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INTELLECTUAL PROPERTY RIGHTS IN INDIA

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INTELLECTUAL PROPERTY RIGHTS IN INDIA

Introduction

Intellectual property (IP) is related to human brain applied for creativity and invention. Various efforts in terms of inputs of manpower, time, energy, skill, money, etc., are required to invent or create something new. As per law, legal rights or monopoly rights are given to creator or innovator to harvest the economic benefits on their invention or creation. These Intellectual property rights (IPR) are territorial rights that can be registered with a legal authority in some presentable or tangible form which can be sold or bought or licensed, similar to physical property. IPR provides a secure environment for investors, scientists, artists, designers, traders etc. to foster innovation and scientific temper. In the present scenario of Globalisation, IPR is the focal point in global trade practices and livelihood across the world. A balanced IPR System is one of the key mechanisms to support country's innovation and development objectives.

The development of any society directly depends on IPR and its policy framework. Lack of IPR awareness results in the death of inventions, high risk of infringement, economic loss and decline of an intellectual era in the country.

Classification of Intellectual Property Rights

On the basis of type of invention and creation of human mind and their application, the IPRs are classified as follows:

1. **Patents** - A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. Patentability of any invention needs to fulfill certain criteria such as Usefulness,

Novelty and Non obviousness. It provides protection for the invention to the owner of the patent for a limited period, *i.e* 20 years.

2. ***Trademarks*** - A trademark is a distinctive sign which identifies certain goods or services as those produced or provided by a specific person or enterprise.¹ It may be one or a combination of words, letters, and numerals.²
3. ***Copyright and related rights*** - Copyright is a legal term describing rights given to creators for their literary and artistic works.³ Creators often sell the rights to their works to individuals or companies best able to market the works in return for payment. These payments are often made dependent on the actual use of the work, and are then referred to as royalties.
4. ***Geographic indications of source*** - A Geographical Indication (GI) is a sign used on goods that have a specific geographical origin and possess qualities, reputation or characteristics that are essentially attributable to that place of origin.⁴ The Geographical Indications of Goods (Registration and Protection) Act 1999 (the Act) provide for registration of Handicrafts as Geographical indications (GI).⁵ As on 31 July 2016,

¹ Registration of a trademark is *prima facie* proof of its ownership giving statutory right to the proprietor. Trademark rights may be held in perpetuity. The initial term of registration is for 10 years; thereafter it may be renewed from time to time.

² Trademarks help consumer identify and purchase a product or service by its unique trademark which ensures quality of the product, *e.g.* wool mark, Hallmark, *etc.*

³ The kinds of works covered by copyright include: literary works such as novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings.

⁴ Agricultural products typically have qualities that derive from their place of production and are influenced by specific local factors, such as climate and soil. Basmati Rice and Darjeeling Tea etc. are the best examples of GI.

⁵ The registration of GI is valid for a period of 10 years after which it may be renewed from time to time.

1152 GI Authorized user have been registered under the Act for handicraft goods.⁶

5. ***Industrial designs*** - Industrial designs refer to creative activity which results in the ornamental or formal appearance of a product and ‘design right’ refers to a novel or original design that is accorded to the proprietor of a validly registered design.⁷ The existing legislation on industrial designs in India is contained in the New Designs Act, 2000 which aims at enacting a more detailed classification of design to conform to the international system and to take care of the proliferation of design-related activities in various fields.
6. ***Trade Secrets*** - Broadly speaking, any confidential business information which provides an enterprise a competitive edge may be considered a trade secret⁸. Trade secrets encompass manufacturing or industrial secrets and commercial secrets. The unauthorized use of such information by persons other than the holder is regarded as an unfair practice and a violation of the trade secret. Contrary to patents, trade secrets are protected without registration.
7. ***Semiconductor Integrated Circuit of Layout Designs (SICLD)***- All electronic gadgets are very compact nowadays due to their integrated circuits. These designs of circuits are creation of human mind as a consequence of enormous investments and efforts of highly qualified experts. The SICLD Act of 2000⁹ empowers the registered proprietor of the layout-design an inherent right to use the layout-design,

⁶ Lok Sabha Unstarred Ques. No.3498, dated 8 August 2016.

⁷ The initial term of protection is for 10 years from the date of filing, which can be extended for an additional term of five years.

⁸ A trade secret can be protected for an unlimited period of time.

⁹ The initial term of registration is for 10 years.

commercially exploit it and obtain relief in respect of any infringement¹⁰.

