

**INDIA**  
**COUNTRY REPORT**  
**PRESENTED BY PROF.[Dr]T.VIDYA KUMARI**

AT THE OUTSET I WISH TO DEDICATE THIS PAPER TO MY BELOVED SISTER DR. VIJAYA WHOSE UNTIMELY DEATH IN MAY 2009 HAS CREATED A VOID IN MY LIFE, AS SHE WAS MY TRUE FRIEND, PHILOSOPHER AND GUIDE.

**Introduction**

IN INDIA IT IS BELIEVED IN THE HINDU RELIGION THAT THERE WERE SEVERAL INCARNATIONS OF GOD, EACH INCARNATION OF GOD IS REVERED WITH THOUSAND NAMES .IN THE SAME SPIRIT INTELLECTUAL PROPERTY HAS SEVERAL DEFINITIONS APPLIED IN DIFFERENT CONTEXTS TO PROTECT CREATIVITY IN MYRAID WAYS. IT IS A HUMAN RIGHT AS A HARBINGER OF INNATE HUMAN VALUES OF CULTURE, EDUCATION AND TRADITION. IT IS ALSO A TOOL OF ECONOMIC PROGRESS THAT SPURS INNOVATION AND NEW TECHNOLOGIES. INDIA HAS RECOGNISED THE MULTI PRONGED POTENTIAL OF THE REGIME OF INTELLECTUAL PROPERTY .THE MYSTICISM OF INDIA STILL REMAINS AS THE LAND HAS BOTH THE AWESOME SNAKE CHARMER AND THE TECHNO SAVVY SCIENTISTS, THE TRADITIONAL HEALER AND THE PHYSICIAN WITH COMPLEX GADGETS, THE CHALK BOARD TEACHER AND THE LAP TOP PRESENTER LIVING TOGETHER IN HARMONY .IT IS FOR THE GOVERNMENT TO TAKE PROPER INITIATIVES TO PROTECT ALL CLASSES OF THE SOCIETY AND INTELLECTUAL PROPERTY IS THE APPROPRIATE TOOL TO GARNER AND PROPAGATE KNOWLEDGE FROM ALL SPHERES OF THE SOCIETY.

THE TWO MAIN INGREDIENTS REQUIRED TO PROMOTE INTELLECTUAL PROPERTY IS- KNOWLEDGE AND MARKET TO DISSEMINATE KNOWLEDGE. TWO REPORTS PRESENTED BY THE KNOWLEDGE COMMISSION-ON **Knowledge creation** AND ON **Entrepreneur ship** FORM THE BASIS FOR SUBSEQUENT LEGISLATION THAT ENCOURAGE RESEARCH AND INNOVATION

## **Creation of a knowledge society**

INTELLECTUAL PROPERTY THRIVES ON KNOWLEDGE. THE FACT IS THAT THE WORLD TODAY IS DIVIDED INTO KNOWLEDGE HAVE AND KNOWLEDGE HAVE NOT'S .TO DEVELOP A KNOWLEDGE SOCIETY A SOUND KNOWLEDGE BASE IS REQUIRED. IT IS ESTIMATED THAT THERE ARE 50 MILLION YOUTH IN INDIA BELOW 25 YEARS OF AGE. THE NATURAL COROLLARY TO THIS DATA WAS THE ESTABLISHMENT OF A NATIONAL KNOWLEDGE COMMISSION TO DRAW OUT A BLUE PRINT TO CREATE EXCELLENCE IN THE EDUCATIONAL SYSTEM. .1THE COMMISSION WAS CONSTITUTED ON 13<sup>TH</sup> JUNE 2005AND HAD A DESIGNATED TIME FRAME OF THREE YEARS FROM 2<sup>ND</sup> OCTOBER 2005 TO 31<sup>ST</sup> MARCH 2009 TO SUBMIT ITS REPORT. THE COMMISSION [NKC] IS COMPOSED OF EIGHT MEMBERS WITH A CHAIRMAN WITHIN A WIDER ORGANISATION HEADED BY THE PRIME MINISTER OF INDIA, THE PLANNING COMMISSION IS ITS THE NODAL AGENCY, ASSISTED BY THE UNION AND STATE MINISTERS.

### **Prime Minister**

**I**

**Planning-----National Knowledge Commission-----Ministers/  
Commission      Chairman      States      Members      Staff**

THE THREE REPORTS SUBMITTED BY THE KNOWLEDGE COMMISSION WERE

REPORT TO THE NATION 2006

REPORT TO THE NATION 2007

TOWARDS A KNOWLEDGE SOCIETY 2009

THE NATIONAL KNOWLEDGE COMMISSION EXPLORED THE STRATEGIES TO INCREASE INDIA'S COMPETITIVE ADVANTAGE IN FIELDS OF KNOWLEDGE AND PROMOTE CREATION OF KNOWLEDGE IN SCIENCE AND TECHNOLOGY LABORATORIES; IMPROVE THE MANAGEMENT OF INSTITUTIONS ENGAGED IN INTELLECTUAL PROPERTY RIGHTS; PROMOTE KNOWLEDGE APPLICATIONS IN AGRICULTURE AND INDUSTRY; PROMOTE THE USE OF KNOWLEDGE CAPABILITIES IN MAKING GOVERNMENT AN EFFECTIVE .TRANSPARENT, AND ACCOUNTABLE SERVICE PROVIDER TO THE CITIZEN AND PROMOTE WIDESPREAD SHARING OF KNOWLEDGE TO MAXIMISE PUBLIC BENEFIT<sup>1</sup>.

IN THE FIELD OF INTELLECTUAL PROPERTY SPECIFICALLY, IT RECOMMENDED A FAVOURABLE ECO SYSTEM THAT NOT ONLY PROTECTS THE INGENUITY OF THE CREATOR BUT ALSO REWARDS KNOWLEDGE CREATION THROUGH COMMERCIAL APPLICATIONS. IT SUGGESTED SCALING UP OF EFFORTS TO BUILD A WORLD CLASS IPR STRUCTURE, INCLUDING STEPS TO MODERNISE THE PATENT OFFICES. IT FURTHER RECOMMENDED A SEPARATE IPR TRIBUNAL, A NATIONAL INSTITUTION FOR CUTTING EDGE POLICY AND A GLOBAL TECHNOLOGY ACQUISITION FUND. IT STRESSED THE NEED FOR PROTECTION OF TRADITIONAL KNOWLEDGE AND ENSURES THAT SUFFICIENT INCENTIVES ARE CREATED FOR COMMERCIALISATION OF TRADITIONAL MEDICINES.

REPORT ON ENTREPRENEURSHIP IN INDIA 2008 WAS ISSUED BY THE KNOWLEDGE COMMISSION<sup>2</sup>

THIS REPORT PRESENTS THE KEY ROLE OF ENTREPRENEURSHIP IN THE GROWTH AND DEVELOPMENT OF INDIA. IN ITS FINDINGS IT WAS REVEALED THAT ONLY 63% OF THE ENTREPRENEURS INTERVIEWED WERE SELF FINANCED, WHILE THE OTHERS RECEIVED LOANS FROM BANKS, VENTURE CAPITAL, ANGEL INVESTORS, AND STATE FINANCE CORPORATIONS. AMONG THOSE FINANCED BY BANKS ONLY 61% APPLICANTS FOR LOAN RECEIVED BANK FINANCE. IN ITS RECOMMENDATIONS THE COMMISSION SUGGESTED INCENTIVES TO ANGEL INVESTORS; ESTABLISHMENT OF SECONDARY MARKET FOR SMALL COMPANIES; CREATION OF NEW INSTRUMENTS FOR START UP FUNDING AND TO PROVIDE FINANCIAL LITERACY TO START UPS. SYNERGIES BETWEEN EDUCATION, INNOVATION, AND ENTREPRENEURSHIP WAS ENCOURAGED.

BASED ON THESE RECOMMENDATIONS A DRAFT INNOVATION ACT, 2008 HAS BEEN PREPARED AND SUBMITTED FOR PUBLIC RESPONSE. THIS ENACTMENT OWES ITS ORIGIN TO THIS REPORT.

**The Innovation Act 2008<sup>3</sup>** SEEMS TO BE INSPIRED BY THE AMERICAN COMPETES ACT [AMERICA CREATING OPPORTUNITIES TO MEANINGFULLY PROMOTE EXCELLENCE IN TECHNOLOGY, EDUCATION AND SCIENCE ACT]. IT SEEKS TO CONVERGE DIVERSE FIELDS OF EDUCATION UNDER THE NATIONAL ANNUAL INTEGRATED SCIENCE AND TECHNOLOGY PLAN TO TAKE INITIATIVES IN IMPROVING THE STANDARDS IN SCIENCE, TECHNOLOGY, ENGINEERING, MATHEMATICS, LAW, FINANCE, MANAGEMENT. IT PROVIDES MEASURES FOR SUPPORTING INNOVATION BY

WAIVER OF RESEARCH AND DEVELOPMENT FEES, WAIVER OF STAMP DUTY ON ANY CONVEYANCES OF MOVEABLE, IMMOVABLE PROPERTY FOR ESTABLISHING RESEARCH AND DEVELOPMENT FACILITIES, OFFERING INCENTIVES TO ANGEL INVESTORS IN THE FORM OF TAX EXEMPTIONS/PROVIDING FACILITIES TO SET UP INNOVATION ZONES/PARKS, ENCOURAGING PUBLIC AND PRIVATE PARTNERSHIP.

### **The protection and utilisation of public funded Intellectual Property Bill,2008<sup>4</sup>.**

A LEGAL FRAMEWORK TO PROVIDE FUNDS FOR RESEARCH AND INNOVATION WAS RECOMMENDED BY THE NATIONAL KNOWLEDGE COMMISSION. A SEPARATE LEGISLATION WAS PROPOSED ON THE LINES OF THE US BAYH- DOLE ACT OF 1980

**The protection and utilization of public funded Intellectual Property Bill 2008** PROVIDES INCENTIVES FOR CREATING INTELLECTUAL PROPERTY FROM PUBLIC FUNDED RESEARCH.

