regional cooperation before pursuing ambitious international obligations.

In short, while the Industrial Property Bill provides a strong legal foundation, its effectiveness will depend entirely on whether Nepal can overcome these institutional and enforcement gaps. Without significant investment in examiners, digital infrastructure, judicial training, and enforcement systems, the law risks becoming a symbolic reform—legally sophisticated but practically ineffectual. For Nepal and similar developing countries, the lesson is clear: capacity must precede complexity if intellectual property is to function as a tool for enterprise growth and economic transformation.

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Annex I

Survey questionnaire

Background:

The Industrial Property Bill 2024, presented in the House of Representative in July 2025, was drafted in order to bring about stronger protections for the existing industrial property rights (patents, designs and trademarks), and to introduce newer intellectual property rights (IPR) to Nepal to promote enterprises, and subsequently, the economy of Nepal. Some of the newer forms of IPR in the context of Nepali law introduced by the Bill include:

- a. Geographical indication: *A sign or a map or a geographical name or a combination of all these in anything produced in any fixed geographical location or region or containing specialty, renown or other quality specific to the region.*
- b. Utility model: *Exclusive rights provided to general/simple modifications on existing technology.*
- c. Design layout of integrated circuit: *A two-dimensional or three-dimensional form depicting internal integrated connections of different elements of IC.*
- d. Trade secrets: *Business-related commercial information, technical knowledge, business plans, etc., which must be kept confidential for the benefit of the enterprise.*
- e. Traditional and cultural knowledge: *Any knowledge or skill specific to a community in the form of information, process or technique and practice of the same that has been handed down and developed through generations and also denotes homemade machines, appliances, medicinal herbs or ayurvedic treatment, agriculture, technology, environmental practice, medicinal and other spiritual knowledge or skill.*

Additionally, the Bill also provides for the formation of an Industrial Property Promotion Council and an Industrial Property Office to ensure effective implementation of the rights provided under the Bill at the policy, advisory, and implementation levels.

Section 1: Respondent Profile

Q1. Age

- 18 – 30
- 31 – 45
- 45 – 60
- 60 and above

Q2. Gender

- Male
- Female
- Non-binary
- Prefer not to say

Q3. Type of Enterprise

- Sole proprietorship
- Partnership
- Private limited company
- Informal/home-based
- Other (please specify): _____

Q4. Sector of Business

- Agriculture / Agritech
- Manufacturing
- Handicrafts / Traditional Products
- Technology / Software
- Services (e.g., hospitality, finance, consulting)
- Creative Industries (e.g., design, music, content)
- Other (please specify): _____

Section 2: Awareness and Use of IP System

Q5. Have you ever tried registering any form of intellectual property in Nepal under the existing Patent, Trademark and Design Act 2022 BS or Copyright Act 2059 BS?

- Yes (if your answer is, “Yes” skip Q8)
- No (if your answer is, No”, skip Q6 to Q7 and go to Q8)

Q6. If yes, what type of IP did you attempt to register?

(Select all that apply)

- Trademark
- Patent
- Design
- Copyright
- Other (please specify): _____

Q7. What was your experience during the registration process?

Please describe any challenges or barriers you faced.

Q8. If you haven’t registered IP, why not?

(E.g., lack of awareness, too expensive, unclear process, unavailability of the relevant IP right, didn’t feel the need, etc.)

Section 3: Impacts and Constraints

Q9. Has the lack of IP protection ever caused a problem for your enterprise?

(E.g., others copying your product, branding issues)

- Yes
- No
- Not sure

Q10. If yes, please explain briefly:

What happened and how did it affect your enterprise?

Q11. Were you aware about the Industrial Property Bill 2024 and its provisions prior to this?

- Yes
- No

Q12. Do you believe the revised provisions for patents, designs and trademarks, or the introduction of other IP rights such as utility models, trade secrets, etc. (as mentioned in the Background section) lead towards economic benefits for your business?

Do you believe the revision of intellectual property law in Nepal will prove to be economically beneficial for your business?

- Yes
- No

Please explain your answer: _____

Section 4: Attitudes Toward IP Law

Please indicate how much you agree or disagree with the following statements.
(1 = Strongly Disagree; 5 = Strongly Agree)

Statement	1	2	3	4	5
Q13. I understand the types of intellectual property rights available in Nepal.	<input type="checkbox"/>				
Q14. IP protection is important for encouraging innovation in Nepal.	<input type="checkbox"/>				
Q15. The current IP registration process in Nepal is accessible and transparent.	<input type="checkbox"/>				
Q16. My business would benefit from stronger IP protection in Nepal.	<input type="checkbox"/>				
Q17. I believe the government has sufficient capacity to implement IP laws effectively.	<input type="checkbox"/>				

Section 5: Final Comments

Q18. What changes would you suggest to improve Nepal’s IP system?

Annex II

KII Checklist

1. Ministry of Industry, Commerce and Supplies (MoICS) Officials

Relevant for: policy design, IP strategy, inter-agency coordination

- What were the main policy objectives behind drafting the Industrial Property Bill 2024?
- How does the Bill align with Nepal's LDC graduation roadmap?
- What challenges do you foresee in implementing provisions related to the newer IPRs introduced by the Bill (such as traditional knowledge, GIs, and compulsory licensing)?
- How does the Ministry plan to engage MSMEs and start-ups under the new IP regime?
- Is there a timeline for phased implementation and institutional capacity building?

2. Trade and entrepreneur associations and federations (such as NYEF, FNCCI, CNI, NCC etc.)

Relevant for: enterprise-level IP challenges, private sector needs

- Are businesses currently registering IP in Nepal? If not, what are the main barriers?
- What is your assessment of the usefulness of utility models or trade secrets provisions in the Bill? - are we adaptive or innovative -
- Do your members view IP law as a constraint or enabler for innovation?
- Have there been any cases of IP infringement affecting members, especially SMEs?
- What kind of IP education or support services are needed for young entrepreneurs?
- Do you think stronger IP enforcement would attract more foreign investment?

3. Department of Industry (DoI) / IP Office Officials (such as patent and trademark registration department)

Relevant for: institutional capacity, IP registration, enforcement

- How will the new provisions (GIs, utility models, traditional knowledge) be operationalized?

- What is the current average processing time for trademarks or patents?
- What enforcement mechanisms exist to support registered IP owners?
- What technical or administrative constraints do you face in managing IP applications?
- How are examiners trained, and is WIPO or international technical support involved?
- What reforms are planned to ensure efficiency and accessibility?

4. Legal and IP Practitioners / Bar Association Members

Relevant for: legal interpretation, system usability, dispute resolution

- Does the Bill provide adequate legal clarity for courts and IP professionals?
- Are the new provisions (compulsory licensing, trade secrets) implementable under current judicial and legal infrastructure?
- How do you assess Nepal's current IP dispute resolution capacity?
- What are common legal issues clients face when registering or defending IP?
- Will this be actually used and beneficial
- Are there specific improvements you'd recommend to align with international standards?