8. *Protection of plant varieties & farmer's rights* - The objective of this act is to recognize the role of farmers as cultivators and conservers and the contribution of traditional, rural and tribal communities to the country's agro-biodiversity by rewarding them for their contribution and to stimulate investment for R & D for the development of new plant varieties to facilitate the growth of the seed industry which will ensure the availability of high quality seeds¹¹ and planting material to the farmers.

9. *Protection of Biological Diversity* - The Biological Diversity Act covers the traditional knowledge in the preamble itself. It also provides for issues related to traditional knowledge under the umbrella of associated knowledge within various provisions of the Biological Diversity Act, 2002.¹² The benefit claimers are conservers of biological resources, creators and holders of knowledge and information relating to the uses of biological resources.

¹⁰ Layout-designs can be registered, if they are; (i) original, (ii) inherently distinctive, (iii) capable of being distinguishable from any other registered layout- design and (iv) if they have not been commercially exploited for more than two years before date of application for registration. Thus, the Act does not require 'novelty' (as in patents) but 'distinctiveness' for the purpose of registration.

¹¹ The duration of protection of registered varieties is different for different type of crops. For example, trees and vines - 18 years; for other crops - 15 years; or extant varieties notified - 15 years from the date of notification under section 5 of the Seeds Act, 1966.

¹² Under Section 7 of the Biological Diversity Act, 2002 the Indian industry is required to give prior intimation to the concerned State Biodiversity Boards (SBBs) about obtaining the biological resources for commercial utilization. The SBB will have the power to prohibit or restrict any such activity, which violates the objectives of conservation, sustainable use and equitable sharing of benefits.

The IPR System in India

The origins of India's IPR system date back to British colonial rule, when as a colony the state enacted various rules and enforcement mechanisms pertaining to IP rights. Post-independence, India retained elements of these structures while updating some guiding regulations and other bureaucratic structures. As India moved toward liberalization, privatization, and globalization in the 1990s and later, Indian policymakers made further adjustments to keep up with growing needs of domestic and international stakeholders. Indian IPR Laws fully conform to the Agreement on Trade Related Aspects of Intellectual Property Rights under WTO aegis.

IPR Policy 2016

Adopted in May 2016, the IPR Policy is a giant leap by the Government of India to spur creativity and stimulate innovation. It lays the roadmap for the future of IPRs in India. The Policy seeks to reinforce the IPR framework in the country that will create public awareness about economic, social and cultural benefits of IPRs among all sections of the society, stimulate IPR generation and commercialization, modernize and strengthen service-oriented IPR administration (*see Annexure I*) as also the enforcement and adjudicatory mechanisms for combating IPR infringements.

Vision Statement of the Policy

(to create) An India where creativity and innovation are stimulated by Intellectual Property for the benefit of all; an India where intellectual property promotes advancement in science and technology, arts and culture, traditional knowledge and biodiversity resources; an India where knowledge is the main driver of development, and knowledge owned is transformed into knowledge shared.

The Policy lays down seven objectives which are elaborated with steps to be undertaken by the identified nodal Ministry/ Department. The objectives of the Policy are:

- 1) ***IPR Awareness: Outreach and Promotion*** - To create public awareness about the economic, social and cultural benefits of IPRs among all sections.
- 2) ***Generation of IPRs - To stimulate the generation of IPRs:*** India has a large talent pool of scientific and technological talent spread over R&D institutions, enterprises, universities and technical institutes. There is a need to tap this fertile knowledge resource and stimulate the creation of IP assets. (see *Annexures II and III* for no. of applications for patents and top patentees.)
- 3) ***Legal and Legislative Framework*** - To have strong and effective IPR laws, which balance the interests of rights owners with larger public interest.
- 4) ***Administration and Management*** - To modernize and strengthen service-oriented IPR administration.
- 5) ***Commercialization of IPR*** - Get value for IPRs through commercialization.
- 6) ***Enforcement and Adjudication*** - To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements.
- 7) ***Human Capital Development*** - To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs.

The present IPR Policy aims to integrate IPR as a policy and strategic tool in national development plans. It foresees a coordinated and integrated development of IP system in India and the need for a holistic approach to be taken on IP legal, administrative, institutional and enforcement related matters.

IPR Status of India

India currently ranks 60th out of 127 countries on the Global innovation Index (GII) 2017, co-published by World-Intellectual Property Organization (WIPO), Cornell University and INSEAD¹³ with Confederation of Indian Industry & others as Knowledge Partners (*see Annexure IV*).