THE INSTITUTIONS ARE PROVIDED FUNDS TO BE UTILIZED FOR CREATIVE RESEARCH. THE SCIENTIST WHO CREATES THE INTELLECTUAL PROPERTY IS REQUIRED TO INFORM THE RESEARCH INSTITUTION IMMEDIATELY, IN TURN THE RESEARCH INSTITUTE IS REQUIRED TO DISCLOSE THIS INFORMATION TO THE GOVERNMENT WITHIN 60 DAYS. THE SCIENTIST IS GRANTED 30% OF THE ROYALTIES RECEIVED FROM THE INTELLECTUAL PROPERTY CREATED BY HIM. THE SCIENTIST IS REQUIRED TO DISCLOSE THE CREATION OF THE INTELLECTUAL PROPERTY .IF HE FAILS TO SO OR IF THE INSTITUTION FAILS TO INFORM THE GOVERNMENT, IT ENTAILS PENALTIES WHICH INCLUDES FINES, FORFEITURE OF THE GRANT. THE BILL SPECIFIES THAT EVERY INSTITUTION [THAT RECEIVES THE GRANT] HAS TO CONSTITUTE AN INTELLECTUAL PROPERTY MANAGEMENT COMMITTEE WITHIN 180 DAYS OF RECEIVING THE FUNDS. THE COMMITTEE SHALL.

- A)IDENTIFY, DOCUMENT AND PROTECT PUBLIC FUNDED INTELLECTUAL PROPERTY HAVING COMMERCIAL POTENTIAL.
- B)PERFORM MARKET RESEARCH AND MARKET THE INTELLECTUAL PROPERTY.
- C)CREATE AN INTELLECTUAL PROPERTY MANAGEMENT FUND.
- D)MONITOR THE PROCESS OF LICENSING AND ASSIGNMENT.
- E)MANAGE REVENUES FROM LICENSED INTELLECTUAL PROPERTY WITHIN THE ORGANISATION.

F)CREATE A MECHANISM TO GOVERN THE RELATION BETWEEN THE INSTITUTION AND THE SCIENTIST.

AT FIRST SIGHT THE BILL APPEARS TO BE ATTRACTIVE PROVIDING IMMEDIATE BENEFITS, AS PATENTS GENERATE REVENUE. THE ROYALTIES RECEIVED CAN BE UTILIZED FOR FURTHER RESEARCH. THE COMPETENCY OF THE SCIENTIST WILL BE ENHANCED, AS HIS FOCUS WOULD BE ON APPLIED RESEARCH.

THE PAST EXPERIENCE IN THE UNITED STATES BY THE BAYH DOLE ACT HAS NOT BEEN IMPRESSIVE. THE RESPONSE TO THE BILL IS NOT POSITIVE AS SEVERAL APPREHENSIONS WERE EXPRESSED ON THE SUCCESS OF THIS BILL. IT IS FEARED THAT THE FUNDS WOULD BE DIRECTED ONLY TO PRESTIGIOUS INSTITUTIONS. IT MAY PUT UNDUE PRESSURE ON THE RESEARCHERS FOR QUICK RESULTS. THERE WILL BE ADDED COSTS FOR MAINTAINING THE PATENT, DEFENDING THE RIGHTS THEREIN, FILING INFRINGEMENT SUITS AND THE REVENUES EARNED MAY NOT COMMENSURATE WITH THE EXPENSES TO EXPLOIT THE RIGHTS THEREIN.

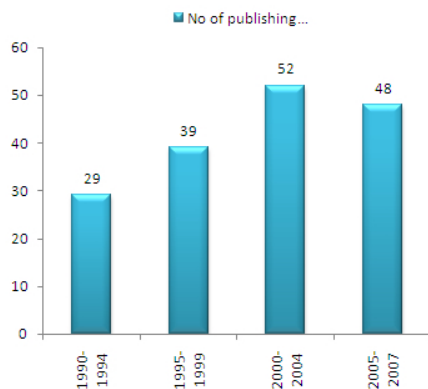
- India is ranked 19 in terms of number of PCT International Applications (IA) filed in 2008<sup>1</sup>

2008 Rank of IA Filings	Conversion Rate from Resident filings to IA filings	Conversion rate from IA filings to NPE <sup>2</sup>	Share of NPE among Total Non resident filings	Share of NPE among World Wide NPEs
19	0.19	1.94	52.36 %	0.35 %

- It ranks third among Developing Countries where the applicants filed most PCT international applications in 2008

2004	2005	2006	2007	2008
724	679	831	901	753

- In 2008 - 4071 Indian Inventors of Indian Nationality were named in PCT International applications among a total of 47,339 Foreign Inventors.
- As cited by V.K Gupta, the number of countries in which Indian assignees have sought protection for their inventions through patents rose from 29 countries in 1990-1994 to 52 countries in 2000-2004 – a growth of 79% and 49 countries just in three year period 2005-2007.



*Fig 1: Expanding patent base across countries<sup>3</sup>*

<sup>1</sup> WIPO International Patent System Yearly review – Developments & Performance in 2008

<sup>2</sup> National Phase entries

<sup>3</sup> India, Science and Technology: 2008, S&T Output and Patents, Indian patent output 1990-2007, [V. K. Gupta](#)

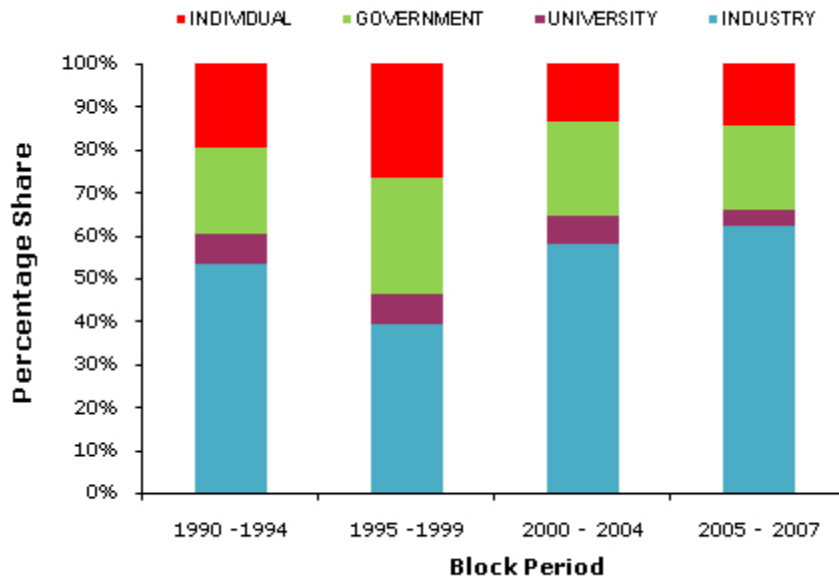


Figure 2: Analysis of Indian Patent Output

- Analyzing the Report submitted by VK Gupta, during 1990-2007, Indian patent output was 26,250 patents wherein the patentees from industry sector contributed 57% of the total patents, from university sector 5% and from the government sector 21% of the total patents. Individual inventors contributed 17% of the total patents during this period.
- The analysis indicates that the patenting activity of the government research institutes has broadly remained in the range of 20% - 30% of the total Indian patents. Of the total patents obtained by the patentees from the industry sector (57% of the total patents), domestic Indian firms owned about 70% patents and Indian affiliates of foreign companies about 10% patents. Foreign firms jointly owned the remaining 20% of the patents, which were either with the Indian companies or with their affiliates in the country. The share of domestic Indian firms decreased from about 74% during 1990-1999 to about 57% during 2000-2007 while the share of foreign affiliates in India during the two periods, remained same as around 20%. In contrast, the share of joint patents between foreign companies and domestic Indian companies or foreign affiliates showed an increase from just 3% patents during 1990-1999, to about 23% of the total patents during 2000-2007. The foreign firms have played a positive role in the growth of Indian patenting activity wherein their joint patents with domestic Indian firms as well as with their affiliates have increased significantly.
- Of the total patents obtained by Indian assignees during 1990-2007, about 15% patents were jointly owned by performers in industry, university or government sectors. The foreign firms were joint owners of patents largely with their own affiliates (88% patents) in comparison to the Indian companies (11% patents). Indian firms jointly owned just about 1% of these joint patents between themselves. The

domestic industry had joint ownership of patents with Indian universities (42 patents) and with government institutions (77 patents) during 2000-2007, which is a rise from 12 patents with universities and 4 patents with government institutions, respectively, during 1990-1999. Similarly, the joint ownership of patents between government institutions shows an increase (82 patents) during 2000-2007 over 4 patents during 1990-1999. The joint ownership of patents between Indian universities was almost negligible

### 1.3 Indian IP Regime – A SWOT Analysis

<p><b><u>Strength</u></b></p> <ul style="list-style-type: none"> <li>• IP Regime : Forward Looking for Collaboration</li> <li>• Potential to tap Scientific &amp; Technology Professionals</li> </ul>	<p><b><u>Weakness</u></b></p> <ul style="list-style-type: none"> <li>• Transparency in Patent Prosecution</li> <li>• Indian Corporation &lt; 10 % IP filings</li> <li>• Individual Inventors/ MSMEs : Incentive to file</li> <li>• Cross Verification Systems</li> <li>• Pre grant system : Unforeseen Cost</li> </ul>
<p><b><u>Opportunity</u></b></p> <ul style="list-style-type: none"> <li>• Outsourcing hub : R &amp; D/ Design/ Knowledge Industry</li> <li>• Potential for Cross Over :Emerging Breed of Scientific &amp; Legal Professionals</li> <li>• Expanding Base of IP Expertise</li> </ul>	<p><b><u>Threat</u></b></p> <ul style="list-style-type: none"> <li>• Counterfeiting &amp; Piracy</li> </ul>

