CHHATTISGARH NATIONAL LAW UNIVERSITY

CENTRE FOR INNOVATION RESEARCH AND REGISTRATION
CHHATTA NATIONAL LAW UNIVERSITY, PATNA

E-JAIRIPA

E-Journal of Academic Innovation and Research in Intellectual Property Assets)

January–June 2026

Volume VII, Issue 1



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Publisher: Registrar CNLU, Patna

ACKNOWLEDGEMENT

I express my deep gratitude to Hon'ble Vice Chancellor Prof. (Dr.) Faizan Mustafa, Hon'ble Registrar Prof. (Dr.) S.P. Singh, for their free hand generous support in releasing this journal.

I also express my profound sense of gratitude to all the contributors of research papers, peer reviewers, and all the respected members of the Editorial Board. I also acknowledge the valuable efforts of all those who contributed to the preparation, publication, and release of this e-journal (E-JAIRIPA).

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CHANAKYA NATIONAL LAW UNIVERSITY

Volume VII Issue 1 (January-June 2026)

CENTRE FOR INNOVATON RESEARCH AND FACILITATION INTELLECTUAL PROPERTY FOR HUMANITY AND DEVELOPMEMT (CIRF-IPR)

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E-JAIRIPA
Volume VII Issue I January 2026- June 2026

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RECONNOITRING GI PERFORMANCE: GLOBAL AND INDIAN SCENARIO

Author: *Dr. Akinchan Buddhodev Sinha*[1]

Abstract

Geographical Indication (GI), as a form of Intellectual Property (IP), possesses tremendous commercial value. In general, a geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities and a reputation that are due to that origin. In this era of globalization, it is imperative to protect products originating from a particular place, i.e. from where it comes, since such products signify legacy of that place to which they belong , i.e. their genesis, further innovations that might have taken place and most significantly to preclude unauthorized usage of a registered Geographical Indication by others.

Geographical Indication (GI) contributes prodigiously towards the export earnings of a nation and also assists in uplifting the economic status of the people belonging to the place of GI product's origin. It is heartening to note that there is a whopping jump in GIs across the globe. As per the data of WIPO, from a total of 86 national and regional authorities there are approximately 58,600 protected GIs in existence in 2023.

In view of the soaring significance of GIs, this article made an academic endeavour to reconnoiter various interesting developments in terms of estimated global growth of GI, future growth trend of appellations of origins in force by origins and performance of GI product category wise.

Keywords**:** Geographical Indication; Estimated Global Growth; Appellations of Origins; GI Performance

JEL Classification Code: O34, R11

I. Introduction

Human beings have always strived to create something unique and innovative to be distinct or different from others. This strong desire to do something new, something different and to claim

[1] Deputy Director, The Institute of Company Secretaries of India (ICSI).

the new creation has led to advent of myriad products. However, one of the major factors that have driven innovation in the business world is incessant and ruthless competition.

To vanquish competition as well as to stay in the top slot, it is imperative to explore unique products and if such product has linkage to the culture or custom of a particular state or region of the country where it is produced, then it adds prodigious value, since it possesses the twin attributes of novelty and leveraging of cultural values.

Further, in this times of globalization, the protection and fostering of unique products and cultural heritage have gained steam. In this regard, Geographical Indications (GI) stand at the intersection of tradition, innovation, and economic development, providing a robust tool for protecting the authenticity and quality of products originating from specific regions.

GI is a vital facet of intellectual property law with far-reaching impacts for both cultural preservation as well as economic development. With the passage of time and phenomenal growth in business activities, several countries have developed GIs for their agricultural, natural and manufactured goods.

One of the fundamental benefits of GI protection is the preservation of cultural heritage. Numerous GI products possess enormous cultural and historical significance, evincing generations of traditional craftsmanship and knowledge. By preserving the geographical origin of these products, GI protection paves the way for transferring of heritage to future generations.