India ranks 14 overall in the presence of global R&D companies, considerably better than comparable groups of lower- and upper-middle-income economies. India also surpasses most other middle-income economies in science and engineering graduates, gross capital formation, Gross Expenditure on Research and Development (GERD) performed by business, research talent, on the input side; quality of scientific publications, growth rate of GDP per worker, high-tech and ICT services exports, creative goods exports, high-tech manufactures, and IP receipts on the output side.

Conclusion

Today, India is on its way to adopting a balanced approach towards creating a stimulus for the betterment of the IPR industry as a whole. Recent developments in India, be it the New IPR policy or providing an effective toolkit in the form of checklist that will act as a reckoner for the police to deal with IP crimes or encouragement to innovators in terms of speedy patent examination in case they file first in India, all are a part of much needed attempt to improve the overall security of IPR and encouragement to create more IP in the country. India is having all the resources in terms of available raw material, cheap labour, innovative and creative dedicated manpower. No doubt that India will definitely harness its

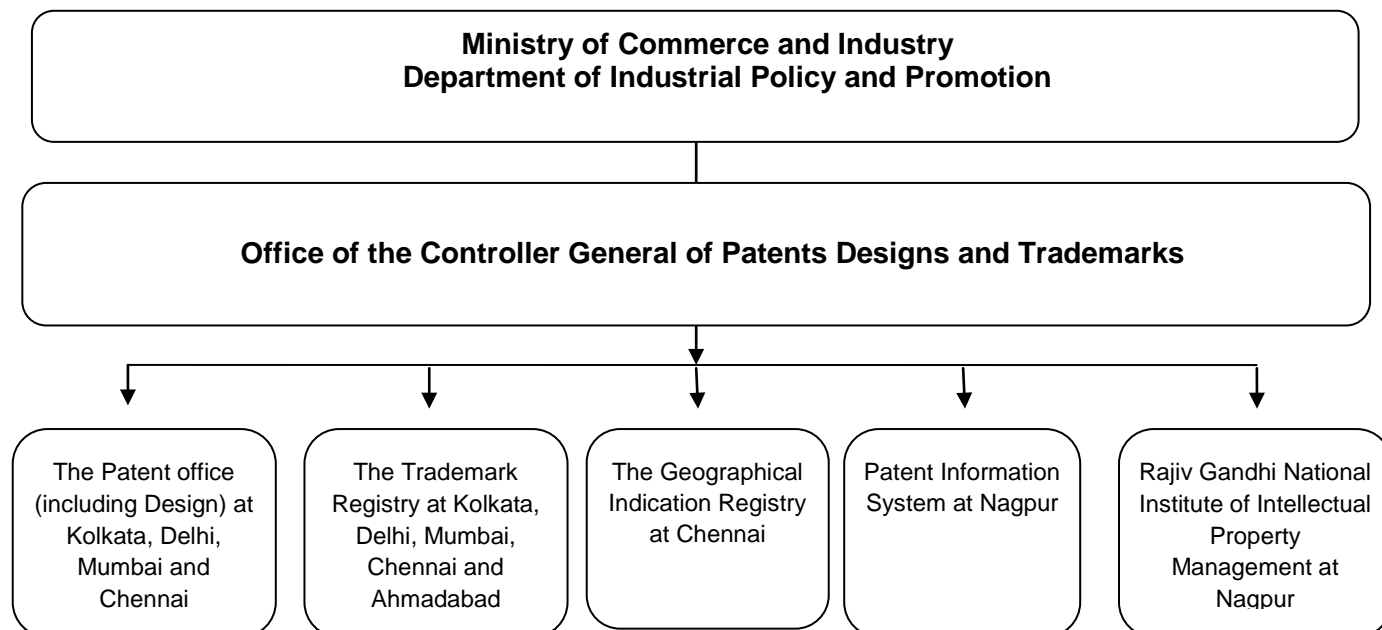
¹³INSEAD" is originally an acronym for the French "Institut Européen d'Administration des Affaires" or European Institute of Business Administration.

proportionate share in global trade by exploration in Intellectual Property Rights and mark its footprint on international map as "*Creative India; Innovative India*" रचनात्मक भारत; अभिनव भारत".