#### • Analysis of Patent Outlook

- Growth Trends : 90 % Foreign Corporations
- Need Incentives for Domestic Companies to file more Patent Application

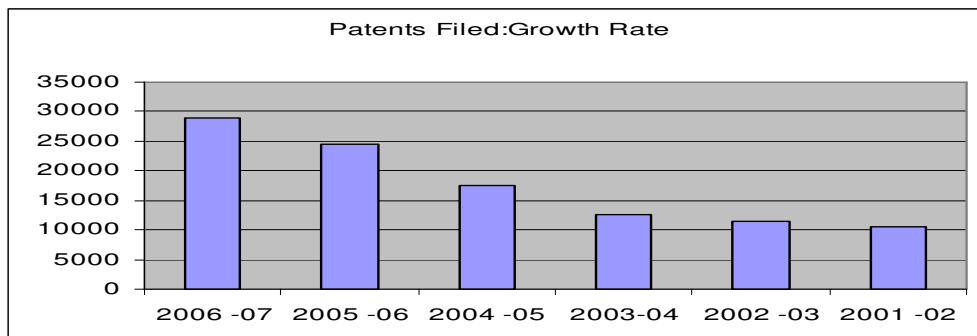
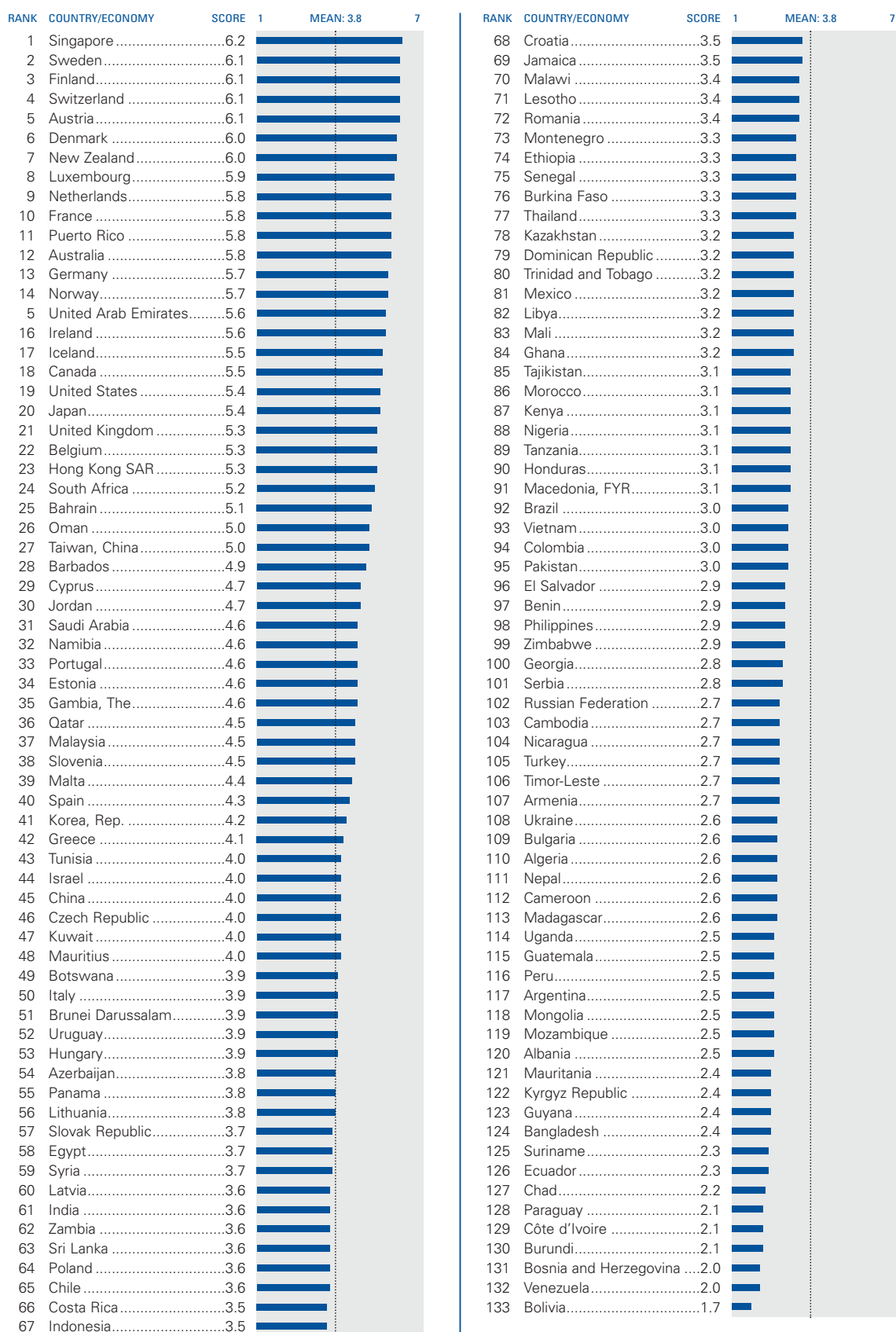


Figure 3: Patents filed: Growth Rate



# Intellectual property protection

How would you rate intellectual property protection, including anti-counterfeiting measures, in your country? (1 = very weak; 7 = very strong) | 2008–2009 weighted average



SOURCE: World Economic Forum, Executive Opinion Survey 2008, 2009

# Efficiency of legal framework in settling disputes

How efficient is the legal framework in your country for private businesses in settling disputes? (1 = extremely inefficient; 7 = highly efficient) | 2008–2009 weighted average



SOURCE: World Economic Forum, Executive Opinion Survey 2008, 2009

## **The Indian Patent System**

THE FIRST LEGISLATION IN INDIA ON PATENTS WAS IN 1856. THIS ACT WAS MODIFIED IN 1859 PROVIDING PROTECTION ONLY TO INVENTIONS AND NOT FOR DESIGNS. THE PATENT AND DESIGN PROTECTION ACT WAS PASSED IN 1872 TO INCLUDE ANY NEW AND ORIGINAL PATTERN TO ANY SUBSTANCE OR ARTICLE OF MANUFACTURE AS AN INTELLECTUAL PROPERTY. THE INDIAN PATENT SYSTEM WAS STREAMLINED WITH THE SUBMISSION OF THE REPORT OF JUSTICE N. RAJAGOPAL AYYANGAR COMMITTEE IN 1959. THIS REPORT RECOMMENDED MAJOR CHANGES WHICH FORMED THE BASIS FOR THE SUBSEQUENT ENACTMENTS.

THE PRESENT ACT THAT REPLACED THE EARLIER LAWS IS THE PATENTS [AMENDMENT ] ACT, 2005. SOME OF THE SPECIAL FEATURES OF THE INDIAN PATENT ACT<sup>5</sup>.

### **1. Protection of traditional Knowledge in the Patent System**

**Section 3 of The Indian Patent [Amendment] Act, 2002** ENLISTS THE INVENTIONS THAT CANNOT BE PATENTED. **Section 3 [p] of the Act** STATES THAT AN INVENTION WHICH IN EFFECT, IS TRADITIONAL KNOWLEDGE OR WHICH IS AN AGGREGATION OR DUPLICATION OF KNOWN PROPERTIES OF TRADITIONALLY KNOWN PROPERTIES OF TRADITIONALLY KNOWN COMPONENT OR COMPONENTS ...IS NOT AN INVENTION WITHIN THE MEANING OF THE ACT.

THIS PROVISION CAN EFFECTIVELY CURB MISAPPROPRIATION AND COMMERCIALISATION OF TRADITIONAL KNOWLEDGE<sup>6</sup>.

**Pre Grant opposition.** THIS PROVISIONS HAS PROVED TO BE BOTH A BANE AND BOON DEPENDING ENTIRELY ON ITS USE AND MISUSE. THE PRESENT STRUCTURE OF THE PRE-GRANT AND POST GRANT PROCEDURE VIDE SECTIONS 25[1] AND 25[2] HAS BEEN INTRODUCED IN THE PATENT AMENDMENT ACT, 2005. SECTION 25[1] WHERE AN APPLICATION FOR A PATENT HAS BEEN PUBLISHED BUT A PATENT HAS NOT BEEN GRANTED, **any person may**, IN WRITING, REPRESENT BY WAY OF OPPOSITION

TO THE CONTROLLER AGAINST THE GRANT OF PATENT., .....THE PERSON OPPOSING THE PATENT MAYBE ANY PERSON ,HE MAY NOT BE A RIVAL IN TRADE ,HE MAY OPPOSE ON PUBLIC POLICY OR PUBLIC INTEREST OR ON ISSUES OF PUBLIC HEALTH, AFFORDABILITY OF PRODUCT AT A REASONABLE RATE. WHILE THERE HAVE BEEN SEVERAL CASES OF MISCHIEVOUS PRE GRANT OPPOSITION APPLICATIONS TO DILATE THE GRANT OF A DESERVING PATENT, THE MADRAS HIGH COURT HAS AFFIRMED THAT THE DENIAL OF THE STATUTORY RIGHT TO OPPOSE AT A PRE GRANT STAGE AMOUNTS TO LEGAL INFIRMITY AND THE GRANT OF THE PATENT IS NOT LEGALLY SUSTAINABLE. IN THE CASE CITED BELOW, THE PETITIONERS WERE REGISTERED SOCIETIES PROVIDING SUPPORT TO PEOPLE LIVING WITH HIV/AIDS. E-HOFFMAN -LA ROCHE, THE RESPONDENT, A PHARMACEUTICAL COMPANY HAD APPLIED FOR A PATENT, WHICH WAS OPPOSED BY THE PETITIONERS. THE PETITIONERS WERE DENIED THE RIGHT TO MAKE THEIR REPRESENTATION AND THE PATENT WAS GRANTED. THIS WAS BROUGHT TO THE NOTICE OF THE HIGH COURT. THE COURT DID NOT GO INTO THE MERITS OF THE ORDER GRANTING THE PATENT. THE CASE WAS EXAMINED IN THE LIGHT OF SECTION 25[1], WHICH WAS INCORPORATED IN 2005. IT DID NOT ACCEPT THE ARGUMENT PRESENTED ON BEHALF OF THE RESPONDENT THAT THE MERE DENIAL TO HEAR DOES NOT BECOME BAD, UNLESS THE PERSON WHO HAS BEEN DENIED SUCH PROCEEDING PROVES THAT HE HAS SUFFERED A PREJUDICE. IT WAS CONTENDED THAT THE PETITIONERS DID NOT SUFFER ANY LOSS AS THE RIGHT OF POST GRANT OPPOSITION IS AVAILABLE TO THE PETITIONERS. IT WAS HELD THAT THE DENIAL OF OPPORTUNITY TO HEAR THE OPPOSITION MAKES THE GRANT OF THE PATENT TOTALLY NULL AND IS NOT AN IRREGULARITY THAT CAN BE CURED. THE REMEDY AT THE POST GRANT STAGE CANNOT BE EQUATED WITH THE REMEDY AT THE PRE GRANT STAGE. THE INSUFFICIENCY OF THE OPPORTUNITY OF