It is heartening to note that the awareness among the consumers across the globe with reference to the genuineness of the products they buy have soared remarkably. GI certification have captured the centered space, as it exhibits quality, thereby assuring consumers that products they purchase adheres to the standards linked to its geographical origin.

GI contributes prodigiously towards strengthening international trade and cultural exchange. It acts as ambassadors of its regions, giving global diaspora

The ensuing part of the article will explore the performance of GI both globally as well as in India by taking into consideration the growth of GI across selected national / regional authorities, growth prospects of appellations by origins, product-wise GI performance globally, and efficacy in the processes filing, examining and registration of GIs with respect to India.

II. Global GI Performance

As GI is gaining steam across the globe and several countries are filing GI applications for their varied products, in this regard, it generates substantial interests to reconnoiter the global performance of GIs on the basis of the following parameters:

i) Estimated global growth of GIs.

ii) Future growth trends of appellations of origin in force by origins.

iii) Performance of GI product category wise.

The data used for comprehending the GI performance in terms of the aforesaid parameters have been referred from World Intellectual Property Indicators Report, published by World Intellectual Property Organization ("WIPO") (). The data for the period from 2017 to 2023 have been considered for the analysis.

i) Estimated global growth of GI

The global GI growth trends have been forecasted based on the data pertaining to GI in force for selected national / regional authorities such as China, European Union, Switzerland, Republic of Moldova, Bosnia and Herzegovina, UK, Vietnam, India, Costa Rica Türkiye, Cuba, Canada, US, Republic of Korea, Iran, Japan, Thailand, Colombia, Argentia, Brazil, Malaysia, Ethiopia, Bangladesh, Jordan, Jamaica etc. The forecasting has been done for the period from 2024 to 2035.[2]

The current and forecasted GI in force across the selected national and regional authorities are provided in table 1 below.

[2] World Intellectual Property Report (Turnitin Observation 1: Link removed, only the organization name have been mentioned)

Table 1

Current and Forecasted Geographical indications in force[3]

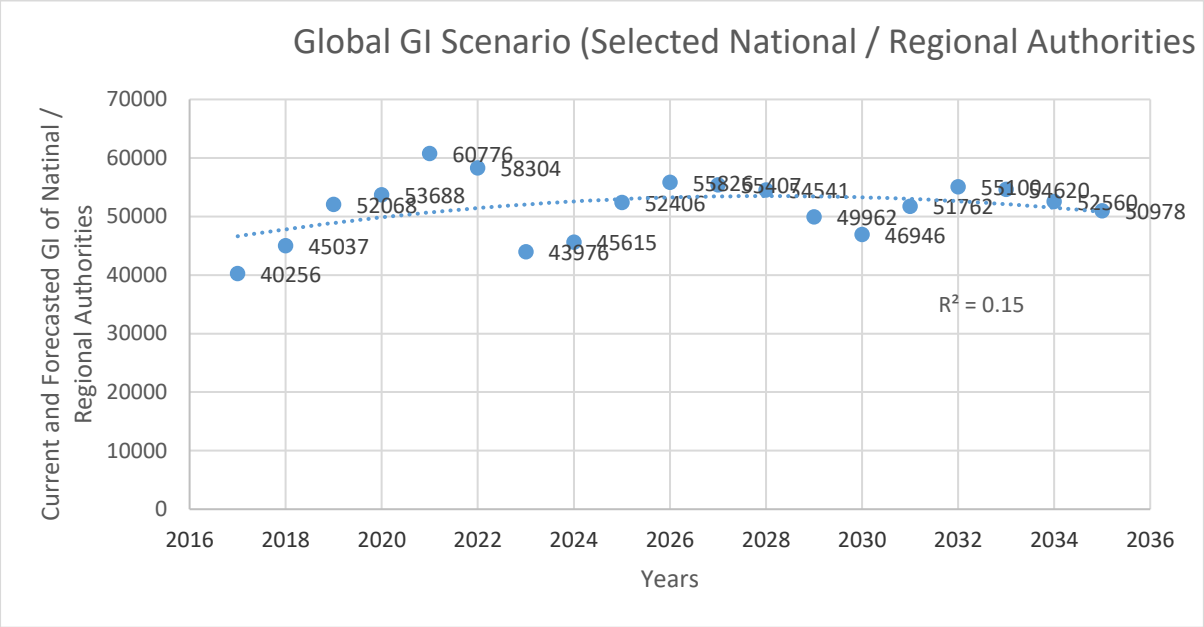
Years	Geographical indications in force for selected national/regional authorities
2017	40256
2018	45037
2019	52068
2020	53688
2021	60776
2022	58304
2023	43976
2024	45615
2025	52406
2026	55826
2027	55407
2028	54541
2029	49962
2030	46946
2031	51762
2032	55100
2033	54620
2034	52560
2035	50978