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Office Structure of CGPDTM



Legislation and Department

Legislation	Department	Agency/Body
Patents Act, 1970 (amended in 1999,2002 and 2005)	Department of Industrial Policy & Promotion	Controller General of Patents, Designs and Trademarks (CGPDTM)
Designs Act, 2000	Department of Industrial Policy & Promotion	Controller General of Patents, Designs and Trademarks (CGPDTM)
Trade Marks Act, 1999 (amended in 2010)	Department of Industrial Policy & Promotion	Controller General of Patents, Designs and Trademarks (CGPDTM)
Geographical Indications of Goods (Registration & Protection) Act. 1999	Department of Industrial Policy & Promotion	Controller General of Patents, Designs and Trademarks (CGPDTM)
Copyright is protected through Copyright Act, 1957, as amended in 2012	Department of Higher Education	Copyright Office
Layout of transistors and other circuitry elements is protected through The Semiconductor Integrated Circuits Layout-Design Act, 2000	Department of Information Technology	Semiconductor Integrated Circuits Layout Design Registry
New varieties of plants are protected through the Protection of Plant Varieties and Farmers' Rights Act, 2001	Department of Agriculture and Cooperation.	Plant Varieties and Farmers' Rights Authority

Source: National Bureau of Asian Research: India's Innovation and IP Policies Working Papers.

IPR TREND AT A GLANCE

FILING OF INTELLECTUAL PROPERTY APPLICATIONS

	2011-12	2012-13	2013-14	2014-15	2015-16
Application					
Patent	43,197	43,674	42,951	42,763	46,904
Design	8,373	8,337	8,533	9,327	11,108
Trade mark	1,83,588	1,94,216	2,00,005	2,10,501	2,83,060
Geographical Indication	148	24	75	47	14
<u>Total</u>	2,35,306	2,46,251	2,51,564	2,62,638	3,41,086

Source: : Annual Report 2015-16: O/O Controller General Of Patents, Designs, Trademarks And Geographical Indications

TOP 5 INDIAN PATENTEES

SL. NO.	NAME OF ORGANIZATION	PATENTS GRANTED
1	COUNCIL OF SCIENTIFIC & INDUSTRIAL RESEARCH	113
2	SAMSUNG R& D INSTITUTE INDIA-BANGALORE PRIVATE LIMITED	55
3	BHARAT HEAVY ELECTRICALS LIMITED	45
4	INDIAN INSTITUTE OF TECHNOLOGY	40
5	DEFENCE RESEARCH & DEVELOPMENT ORGANISATION	32

TOP 5 FOREIGN RESIDENT PATENTEES

SL. NO.	NAME OF ORGANIZATION	PATENTS GRANTED
1	GM GLOBAL TECHNOLOGY OPERATIONS, INC	252
2	QUALCOMM INCORPORATED	212
3	LG ELECTRONICS INC.	89
4	KONINKLIJKE PHILIPS ELECTRONICS N.V.	68
5	HONDA MOTOR CO. LTD.	65

Source: : Annual Report 2015-16: O/O Controller General Of Patents, Designs, Trademarks And Geographical Indications