HEARING AT THE PRE GRANT STAGE CANNOT BE MADE GOOD BY GRANT OF OPPORTUNITY AT THE POST GRANT STAGE. SINCE THE STATUTE HAS GIVEN REMEDY AT BOTH STAGES IT MUST BE AVAILABLE AT BOTH STAGES. ONE CANNOT BE THE SUBSTITUTE OF ANOTHER. AN UNFAIR TRIAL CANNOT BE CURED BY A FAIR APPEAL. **Indian Network for people living with HIV/AIDS Versus Union of India**<sup>7</sup>.

### **Evergreening of Patents:**

SECTION 3[D] OF THE INDIAN PATENT ACT HAS RECEIVED WORLD WIDE ACCLAIM AS THE LEGAL PROVISION PREVENTS "EVER GREENING" BY PROHIBITING THE PATENTING OF NEW FORMS OF EXISTING PHARMACEUTICAL SUBSTANCES THAT DO NOT DEMONSTRATE SIGNIFICANTLY ENHANCED EFFICACY. THE SAGA OF NOVARTIS STRETCHED FOR SEVERAL YEARS ON THE CONSTITUTIONALITY AND TRIPS COMPLIANCE OF SECTION 3[D] BRINGS TO LIGHT YET ANOTHER CONTROVERSIAL SUBJECT<sup>8</sup>. IT RELATES TO THE JURISDICTION OF THE IPAB.

**IPAB** THE INTELLECTUAL PROPERTY APPELLATE BOARD WAS CONSTITUTED ON SEPTEMBER 15,2003 TO HEAR AND ADJUDICATE APPEALS AGAINST THE DECISION OF THE REGISTRAR UNDER THE TRADE MARKS ACT,1999 AND THE INDIAN GEOGRAPHICAL INDICATIONS OF GOODS[REGISTRATION AND PROTECTION]ACT,1999.THE JURISDICTION OF THE IPAB WAS EXTENDED TO PATENT LAWS FROM 2007.AN APPEAL MAY BE MADE OVER THE DECISION OF THE CONTROLLER WITHIN 3 MONTHS FROM THE DATE OF THE DECISION, ORDER, OR DIRECTION AS THE CASE MAY BE.

DESPITE THE TRAPPINGS OF A CIVIL COURT, THIS IS A SMALL STEP AS THE JURISDICTION OF THE BOARD IS LIMITED. MATTERS RELATING TO INFRINGEMENT ARE LEFT TO THE HIGH COURTS. THERE IS AN IMMINENT NEED FOR A SPECIALISED COURT ON INTELLECTUAL PROPERTY THE SUBJECT BEING TOO COMPLEX

AND SPECIALISED. APPOINTMENT OF EXPERT'S PANEL TO ASSIST THE COURTS AS REPORTED IN THE INDIAN PATENT OFFICE WEBSITE IS A FEEBLE ATTEMPT TO HANDLE COMPLEX IP ISSUES IN TUNE WITH THE GLOBAL REQUIREMENTS.

**Attempts to stall the entry of generic drugs: Subversion of law.**

THE CLASH BETWEEN THE PATENT HOLDER AND THE MANUFACTURER OF GENERIC VERSION OF THE PATENT IS INEVITABLE. THE PATENT HOLDER IS EAGER TO EXPLOIT HIS INVENTION TO THE TOTAL EXCLUSION OF OTHERS-VIDE SECTION 48 OF THE PATENT ACT, WHILE THE GENERIC MANUFACTURER SEEKING LICENSE FROM THE DRUG CONTROLLER GENERAL OF INDIA TO MANUFACTURE A DRUG IS PERMITTED ON FURNISHING TO THE LICENSING AUTHORITY THAT THE MEDICINE:

(I) CONTAINS THE CONSTITUENT INGREDIENTS IN THERAPEUTIC/ PROPHYLACTIC QUANTITIES AS DETERMINED IN RELATION TO THE CLAIMS OR CONDITIONS FOR WHICH THE MEDICINE IS RECOMMENDED FOR USE OR CLAIMED TO BE USEFUL

(II) IS SAFE FOR USE UNDER THE CONDITIONS IN WHICH THE FORMULATION FOR ADMINISTRATION AND USE ARE RECOMMENDED;

(III) IS STABLE UNDER THE CONDITIONS OF STORAGE RECOMMENDED;

(IV) CONTAINS SUCH INGREDIENTS AND IN SUCH QUANTITIES FOR WHICH THERE IS THERAPEUTIC JUSTIFICATION;

THE CONTROVERSY THAT ARISES IN SUCH SITUATIONS PERTAINS TO THE EXTENT OF PROTECTION AVAILABLE TO THE PATENT HOLDER TO STALL THE ENTRY OF THE GENERICS. THE COURTS HAVE REITERATED IN SEVERAL CASES THAT THE PATENT HOLDER IS REQUIRED TO AVOID SPECULATIVE LITIGATION AND ATTEMPTS TO SUBVERT THE LAWS WAS DESISTED ENTAILING HEAVY PENALTY. IN A WRIT FILED BY BAYER CORPORATION AGAINST THE GENERIC MANUFACTURER CIPLA<sup>9</sup>, BAYER

SUBMITTED THAT THE DRUG APPROVAL PROCESS AND THE LICENSE ISSUED BY THE DRUG CONTROLLER GENERAL OF INDIA TO A GENERIC DRUG IS SUBJECT TO SECTION 48 OF THE INDIAN PATENT ACT AND THAT A LICENSE TO THE GENERIC MANUFACTURER MAY BE GIVEN ONLY ON THE EXPIRY OF THE PATENT TERM. BAYER REQUESTED THE CONTROLLER NOT TO GRANT LICENSE TO THE GENERIC VERSION OF ITS DRUG SORANIB, MARKETED AS NEXAVAR, AS IT WOULD IMPAIR HIS EXCLUSIVE RIGHT U/SEC 48 BY VIRTUE OF WHICH IT CAN PREVENT THIRD PARTIES FROM MANUFACTURING, USING, SELLING, OFFERING FOR SALE, OR IMPORTING THE PATENTED PRODUCT IN INDIA.

THE COURT HELD THAT THE TWO ENACTMENT'S ARE SEPARATE- THE PATENT ACT ISSUES GRANTS FOR A NEW INVENTION, HEREIN A DRUG, AND PROVIDES EXCLUSIVE RIGHTS FOR A LIMITED PERIOD TO THE PATENT HOLDER. WHILE THE DRUGS AND COSMETICS ACT PROVIDES POWERS TO THE DRUG CONTROLLER OF INDIA TO ISSUE LICENSES AFTER TESTING THE SAFETY OF THE PRODUCT AND ON ENSURING THAT THE DRUG CONFORMS TO THE THERAPEUTIC CLAIMS.

THE HIGH COURT EXPRESSED ITS DISPLEASURE AT THE ATTEMPTS MADE BY THE PETITIONER TO SUBVERT THE LAW AND TO CREATE LINKAGE BETWEEN THE PATENT ACT AND THE DRUGS ACT. THE PETITIONER WAS PENALISED TO THE TUNE OF 6.75 LAKHS AND THE PROCEEDS WERE TO BE SHARED BY CIPLA AND THE UNION OF INDIA. THE DIVISION BENCH LATER REDUCED THE PENALTY TO ONE LAKH.

**Refusal of an injunction sought by the patent holder during the course of a suit for infringement of a patent. Protection of the generics mainly on the differential pricing of the drugs**

AN APT ILLUSTRATION IS THE CASE OF F.HOFFMAN-LA ROCHE

VERSUS CIPLA LIMITED<sup>10</sup>.

ROCHE THE FAMOUS MNC HELD A PATENT FOR A DRUG KNOWN AS ERLOTINIB. THE RESPONDENT IS ANOTHER WELL-KNOWN PHARMA INDUSTRY, THE CIPLA THAT LAUNCHED THE GENERIC VERSION. ROCHE SOUGHT AN INTERIM INJUNCTION TO RESTRAIN THE GENERIC VERSION IN A SUIT FOR INFRINGEMENT OF ITS PATENT. THE HIGH COURT REFUSED TO GRANT THE ORDER. ONE OF THE REASONS IS BASED ON THE **pricing of the drugs**- THE PRICE OF THE GENERIC PILL IS ONE THIRD OF THE PATENT DRUG. WHILE THE PATENT COSTS Rs. 4,800 THE GENERIC PILL IS AVAILABLE FOR Rs 1,600 ONLY. THE COURT OPINED THAT IT WAS IN PUBLIC INTEREST THAT THE GENERIC IS ALLOWED TO MARKET ITS PRODUCT FOR THE BENEFIT OF THE PATIENTS WHO REQUIRE THIS DRUG AND CAN AFFORD ONLY THE GENERIC VERSION. THE INTENTION OF THE COURT MAY BE LAUDABLE BUT VIOLATES THE SPIRIT OF THE PATENT ACT WHICH IS PRIMARILY TO ENCOURAGE AND PERMIT AN INVENTOR TO EXPLOIT HIS WORK WITHOUT ANY INTERFERENCE. THE PATENT HOLDER WAS BROWBEATEN FURTHER BY THE DIVISION BENCH AS THE COURT IMPOSED DAMAGES FOR SUPPRESSING MATERIAL FACTS. AND FINALLY THE SUPREME COURT DISMISSED THE APPEAL AND THE MATTER IS BACK TO THE TRIAL COURT. THERE IS EVERY POSSIBILITY THAT THE IMPACT OF SUCH JUDGMENTS WOULD ENCOURAGE THE PATENT HOLDERS TO RESORT TO REVERSE PAYMENTS TO BLOCK THE ENTRY OF GENERICS, AS SUCH ANTI COMPETITIVE PRACTICES ARE REPORTED BY THE EUROPEAN UNION IN ITS PHARMACEUTICAL ENQUIRY REPORT, 2009.