Source: World Intellectual Property Indicators (WIPO)

[3] "World Intellectual Property Indicators (WIPO)", Accessed from https://www.wipo.int/publications/en/details.jsp?id=4822

Based on the aforesaid data, the growth trend of GI in force has been derived using parabolic trend equation. The parabolic trend of both current and forecasted data of GI in force is provided in exhibit.

Exhibit 1



Source: Based on the GI figures provided in Table 1 (World Intellectual Property Indicators (WIPO))

On viewing the countries or regions (a partial list) mentioned above, it may be opined that both developed and emerging economies are contributing towards GI. Moreover, from the GI in force data provided through WIPO Intellectual Property Indicators reports, it may be seen that countries or group of countries (EU) from all the continents are enhancing their GIs, becoming a harbinger of strong growth in global trade, impetus to the growth of primary, secondary and tertiary sectors, generation of employment, rise in gross domestic product, per capita income and other vital economic variables of the economies.

ii) Future growth trend of appellations of origins in force by origins

Another benchmark considered to ascertain the performance of GIs across the world is exploring the growth trend of appellations of origins in force by origins like France, European Union, Italy, Iran, Czech Republic, Bulgaria, Georgia, Hungary, Cuba, Mexico, Peru, Tunisia,

Algeria, Portugal, ~~Slovakia, D.P.R.K., North Macedonia, Serbia, Bosnia and Herzegovina, Switzerland~~ etc. [4]

Parabolic trend has been applied to comprehend the projected appellations of origins that will be in force by origins for the period 2024-2035. The current and forecasted appellations of origins by origins is provided in table 2.

Table 2

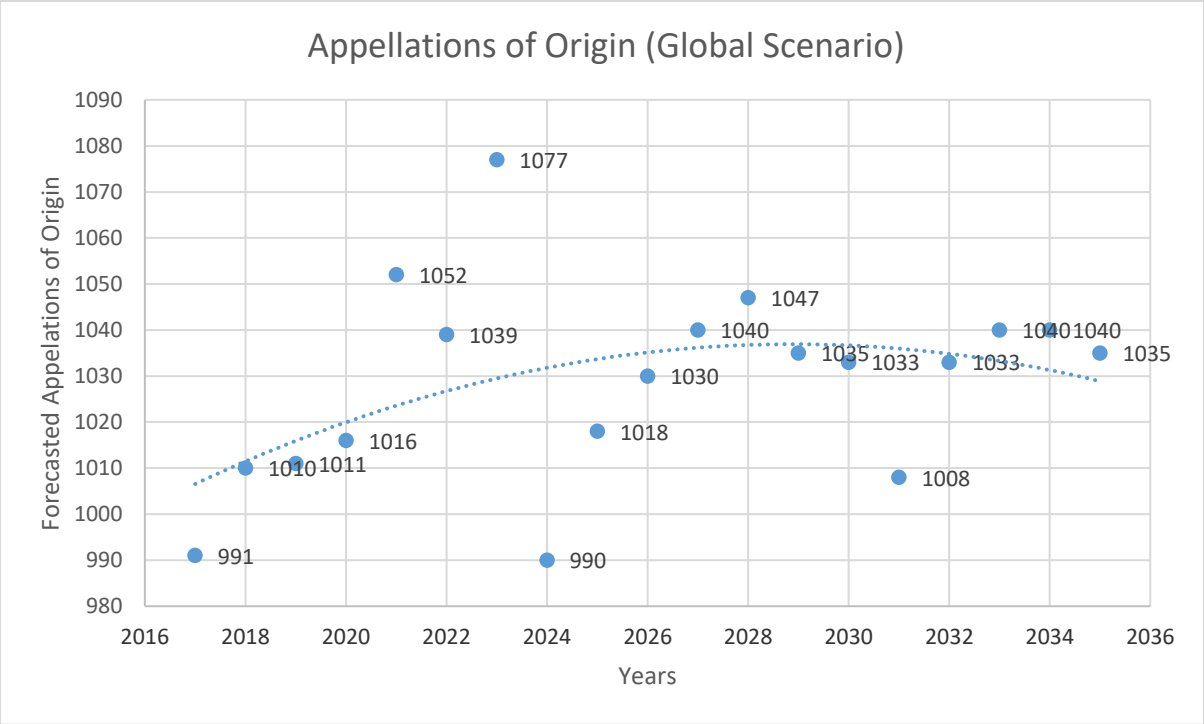
Appellations of origins by origins[5]