Global Ranking

Global Innovation Index 2017 rankings

Country/Economy	Score (0–100)	Rank	Income	Rank	Region	Rank	Efficiency Ratio	Rank	Median: 0.62
Switzerland	67.69	1	HI	1	EUR	1	0.95	2	
Sweden	63.82	2	HI	2	EUR	2	0.83	12	
Netherlands	63.36	3	HI	3	EUR	3	0.93	4	
United States of America	61.40	4	HI	4	NAC	1	0.78	21	
United Kingdom	60.89	5	HI	5	EUR	4	0.78	20	
Denmark	58.70	6	HI	6	EUR	5	0.71	34	
Singapore	58.69	7	HI	7	SEAO	1	0.62	63	
Finland	58.49	8	HI	8	EUR	6	0.70	37	
Germany	58.39	9	HI	9	EUR	7	0.84	7	
Ireland	58.13	10	HI	10	EUR	8	0.85	6	
Korea, Rep.	57.70	11	HI	11	SEAO	2	0.82	14	
Luxembourg	56.40	12	HI	12	EUR	9	0.97	1	
Iceland	55.76	13	HI	13	EUR	10	0.86	5	
Japan	54.72	14	HI	14	SEAO	3	0.67	49	
France	54.18	15	HI	15	EUR	11	0.71	35	
Hong Kong (China)	53.88	16	HI	16	SEAO	4	0.61	73	
Israel	53.88	17	HI	17	NAWA	1	0.77	23	
Canada	53.65	18	HI	18	NAC	2	0.64	59	
Norway	53.14	19	HI	19	EUR	12	0.66	51	
Austria	53.10	20	HI	20	EUR	13	0.69	41	
New Zealand	52.87	21	HI	21	SEAO	5	0.65	56	
China	52.54	22	UM	1	SEAO	6	0.94	3	
Australia	51.83	23	HI	22	SEAO	7	0.60	76	
Czech Republic	50.98	24	HI	23	EUR	14	0.83	13	
Estonia	50.93	25	HI	24	EUR	15	0.79	19	
Malta	50.60	26	HI	25	EUR	16	0.84	8	
Belgium	49.85	27	HI	26	EUR	17	0.67	47	
Spain	48.81	28	HI	27	EUR	18	0.70	36	
Italy	46.96	29	HI	28	EUR	19	0.73	31	
Cyprus	46.84	30	HI	29	NAWA	2	0.74	28	
Portugal	46.05	31	HI	30	EUR	20	0.71	33	
Slovenia	45.80	32	HI	31	EUR	21	0.68	44	
Latvia	44.61	33	HI	32	EUR	22	0.74	26	
Slovakia	43.43	34	HI	33	EUR	23	0.75	25	
United Arab Emirates	43.24	35	HI	34	NAWA	3	0.49	104	
Bulgaria	42.84	36	UM	2	EUR	24	0.80	15	
Malaysia	42.72	37	UM	3	SEAO	8	0.68	46	
Poland	41.99	38	HI	35	EUR	25	0.67	48	
Hungary	41.74	39	HI	36	EUR	26	0.73	30	
Lithuania	41.17	40	HI	37	EUR	27	0.59	84	
Croatia	39.80	41	HI	38	EUR	28	0.66	52	
Romania	39.16	42	UM	4	EUR	29	0.69	39	
Turkey	38.90	43	UM	5	NAWA	4	0.84	9	
Greece	38.85	44	HI	39	EUR	30	0.56	87	
Russian Federation	38.76	45	UM	6	EUR	31	0.61	75	
Chile	38.70	46	HI	40	LCN	1	0.60	77	
Viet Nam	38.34	47	LM	1	SEAO	9	0.84	10	
Montenegro	38.07	48	UM	7	EUR	32	0.63	62	
Qatar	37.90	49	HI	41	NAWA	5	0.61	68	
Ukraine	37.62	50	LM	2	EUR	33	0.83	11	
Thailand	37.57	51	UM	8	SEAO	10	0.75	24	
Mongolia	37.13	52	LM	3	SEAO	11	0.74	27	
Costa Rica	37.09	53	UM	9	LCN	2	0.69	43	
Moldova, Rep.	36.84	54	LM	4	EUR	34	0.78	22	
Saudi Arabia	36.17	55	HI	42	NAWA	6	0.53	96	
Kuwait	36.10	56	HI	43	NAWA	7	0.79	18	
South Africa	35.80	57	UM	10	SSF	1	0.53	97	
Mexico	35.79	58	UM	11	LCN	3	0.61	74	
Armenia	35.65	59	LM	5	NAWA	8	0.80	17	
India	35.47	60	LM	6	CSA	1	0.66	53	
TFYR of Macedonia	35.43	61	UM	12	EUR	35	0.59	80	
Serbia	35.34	62	UM	13	EUR	36	0.61	67	
Panama	34.98	63	UM	14	LCN	4	0.69	38	
Mauritius	34.82	64	UM	15	SSF	2	0.48	109	

Global Innovation Index 2017 rankings (continued)