### **Geographical indications**

THE MOST INNOCUOUS IP RIGHT GRANTED IN THE CATEGORY OF GEOGRAPHICAL INDICATIONS HAS BECOME EQUALLY CONTROVERSIAL WITH LEGAL WRANGLES SPILLING OUTSIDE THE



COUNTRY'S BOUNDARIES.

THE GEOGRAPHICAL INDICATIONS OF GOODS [REGISTRATION AND PROTECTION]ACT 1999 CAME INTO FORCE ON 15 SEPTEMBER 2003<sup>11</sup>. IT HAS REGISTERED 106 GOODS OF WHICH DARJEELING TEA IS THE MOST SUCCESSFUL ENTRY. HAVING AMPLE RESOURCES, IT HAS SUCCEEDED IN PROTECTING ITS GI TAG WITHIN AND OUTSIDE INDIA. THE REMARKABLE ACHIEVEMENT OF THIS GI IS THAT IT HAS GAINED ENTRY IN THE GI REGISTRY OF EU, UK, GERMANY AND IS PROTECTED IN SEVERAL COUNTRIES.

THE RECENT ENTRY IN THE GI REGISTRY THAT SPARKED STRONG OPPOSITION IS THE OFFERINGS [THE LADDU] IN THE RICHEST TEMPLE IN THE WORLD. THE TEMPLE OF LORD VENKATESHWARA IS THE RICHEST TEMPLE SITUATED IN THE STATE OF ANDHRA PRADESH IN INDIA. [THE AUTHOR BELONGS TO THIS STATE]. THE ANNUAL BUDGET OF THIS TEMPLE IN YEAR 2008-2009 IS RS.1,925 CRORES AND THE MONEY SPENT FOR PREPARING THE OFFERING IS 60 CRORES WHILE THE REVENUE GAINED FROM THE SALE OF LADDU'S IS 40 CRORES. THE OFFERING TO THE LORD –THE LADDU-IS A SWEET BALL MADE OF

CHICK PEA FLOUR [CALLED BESAN] MIXED WITH GHEE [CLARIFIED BUTTER], SUGAR, ASSORTED DRY FRUITS AND NUTS WITH FLAVOURING OF SAFFRON AND NUTMEG. THE TEMPLE AUTHORITIES -TTD TRUST BOARD SUBMITTED ITS APPLICATION FOR A GI TAG TO THE LADDU. THE STRONG OPPOSITION TO THIS APPLICATION WAS DIRECTED TO THE FOLLOWING ISSUES.

1. IS A GI AN INDIVIDUAL RIGHT OR A COMMUNITY RIGHT?

SECTION 11 OF THE ACT CLEARLY STATES THAT...“ANY ASSOCIATION OF PERSONS OR PRODUCERS OR ANY ORGANISATION OR AUTHORITY ESTABLISHED BY OR UNDER ANY LAW FOR THE TIME BEING IN FORCE REPRESENTING THE INTERESTS OF THE PRODUCERS OF THE CONCERNED GOODS WHO ARE DESIROUS OF REGISTERING A GEOGRAPHICAL INDICATION SHALL APPLY IN WRITING TO THE REGISTRAR.....”

IT WAS ARGUED THAT THE TEMPLE BOARD REPRESENTS A SINGLE ENTITY - THIS RIGHT AS PER THE DEFINITION ABOVE BEING A COMMUNITY RIGHT CANNOT BE CLAIMED BY A SINGLE ENTITY. THIS CONTENTION WAS OVERRULED AS THE MAIN OBJECTIVE OF THE GI IS TO IDENTIFY GOODS OF A GIVEN QUALITY, REPUTATION, OR OTHER CHARACTERISTICS OF SUCH GOODS THAT CAN BE ATTRIBUTABLE TO ITS GEOGRAPHICAL ORIGIN –THE LADDU WAS A SPECIAL FOOD PRODUCT PREPARED BY HEREDITARY PRIESTS IN A SPECIAL KITCHEN FOR THE PAST 300 YEARS AND HAD GAINED REPUTATION, MAINTAINED SPECIFIC QUALITY AND CHARACTERISTICS THAT CANNOT BE CLAIMED BY ANY OTHER.

2. CAN THE LADDU BE IDENTIFIED AS GOODS?- GOODS IS DEFINED IN SECTION 2[F]AS ANY AGRICULTURAL, NATURAL, OR MANUFACTURED GOODS, OR ANY GOODS OF HANDICRAFTS, OR OF INDUSTRY, AND INCLUDES FOOD STUFF. GOODS ARE IDENTIFIED AS MARKETABLE COMMODITIES. THE DISPUTE IS THAT THE LADDU IS PRIMARILY AN OFFERING TO GOD, IT IS NOT

PREPARED TO BE SOLD. THE SANCTITY OF THE PRODUCT IS IMPINGED AS GOD NOR THE TEMPLE AUTHORITIES CAN NEVER BE EQUATED WITH A PRODUCER OF GOODS. THE DEFINITION OF THE 'PRODUCER" [SECTION 2 [K] IS .....ANY PERSON WHO TRADES OR DEALS IN SUCH PRODUCTION ,EXPLOITATION, MAKING OR MANUFACTURING ,AS THE CASE MAY BE ,OF THE GOODS. THE JUSTIFICATION FOR THIS ARGUMENT IS THAT THE GOODS WERE PRODUCED IN THE TEMPLE SO THE TEMPLE AUTHORITIES ARE THE PRODUCERS. THE PROTESTS AIRED WERE THAT THIS GI TAG WILL OPEN FLOODGATES WITH ALL TEMPLE AUTHORITIES VYING FOR THE SYMBOL. NOW HAVING GAINED THE GI TAG THE TEMPLE AUTHORITIES MAY EVEN BE TEMPTED TO HIKE THE PRICE OF THE PRASADAM WHICH STRICTLY SPEAKING HAS TO BE GIVEN FREELY TO THE DEVOTEES.

THE LEGAL WRANGLES IN THE AREA OF GEOGRAPHICAL INDICATIONS HAS SPILLED BEYOND REGIONAL BOUNDARIES AS SEEN IN THE CASE OF PASHMINA SHAWLS THAT ARE WOVEN IN INDIA AS WELL AS IN PAKISTAN BOTH CLAIMING TO BE THE ORIGINAL PRODUCERS. THIS IS THE NOT THE SOLITARY CASE THE BASMATI TAG TO A SPECIAL VARIETY OF RICE GRAIN THAT IS PRODUCED ALL OVER INDIA AND ABROAD IS AN ISSUE THAT IS NOW A TRANSBORDER DISPUTE THAT NEEDS A BILATERAL OR MAYBE A MULTILATERAL APPROACH.

### **The Protection of Plant Varieties and Farmers Rights Act, 2001<sup>12</sup>.**

INDIA HAS ADOPTED A SUI GENERIC SYSTEM TO PROTECT PLANT VARIETIES. THIS IS A UNIQUE LEGISLATION

- A] FOR THE ESTABLISHMENT OF AN EFFECTIVE SYSTEM FOR PROTECTION OF PLANT VARIETIES,
- B] TO PROVIDE RIGHTS TO FARMERS AND PLANT BREEDERS,
- C] TO ENCOURAGE THE DEVELOPMENT OF NEW VARIETIES OF PLANTS.

THE THREE RIGHT HOLDERS IDENTIFIED ARE

**1. Farmers**

**2. Breeders**

**3. Community**

**1. Farmers**

SECTION 2(K) DEFINES A FARMER. A 'FARMER' MEANS ANY PERSON WHO—

(I) CULTIVATES CROPS EITHER BY CULTIVATING THE LAND HIMSELF; OR

(II) CULTIVATES CROPS BY DIRECTLY SUPERVISING THE CULTIVATION OF LAND THROUGH ANY OTHER PERSON; OR

(III) CONSERVES AND PRESERVES, SEVERALLY OR JOINTLY, WITH ANY PERSON ANY WILD SPECIES OR TRADITIONAL VARIETIES OR ADDS VALUE TO SUCH WILD SPECIES OR TRADITIONAL VARIETIES THROUGH SELECTION AND IDENTIFICATION OF THEIR USEFUL PROPERTIES.

**Farmers' variety**

SEC 2(L) "FARMERS' VARIETY" MEANS A VARIETY WHICH—

(I) HAS BEEN TRADITIONALLY CULTIVATED AND EVOLVED BY THE FARMERS IN THEIR FIELDS; OR

(II) IS A WILD RELATIVE OR LAND RACE OF A VARIETY ABOUT WHICH THE FARMERS POSSESS THE COMMON KNOWLEDGE.