Years	**Appellations of origin in force by origin**
2017	991
2018	1010
2019	1011
2020	1016
2021	1052
2022	1039
2023	1077
2024	990
2025	1018
2026	1030
2027	1040
2028	1047
2029	1035
2030	1033
2031	1008
2032	1033
2033	1040
2034	1040
2035	1035

[4] "ibid"
[5] "World Intellectual Property Indicators (WIPO)

The parabolic trend exhibiting the growth of appellations of origin by origin is provided in exhibit 2.

Exhibit 2



Source: Based on the data of Appellations of Origin referred from World Intellectual Property Indicators (WIPO).

The above parabolic trend depicts an arc like structure of the growth of appellations of origin by origin, indicating that first there is a substantial rise in the appellations of origin across all the regions but then gradually going down, nevertheless the drop is not massive. Most of the data point lies outside the trend line signifying an uneven growth. However, the silver lining is that both existing and forecasted values of appellations of origin overall give a positive picture, implying that the products related to specific geographical environment are being produced more, thereby cultivating the practice of preserving and promoting products having strong linkage to the roots or culture of the nation.

iii) Performance of GI product category wise

With reference to the performance of GI, product category-wise, the performance of the following five categories of products, namely agricultural products, handicrafts, others / unknown, services and, wines and spirts, in terms of their share in total GI as per the data provided in the World Intellectual Property Indicators Reports for the periods 2017 to 2023

have been considered.[6] The share of GI of the above products in percentage terms of total GI is presented in table 3 below-

Table 3

GI Product Category Wise Share in Total GI (%)[7]

Years / GI Product Category Share (%)	Agricultural products	Handicrafts	Others/unknown	Services	Wines and spirits
2017	28.17089	2.730023	12.00657	0.0258245	57.0667
2018	29.93706	2.657162	16.25237	0.0515659	51.09881
2019	34.2	3.5	3.5	0.1	56.6
2020	38.61236	3.565525	1.703554	0.0688768	56.10249
2021	43.57275926	3.895673774	1.438625543	0.05174912	51.0411923
2022	43.06838446	4.237712637	1.981606524	0.020036466	50.69827085
2023	44.84	4.23	2.81	0.03	48.09

The performance analysis of the five categories of products on the basis of their share in total GI is provided in exhibit 3.