Country/Economy	Score (0–100)	Rank	Income	Rank	Region	Rank	Efficiency Ratio	Rank	Median: 0.62
Colombia	34.78	65	UM	16	LCN	5	0.52	100	
Bahrain	34.67	66	HI	44	NAWA	9	0.56	88	
Uruguay	34.53	67	HI	45	LCN	6	0.59	82	
Georgia	34.39	68	UM	17	NAWA	10	0.63	60	
Brazil	33.10	69	UM	18	LCN	7	0.52	99	
Peru	32.90	70	UM	19	LCN	8	0.49	106	
Brunei Darussalam	32.89	71	HI	46	SEAO	12	0.34	124	
Morocco	32.72	72	LM	7	NAWA	11	0.61	71	
Philippines	32.48	73	LM	8	SEAO	13	0.65	55	
Tunisia	32.30	74	LM	9	NAWA	12	0.62	65	
Iran, Islamic Rep.	32.09	75	UM	20	CSA	2	0.80	16	
Argentina	32.00	76	UM	21	LCN	9	0.55	94	
Oman	31.83	77	HI	47	NAWA	13	0.46	115	
Kazakhstan	31.50	78	UM	22	CSA	3	0.46	116	
Dominican Republic	31.17	79	UM	23	LCN	10	0.65	54	
Kenya	30.95	80	LM	10	SSF	3	0.66	50	
Lebanon	30.64	81	UM	24	NAWA	14	0.61	69	
Azerbaijan	30.58	82	UM	25	NAWA	15	0.50	103	
Jordan	30.52	83	UM	26	NAWA	16	0.65	57	
Jamaica	30.36	84	UM	27	LCN	11	0.57	86	
Paraguay	30.30	85	UM	28	LCN	12	0.61	72	
Bosnia and Herzegovina	30.23	86	UM	29	EUR	37	0.47	112	
Indonesia	30.10	87	LM	11	SEAO	14	0.69	42	
Belarus	29.98	88	UM	30	EUR	38	0.39	120	
Botswana	29.97	89	UM	31	SSF	4	0.38	121	
Sri Lanka	29.85	90	LM	12	CSA	4	0.65	58	
Trinidad and Tobago	29.75	91	HI	48	LCN	13	0.56	90	
Ecuador	29.14	92	UM	32	LCN	14	0.62	66	
Albania	28.86	93	UM	33	EUR	39	0.37	122	
Tajikistan	28.16	94	LM	13	CSA	5	0.59	83	
Kyrgyzstan	28.01	95	LM	14	CSA	6	0.47	114	
Tanzania, United Rep.	27.97	96	LI	1	SSF	5	0.73	29	
Namibia	27.94	97	UM	34	SSF	6	0.48	108	
Guatemala	27.90	98	LM	15	LCN	15	0.56	91	
Rwanda	27.36	99	LI	2	SSF	7	0.33	125	
Senegal	27.11	100	LI	3	SSF	8	0.54	95	
Cambodia	27.05	101	LM	16	SEAO	15	0.63	61	
Uganda	26.97	102	LI	4	SSF	9	0.47	113	
El Salvador	26.68	103	LM	17	LCN	16	0.48	107	
Honduras	26.36	104	LM	18	LCN	17	0.52	101	
Egypt	26.00	105	LM	19	NAWA	17	0.59	81	
Bolivia, Plurinational St.	25.64	106	LM	20	LCN	18	0.57	85	
Mozambique	24.55	107	LI	5	SSF	10	0.61	70	
Algeria	24.34	108	UM	35	NAWA	18	0.47	111	
Nepal	24.20	109	LI	6	CSA	7	0.49	105	
Ethiopia	24.16	110	LI	7	SSF	11	0.72	32	
Madagascar	24.15	111	LI	8	SSF	12	0.68	45	
Côte d'Ivoire	23.96	112	LM	21	SSF	13	0.69	40	
Pakistan	23.80	113	LM	22	CSA	8	0.62	64	
Bangladesh	23.72	114	LM	23	CSA	9	0.55	93	
Malawi	23.45	115	LI	9	SSF	14	0.53	98	
Benin	23.04	116	LI	10	SSF	15	0.47	110	
Cameroon	22.58	117	LM	24	SSF	16	0.56	92	
Mali	22.48	118	LI	11	SSF	17	0.60	78	
Nigeria	21.92	119	LM	25	SSF	18	0.52	102	
Burkina Faso	21.86	120	LI	12	SSF	19	0.24	127	
Zimbabwe	21.80	121	LI	13	SSF	20	0.56	89	
Burundi	21.31	122	LI	14	SSF	21	0.41	117	
Niger	21.18	123	LI	15	SSF	22	0.36	123	
Zambia	20.83	124	LM	26	SSF	23	0.59	79	
Togo	18.41	125	LI	16	SSF	24	0.28	126	
Guinea	17.41	126	LI	17	SSF	25	0.40	118	
Yemen	15.64	127	LM	27	NAWA	19	0.40	119	

Note: World Bank Income Group Classification (July 2016): LI = low income; LM = lower-middle income; UM = upper-middle income; and HI = high income. Regions are based on the United Nations Classification: EUR = Europe; NAC = Northern America; LCN = Latin America and the Caribbean; CSA = Central and Southern Asia; SEAO = South East Asia, East Asia, and Oceania; NAWA = Northern Africa and Western Asia; SSF = Sub-Saharan Africa.