**2. Breeders**

SECTION 2[C] "BREEDER" MEANS A PERSON OR GROUP OF PERSONS OR A FARMER OR GROUP OF FARMERS OR ANY INSTITUTION WHICH HAS BRED, EVOLVED OR DEVELOPED ANY VARIETY;

**3. Rights of Communities**

41. (1) ANY PERSON, GROUP OF PERSONS (WHETHER ACTIVELY ENGAGED IN FARMING OR NOT) OR ANY GOVERNMENTAL OR NON-GOVERNMENTAL ORGANISATION MAY ON BEHALF OF ANY VILLAGE OR LOCAL COMMUNITY IN INDIA, FILE IN ANY CENTRE

NOTIFIED, WITH THE PREVIOUS APPROVAL OF THE CENTRAL GOVERNMENT BY THE AUTHORITY IN THE OFFICIAL GAZETTE ANY CLAIM ATTRIBUTABLE TO THE CONTRIBUTION OF THE PEOPLE OF THAT VILLAGE OR LOCAL COMMUNITY AS THE CASE MAY BE IN THE EVOLUTION OF ANY VARIETY FOR THE PURPOSE OF STAKING A CLAIM ON BEHALF OF SUCH VILLAGE OR LOCAL COMMUNITY.

**Protection of Plant varieties and Farmers Rights Authority.**

THE CENTRAL GOVERNMENT WAS EN POWERED TO ESTABLISH AN AUTHORITY KNOWN AS PROTECTION OF PLANT VARIETIES AND FARMERS RIGHTS AUTHORITY WITH AN EXTENSIVE BOARD OF MEMBERS DRAWN FROM VARIOUS SECTORS THE DUTY OF THE BOARD AS PROVIDED IN SECTION 8. (1) IS TO PROMOTE, BY SUCH MEASURES AS IT THINKS FIT, THE ENCOURAGEMENT FOR THE DEVELOPMENT OF NEW VARIETIES OF PLANTS AND TO PROTECT THE RIGHTS OF THE FARMERS AND BREEDERS.

**Protection of Bio diversity** HAS BEEN OF PRIME IMPORTANCE TO INDIA. **The Biological Diversity Act, 2002<sup>13</sup>** WAS ENACTED FOR CONSERVATION OF BIOLOGICAL DIVERSITY, SUSTAINABLE USE OF ITS COMPONENTS AND FAIR AND EQUITABLE SHARING OF THE BENEFITS ARISING OUT OF THE USE OF BIOLOGICAL RESOURCES, KNOWLEDGE AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

THE MAIN OBJECTIVES OF THE ACT IS

1. TO CONSERVE BIOLOGICAL DIVERSITY
2. TAKE MEASURES FOR SUSTAINABLE USE OF BIOLOGICAL RESOURCES
3. PROVIDE FAIR AND EQUITABLE SHARING OF BENEFITS ARISING OUT OF THE UTILISATION OF GENETIC RESOURCES.
4. TO ESTABLISH THE NATIONAL BIO DIVERSITY AUTHORITY TO  
A]ADVICE THE CENTRAL GOVERNMENT ON MATTERS RELATING TO THE CONSERVATION OF BIODIVERSITY [B] ADVICE THE STATE GOVERNMENTS IN THE SELECTION OF AREAS OF

BIODIVERSITY IMPORTANCE TO BE NOTIFIED AS HERITAGE SITES. [C] ON BEHALF OF THE CENTRAL GOVERNMENT MAY TAKE ANY MEASURES NECESSARY TO OPPOSE THE GRANT OF INTELLECTUAL PROPERTY RIGHTS IN ANY COUNTRY OUTSIDE INDIA ON ANY BIOLOGICAL RESOURCE OBTAINED FROM INDIA OR KNOWLEDGE ASSOCIATED WITH SUCH BIOLOGICAL RESOURCE WHICH IS DERIVED FROM INDIA.

THE SALIENT FEATURES OF THIS ACT INCLUDE PROHIBITION ON TRANSFER OF INDIAN GENETIC MATERIAL OUTSIDE THE COUNTRY, WITHOUT SPECIFIC APPROVAL OF THE INDIAN GOVERNMENT;

1. PROHIBITION ON ANYONE CLAIMING AN INTELLECTUAL PROPERTY RIGHT (IPR), SUCH AS A PATENT, OVER BIODIVERSITY OR RELATED KNOWLEDGE, WITHOUT PERMISSION OF THE INDIAN GOVERNMENT;

2. REGULATION OF COLLECTION AND USE OF BIODIVERSITY BY INDIAN NATIONALS, WHILE EXEMPTING LOCAL COMMUNITIES FROM SUCH RESTRICTIONS;

3. MEASURES FOR SHARING OF BENEFITS FROM THE USE OF BIODIVERSITY, INCLUDING TRANSFER OF TECHNOLOGY, MONETARY RETURNS, JOINT RESEARCH & DEVELOPMENT, JOINT IPR OWNERSHIP, ETC.;

4. MEASURES TO CONSERVE AND SUSTAINABLY USE BIOLOGICAL RESOURCES, INCLUDING HABITAT AND SPECIES PROTECTION, ENVIRONMENTAL IMPACT ASSESSMENTS (EIAs) OF PROJECTS, INTEGRATION OF BIODIVERSITY INTO THE PLANS, PROGRAMMES, AND POLICIES OF VARIOUS DEPARTMENTS/SECTORS;

5. PROVISIONS FOR LOCAL COMMUNITIES TO HAVE A SAY IN THE USE OF THEIR RESOURCES AND KNOWLEDGE, AND TO CHARGE FEES FOR THIS;

6. PROTECTION OF INDIGENOUS OR TRADITIONAL KNOWLEDGE, THROUGH APPROPRIATE LAWS OR OTHER MEASURES SUCH AS REGISTRATION OF SUCH KNOWLEDGE;

7. REGULATION OF THE USE OF GENETICALLY MODIFIED ORGANISMS;

8. SETTING UP OF NATIONAL, STATE, AND LOCAL BIODIVERSITY FUNDS, TO BE USED TO SUPPORT CONSERVATION AND BENEFIT-SHARING;

9. SETTING UP OF BIODIVERSITY MANAGEMENT COMMITTEES (BMC) AT LOCAL VILLAGE LEVEL, STATE BIODIVERSITY BOARDS (SBB) AT STATE LEVEL, AND A NATIONAL BIODIVERSITY AUTHORITY (NBA).

### **Traditional Knowledge<sup>14</sup>**

PROTECTION OF TRADITIONAL KNOWLEDGE THROUGH THE TRADITIONAL KNOWLEDGE DIGITAL LIBRARY [TKDL] DATABASE IS ONE FORM OF PROTECTING THIS KNOWLEDGE. THE GOVERNMENT OF INDIA HAS ALLOWED THE EU PATENT OFFICES TO ACCESS THE TKDL DATABASE UNDER A NON DISCLOSURE AGREEMENT. THE KNOWLEDGE COMMISSION REPORT SUGGESTS THAT THIS INFORMATION BE GIVEN TO OTHER INTERNATIONAL SEARCH AUTHORITIES TO PREVENT MISAPPROPRIATION AND GRANT OF 'WRONG PATENTS'.

IN THE ABSENCE OF A SEPARATE LEGISLATION ON TRADITIONAL KNOWLEDGE THE STATE OF KERALA INITIATED A POLICY ON MEASURES TO PROTECT TRADITIONAL KNOWLEDGE. THE INTERESTING FEATURE OF THIS STATE POLICY IS THAT IT RECOMMENDS DISCLOSURE OF THE DATABASE AND SUGGESTS BENEFIT SHARING OF THE KNOWLEDGE.

### **Copyright Protection**

IN INDIA THE FIRST LEGISLATION ON COPYRIGHTS WAS PASSED IN THE YEAR 1914. IT WAS IN 1994 THAT MAJOR AMENDMENTS WERE MADE<sup>15</sup>. SOME HIGHLIGHTS ARE

1. PERFORMER RIGHTS WERE INCLUDED-A PERFORMER IS DEFINED IN SECTION 2 [Q] AS INCLUDING AN ACTOR, SINGER, MUSICIAN, DANCER, ACROBAT, JUGGLER, CONJURER, SNAKE

CHARMER, A PERSON DELIVERING A LECTURE, OR ANY OTHER PERSON WHO MAKES A PERFORMANCE.

IT IS INTERESTING TO NOTE THAT A PROFESSOR IS EQUATED TO A SNAKE CHARMER. MAY BE THE REASON IS THAT THEY ATTRACT STUDENTS AND AUDIENCE?

THE OTHER IMPORTANT ADDITION IS THE INTRODUCTION OF BROADCASTING RIGHTS.

REGISTRATION OF COPYRIGHT SOCIETIES WAS PERMITTED.

THE COPYRIGHT SOCIETIES REGISTERED UNDER THIS ACT ARE THE INDIAN PHONOGRAPHIC INDUSTRY [IPI] IS AN ASSOCIATION OF PHONOGRAM PRODUCERS ESTABLISHED IN 1936 . THEY FOCUS ON PUBLIC PERFORMANCES, BROADCASTING RIGHTS AND SOUND RECORDING. IT HAS CHANGED ITS NAME TO INDIAN MUSIC INDUSTRY<sup>16</sup> .



FOR CINEMATOGRAPHY AND TELEVISION FILMS THE SOCIETY FOR COPYRIGHT REGULATION OF INDIAN PRODUCERS FOR FILM AND TELEVISION [SCRIPT] HAS BEEN REGISTERED.

THE INDIAN REPROGRAPHIC RIGHTS ORGANISATION [IRRO] SAFEGUARDS THE INTERESTS OF THE OWNERS OF COPYRIGHTS BY ISSUING REPROGRAPHIC USAGE LICENSES AS THE STATUTORY LIMIT FOR REPROGRAPHY OF COPYRIGHTED WORKS IS RESTRICTED TO 20 COPIES OF NOT MORE THAN 10% OR ONE CHAPTER OF ANY PUBLICATION<sup>17</sup>.

The Indian Performing Rights society for musical literary works protects the rights of composers, authors and publishers. It has 1780 members. In its annual report it has claimed to have paid royalties to the tune of 21 crores to its domestic members and one crore to the International societies<sup>18</sup>.

Several amendments to the Indian Copy right are in the offing

The present law provides ownership to the producer of a cinematography film. Now, the director can claim the ownership.

The term of protection is proposed to be extended from 60 to 70 years.

As India has announced its willingness to accede to the WCT and WPPT, suitable amendments for copyright protection in the digital media have been suggested on those lines.

A very useful suggestion is the imposition of royalties to the original owner in cases of “version recording” of songs. This provision has a two-prong benefit as this adaptation affects both moral and economic rights of the owner.

The reporting of current events is not considered as fair use any more.

The remuneration claimed by the copyright societies is also streamlined.

### **Remedies for infringement of copyrights**

THE INDIAN COPYRIGHT ACT PROVIDES BOTH CIVIL AND CRIMINAL REMEDIES. APART FROM THESE STATUTORY REMEDIES, SEVERAL STATES HAVE TAKEN STRINGENT MEASURES AND

COPYRIGHT PIRATES ARE CONSIDERED AS CRIMINALS. THE STATES HAVE SEPARATE LEGISLATION'S TO HANDLE PIRACY, FOR INSTANCE IN THE STATE OF MAHARASHTRA THE LEGISLATION IS NAMED AS THE MAHARASHTRA PREVENTION OF DANGEROUS ACTIVITIES OF SLUMLORDS, BOOTLEGGERS, DRUG-OFFENDERS, DANGEROUS PERSONS AND VIDEO PIRATES ACT, 2009.

**In Chennai it is The Tamil Nadu Prevention of Dangerous Activities of bootleggers, drug offenders, forest-offenders, goondas, immoral traffic offenders and slum grabbers and video piracy Act, 1982; while in Karnataka - The Karnataka Bootleggers, Drug Offenders, Gamblers and Goondas, Immoral traffickers and Slum-Grabbers (Prevention of Dangerous Activities) Bill, 2009 replaces the Karnataka Prevention of Dangerous Activities of Boot-Leggars, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1985.**

THE INDIAN DESIGN ACT 2000 HAS MADE SUITABLE AMENDMENTS TO THE EARLIER DESIGN ACT OF 1911 AND IS IN FORCE, WHILE THE SEMI CONDUCTOR INTEGRATED CIRCUITS -LAYOUT DESIGN ACT, 2000<sup>19</sup>, IS IN COLD STORAGE. THE LEGISLATION WAS DRAFTED ON THE LINES OF THE TREATY on Intellectual Property in respect of Integrated Circuits<sup>20</sup> to which India is a signatory.

PROTECTION OF DATABASES, CONFIDENTIAL INFORMATION, AND TRADE SECRETS ARE INCLUDED IN THE REGIME OF INTELLECTUAL PROPERTY.

THE NATIONAL INNOVATION ACT 2008 HAS INTRODUCED AN ELABORATE MECHANISM FOR PROTECTION OF CONFIDENTIAL INFORMATION. TRADE SECRET IS HOWEVER A RIGHT THAT NEEDS SELF-REGULATION AS THE CLAIM FOR BREACH OF THE RIGHT DEPENDS ON THE EXTENT OF MEASURES TAKEN TO PROTECT IT.

WHILE REVERSE ENGINEERING A VALID DEFENCE, IT IS ONLY THE MISAPPROPRIATION OF THE INFORMATION PROCURED BY ILLEGAL MEANS THAT ENTAILS PENALTY. THERE ARE SEVERAL LEGISLATIONS IN INDIA THAT PROTECT CONFIDENTIAL INFORMATION-

SECTION 27 OF THE INDIAN CONTRACT ACT PERMITS RESTRICTIVE COVENANTS IN A CONTRACT NOT NECESSARILY CONTRACTS OF EMPLOYMENT THAT PREVENT DISCLOSURE OF INFORMATION

THE INFORMATION TECHNOLOGY ACT, 2000 <sup>21</sup>

THE INDIAN COPYRIGHT ACT PROTECTS ORIGINAL LITERARY, DRAMATIC, MUSICAL, AND ARTISTIC WORKS. THE DEFINITION OF LITERARY WORKS SECTION 2[6] INCLUDES COMPUTER PROGRAMS, TABLES AND COMPILATIONS INCLUDING COMPUTER DATABASES.

THE CREDIT INFORMATION COMPANIES (REGULATION) ACT, 2005<sup>22</sup> REGULATES CREDIT INFORMATION AVAILABLE IN A CREDIT INSTITUTION.

### **Competition Laws**

THEY ARE ANTITHESIS TO THE CONCEPT OF FREE TRADE. IN A WELFARE STATE IMPOSING RESTRICTIONS ON TRADE MAY NOT SEEM CONDUCTIVE. HOWEVER IN CONSONANCE WITH THE CONSTITUTIONAL PROVISIONS TO DISALLOW CONCENTRATION OF ECONOMIC POWER THE COMPETITION ACT 2002, RECEIVED ASSENT OF THE PRESIDENT ON JAN 13, 2003, AND YET HAS NOT COME INTO FORCE<sup>23</sup>. THE STATEMENT OF OBJECTS AND REASONS FOR THE PROMULGATION OF THE LAW PRONOUNCES THAT THE ENACTMENT IS A] TO PROVIDE THAT THE OPERATION OF THE ECONOMIC SYSTEM DOES NOT RESULT IN THE CONCENTRATION OF ECONOMIC POWER TO THE COMMON DETRIMENT, B] TO CONTROL MONOPOLIES, C] TO PROHIBIT MONOPOLISTIC AND RESTRICTIVE TRADE PRACTICES.

TRADE MARKS ACT 1999, CAME INTO FORCE WITH EFFECT FROM SEPT. 15, 2003<sup>24</sup>.

IN THE AREA OF TRADEMARKS- OWNERSHIP IS GRANTED FOR REGISTERED/ UNREGISTERED MARK.

THE ACQUISITION OF A TRADEMARK RIGHT IN INDIA IS-

1. BY REGISTRATION
2. PRIOR AND CONTINUOUS USE
3. WIDE SPREAD REPUTATION AND GOOD WILL OF THE MARK.

**The Ownership right is acquired by use** - IN INDIA, SEC 12 PERMITS REGISTRATION OF A MARK BY MORE THAN ONE PROPRIETOR BY APPLYING THE DOCTRINE **of honest concurrent use**. A TRADEMARK CAN BE REGISTERED WHICH IS EITHER IDENTICAL OR NEARLY IDENTICAL WITH AN EXISTING TRADEMARK ONLY IN CASE OF HONEST CONCURRENT USE – THIS PROVISION IS IN PUBLIC INTEREST AND THE DETERMINATION OF AN HONEST USE IS A QUESTION OF FACT.

**Law protects the vigilant** SEC 33- STATES THAT WHERE THE PROPRIETOR OF AN EARLIER TRADEMARK HAS ACQUIESCED FOR A CONTINUOUS PERIOD OF 5 YEARS IN THE USE OF REGISTERED EXISTING TRADEMARK ONLY IN CASE OF HONEST CONCURRENT USE – THIS PROVISION IS IN PUBLIC INTEREST AND THE DETERMINATION OF AN HONEST USE IS A QUESTION OF FACT,.

BEING AWARE OF THAT USE, HE SHALL NO LONGER BE ENTITLED ON THE BASIS OF THE EARLIER TRADEMARK-

A) APPLY FOR A DECLARATION THAT THE LATER TRADEMARK IS INVALID OR

B) TO OPPOSE TO USE OF THE LATER TRADEMARK.....

UNLESS THE REGISTRATION OF THE LATER TRADEMARK WAS NOT APPLIED IN GOOD FAITH.

**Notice to the public prior to registration of the mark.** THE REGISTRATION OF THE TRADEMARK IS A LENGTHY PROCESS WHICH INCLUDES ADVERTISEMENT OF THE APPLICATION BEFORE/AFTER ACCEPTING THE APPLICATION FOR REGISTRATION

OF THE MARK- THIS GIVES TO THE PUBLIC AN OPPORTUNITY TO OPPOSE THE REGISTRATION.

**Notice to the rival competitor**-IS A MANDATORY PROVISION IN THE COPYRIGHT/ TRADEMARK LAWS, WHEN AN APPLICANT SEEKS TO REGISTER HIS RIGHT. THIS IS A STRIKING FEATURE OF INDIAN LAWS THAT IS NOT AVAILABLE IN OTHER COUNTRIES- **Rule 16 (3) of the Copyright Rules** MANDATE THAT THE PERSON APPLYING FOR REGISTRATION SHALL GIVE NOTICE OF HIS APPLICATION TO EVERY PERSON WHO CLAIMS OR HAS ANY INTEREST ON THE SUBJECT MATTER OF THE COPYRIGHT OR DISPUTES THE RIGHTS OF THE APPLICANT TO IT.

IN A RECENT CASE THE FEDERATION OF THE REGISTERED INDUSTRIES OF INDIA VERSUS G.KESHAVULU<sup>25</sup>. THE RESPONDENT HAD REGISTERED UNDER THE COPYRIGHT ACT, DRAWINGS OF STEEL TUBES AS ARTISTIC WORKS. IN A COUNTRY HAVING A STEEL TUBE INDUSTRIES WITH A MANUFACTURING CAPACITY OF OVER 4 MILLION TONES PER ANNUM WITH 700 ORGANISED SECTOR COMPANIES AN 600 UNITS IN THE SMALL SECTOR THE REGISTRATION HAD A DIRECT IMPACT AS THE REGISTERED HOLDER THREATENED THE MANUFACTURERS AND DEALERS OF INFRINGING PROCEEDINGS FOR MISUSE OF THE REGISTERED COPYRIGHT. IN THE SUIT FILED BY THE FEDERATION OF INDIAN INDUSTRIES, THE COURT HELD THAT THE REGISTRATION WAS IN VIOLATION OF THE MANDATORY PROVISIONS THAT REQUIRE PRIOR NOTICE UNDER RULE 16 (3) OF THE COPYRIGHT RULES [STATED ABOVE] AND UNDER **Sec 45** OF THE COPYRIGHT ACT, WHEREIN IT IS STATED ... IN RESPECT OF AN ARTISTIC WORK WHICH IS USED OR IS CAPABLE OF BEING USED IN RELATION TO ANY GOODS, AN APPLICATION SHALL INCLUDE A STATEMENT TO THE EFFECT THAT AND SHALL BE ACCOMPANIED BY A CERTIFICATE FROM THE REGISTRAR OF TRADEMARKS THAT NO TRADEMARK IDENTICAL WITH OR DECEPTIVELY SIMILAR TO SUCH ARTISTIC WORK HAS BEEN

REGISTERED UNDER THAT ACT IN THE NAME OF ,OR THAT NO APPLICATION HAS BEEN MADE UNDER THAT ACT FOR SUCH REGISTRATION BY ANY PERSON OTHER THAN THE APPLICANT.

PROTECTION OF TRADEMARKS IN CYBERSQUATTING CASES: THE COURTS HAVE IN SEVERAL CASES APPLIED THE TRADITIONAL APPROACH IN THE USE OF EXISTING TRADEMARKS AS DOMAIN NAMES. THE SUFFIX .COM IS NOT TAKEN INTO ACCOUNT WHILE EXAMINING THE INFRINGEMENT OF TRADEMARKS. AS SEEN IN OKI ELECTRIC INDUSTRY CO LTD VERSUS WALTON<sup>26</sup>.

THE GUIDELINES LAID DOWN BY THE COURT WAS

1.THE MERE REGISTRATION OF A WELL-KNOWN TRADEMARK AS A DOMAIN NAME CAN GIVE RISE TO LIABILITY FOR PASSING OFF.

2. IF THE DOMAIN NAME OWNER USES ITS WEBSITE TO PROMOTE OR OFFER GOODS OR SERVICES THAT ARE CONFUSINGLY SIMILAR TO THOSE OFFERED BY A TRADEMARK OWNER WITH PRIOR RIGHTS, AND THE DOMAIN NAME AND MARK ARE CONFUSINGLY SIMILAR, THE TRADEMARK OWNER CAN BRING AN ACTION FOR INFRINGEMENT JUST AS IT WOULD FOR ANY OTHER ACT OF INFRINGEMENT.

3. THE USE OF ANOTHER PARTY'S DOMAIN NAME IS ALLOWED WHERE THE DOMAIN NAME ITSELF DOES NOT GIVE RISE TO CONFUSION.

IT IS UNFORTUNATE THAT INDIA HAS NOT AVAILED, THE BENEFITS OF THE MADRID CONVENTION OR THE MADRID PROTOCOL. THE DELAY IS DETRIMENTAL TO THE INTERESTS OF THE TRADEMARK OWNERS IN INDIA.

## **Conclusion**

THIS REPORT PRESENTS BIRDS EYE VIEW OF THE MAJOR LEGISLATIONS IN INDIA ON INTELLECTUAL PROPERTY. INDIA HAS INITIATED MANY LEGISLATIONS. ENFORCEMENT OF THE LAWS REQUIRES AN EFFECTIVE EXECUTIVE, A CONSTANT MONITORING

MECHANISM AND COOPERATION OF THE CITIZENS. INDIA IS NOT COMPLACENT WITH ITS ABUNDANT TRADITIONAL KNOWLEDGE, THE TALENTED YOUTH HAVE TAKEN THE COUNTRY TO NEW HEIGHTS. THE GLOBAL COMPETITIVENESS REPORT 2009 HAS PLACED INDIA IN 49TH POSITION IN THE GLOBAL COMPETITIVENESS INDEX. THE MAIN DRAWBACK LIES IN THE FACT THAT THE GOVERNMENT SEEMS TO DRAG ITS FEET IN THEIR PLANS TO ACCEDE TO IMPORTANT TREATIES –IT IS NOT A MEMBER OF THE MADRID CONVENTION, NOR THE MADRID PROTOCOL. THE COPYRIGHT BILL WITH SUITABLE AMENDMENTS TO THE COPYRIGHT ACT IS WELL DRAFTED YET DEPENDS ON THE GOVERNMENT TO MOVE FORWARD AND BECOME MEMBER OF THE WCT AND THE WPPT. THE TRADEMARKS BILL ALSO AWAITS THE DECISION OF THE GOVERNMENT TO ACCEPT THE MADRID PROTOCOL. THERE IS AN IMMINENT NEED TO AVAIL THE OPPORTUNITIES PROVIDED BY THE INTERNATIONAL AGREEMENTS, AND ALSO STREAMLINE THE NATIONAL POLICIES BEST SUITED TO ITS REGIONAL NEEDS AND PROTECT THE INTERESTS OF THE STATE AND ITS PEOPLE AT LARGE.

## **FOOT NOTES**

- 1 . [www.Knowledgecommission.gov.in](http://www.Knowledgecommission.gov.in)
2. [www.Knowledgecommission.gov.in/downloads/documents/NKC\\_entrepreneurship.pdf](http://www.Knowledgecommission.gov.in/downloads/documents/NKC_entrepreneurship.pdf)
3. [www.dst.gov.in/draftinnovationlaw.pdf](http://www.dst.gov.in/draftinnovationlaw.pdf)
4. [www.prsindia.org/docs/bills/1229425658\\_the\\_protection\\_and\\_utilisation\\_of\\_publicfunded\\_Intellectual\\_PropertyBill\\_12008](http://www.prsindia.org/docs/bills/1229425658_the_protection_and_utilisation_of_publicfunded_Intellectual_PropertyBill_12008)
5. [www.patentoffice.nic.in/ipr/patent/patent\\_2005.pdf](http://www.patentoffice.nic.in/ipr/patent/patent_2005.pdf)
6. [www.patentoffice.nic.in/ipr/patent/patentg.pdf](http://www.patentoffice.nic.in/ipr/patent/patentg.pdf)
7. Network for people living with HIV/AIDS Versus Union of India 2009[3] Recent Arbitration Journal 349[Madras].

8.

[www.novartis.com/downloads/about\\_novartis/india\\_glivec\\_patent\\_case\\_faq.pdf](http://www.novartis.com/downloads/about_novartis/india_glivec_patent_case_faq.pdf)

9. Bayer versus Union of India and another WP[C]No 7833 of 2008 Delhi High Court Order dated 7 Nov 2008.

10. 2008[37] PTC 71 Delhi.

11. [www.patentoffice.nic.in/ipr/gi/gi\\_act.pdf](http://www.patentoffice.nic.in/ipr/gi/gi_act.pdf)

12. [www.grain.org/brl\\_files/india-pvp-2001-en.pdf](http://www.grain.org/brl_files/india-pvp-2001-en.pdf)

13. [www.envfor.nic.in/divisions/biodiv/act/bio\\_div\\_act\\_2002.doc](http://www.envfor.nic.in/divisions/biodiv/act/bio_div_act_2002.doc)

14. <http://www.tkdl.res.in/tkdl/langdefault/common/Abouttkdl.asp?GL=Eng>

15. <http://copyright.gov.in/>

16. <http://www.pplindia.org>

17. <http://www.irro.in>

18. <http://www.iprs.org>

19. <http://www.mit.gov.in/default.aspx?id=322>

20. [http://www.wipo.int/clea/docs\\_new/pdf/en/in/in003en.pdf](http://www.wipo.int/clea/docs_new/pdf/en/in/in003en.pdf)

21. In the Chapter IX. PENALTIES , COMPENSATION AND ADJUDICATION

Section 43 Penalty and Compensation for damage to computer, computer system, etc (Amended in 2008) the penalty for a]illegal access to confidential information b]downloading any data without permission of the ownerc]introducing a contaminant d]disrupting the system, e]cause denial of access to any computer to the person authorized to access f]assisting in any illegal act of tampering,manipulating any computer system,f]destroying,deleting,diminishing the value,altering the source code ,shall be liable to pay damages not exceeding one crore rupees. The Computer Database"protected in this Act means a representation of information, knowledge, facts, concepts or instructions in text, image, audio, video that are being prepared or have been prepared in a formalized manner or have been produced by a computer, computer system or computer network and are intended for use in a computer, computer system or computer network; Section 43 A Compensation for failure to protect data.



Where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation, not exceeding five crore rupees, to the person so affected. sensitive personal data or information" means such personal information as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit.

22. The Credit Information Companies (Regulation) Act, 2005 regulates credit information available in a credit institution.

- Credit Institution is defined as a banking company and including-  
(i) a corresponding new bank, the State Bank of India, a subsidiary bank, a co-operative bank, the National Bank and regional rural bank;

(ii) a non-banking financial company;

(iii) a public financial institution ;;

(iv) the financial corporation established by a State;

(v) the housing finance institution;

(vi) the companies engaged in the business of credit cards and other similar cards and companies dealing with distribution of credit in any other manner; Credit information is defined as "any information relating to

(i) the amounts and the nature of loans or advances, amounts outstanding under credit cards and other credit facilities granted or to be granted, by a credit institution to any borrower;

(ii) the nature of security taken or proposed to be taken by a credit institution from any borrower for credit facilities granted or proposed to be granted to him;

(iii) the guarantee furnished or any other non-fund based facility granted or proposed to be granted by a credit institution for any of its borrowers;

(iv) the creditworthiness of any borrower of a credit institution;

(iv) any other matter which the Reserve Bank may, consider necessary for inclusion in the credit information to be collected and maintained by credit information companies, and, specify, by notification, in this behalf;"

23. [http://www.commonlii.org/in/legis/num\\_act/ca2002149](http://www.commonlii.org/in/legis/num_act/ca2002149)

24. <http://www.iprindia.net/ipr-laws/trade-mark.pdf>

25. 2008[37]PTC 602

26. 2008 [36]PTC 510