Exhibit 3

Performance Analysis of Products Category-wise in terms of share in total GI

Statistical Variables / Product Category	Agricultural products	Handicrafts	Others/unknown	Services	Wines and spirits
Mean	37.5	3.54	5.67	0.05	52.96
Inference	1. The mean value of agricultural	1.Handicrafts which provides	1.The others / unknown product category has also	The GI in services have an	1.Wines and spirits as it hold a lion share in the

[6] "ibid"
[7] "World Intellectual Property Indicators (WIPO)

	products is quite high for agricultural products, implying various forms of agricultural products are registered under GI. 2. Thus, high mean or average value of agricultural products GI is also an indicator of agricultural growth in various economies of the globe.	employment to many artisans across the world requires an impetus, so that the income levels of artisans go up. 2. Based on the share in GI, handicrafts have performed quite impressively, evincing a robust growth in innovation and newness.	displayed a robust performance in view of the percentage of GI it holds among the total GI across the globe. 2. These products may be small or lesser known but their contribution in business world is phenomenal.	insignificant share in the total GI and so its mean value tends to be on the lower side.	total GI, the same gets reflected in its average value too. It indicates that across the globe, several countries / regions are holding lot of GIs on various forms of wines and spirts.
Standard Error	2.57	0.25	2.25	0.01	1.34
Inference	From the given standard error value, it may be	In case of handicraft products, the standard error is quite less,	The mentioned standard error is a metaphor of relatively low variation between	Services has the least standard error, indicating	The standard error of wines and spirits is also quite low, indicating a

	inferred that agricultural products have performed quite better as its variance is not so high, implying that year-wise variation in the GI share data is less.	indicating lesser deviation from the population mean, indicating that most of the year-wise GI share data may have uniformity.	the sample and the actual mean of the population, indicating a fair performance.	the least deviation of the sample mean from the actual mean of the population. It may also be opined that the GI data of services sector possess uniformity to a large extent.	healthy performance in total share of GI.
Median	38.61	3.57	2.81	0.052	51.09
Inference	The median value of 38.61 indicates that share of agricultural products in GI is on the higher side, as median value implies the mid-value, and so	From the above median value, it may be inferred that in view of the handicrafts products share in total GI, it is quite satisfactory. However, there is a	Others/ unknown products have also fairly performed well, based on the median value. It reveals that though they are categorised under others / unknown in assessment of share in GI, but	As stated for its mean value, since the share of the services in GI is on the lower side, so its median value is also less. However, its composition in GI may	Since wines and spirts under the product categories holds the mammoth share in GI, its median value is also high, indicating that with the passage of time its composition in

	it may be deduced that a substantial share of GIs in agricultural products lies above the given median value.	tremendous scope of handicrafts manufacturing countries / regions to enhance their share in GI.	their contribution is relatively high.	increase in future, if new forms of services or unique services of various countries / regions which are still unexplored currently, later get discovered are included in GI.	total GI has enhanced.
Standard Deviation	6.81	0.65	5.95	0.028	3.56
Inference	The standard deviation of agricultural products is the highest among all the products covered under GI, thereby exhibiting volatility in share of agricultural	The performance of handicrafts with respect to standard deviation is quite satisfactory, as its value is 0.65, indicating that it has displayed a consistent	Others / unknown products share in GI have registered a high standard deviation, implying that there may be fluctuations in its share in GI. In other words, in certain years its share may have gone high and in	A lower standard deviation for the services may be attributed to its small share in the GI.	Wines and spirts have evinced better performance in standard deviation, as its standard deviation stood at 3.56. The most salient facet of the standard deviation of wines and spirts is that there share

	products in GI for the periods considered for the study.	performance as far as its share in the GI is concerned.	some years it might have moved downwards.		in the GI is highest but its volatility in year-wise share in total GI is less.
Kurtosis	-1.89	-1.38	0.19	0.41	-1.99
Inference	Kurtosis signifies whether the distribution is peaked or flat compared to a normal distribution. The negative kurtosis value of agricultural products demonstrates a flat distribution that is the shares of agricultural products in GI during the years considered for the study are scattered.	Like agricultural products, the shares of handicraft products tends to be scattered during the periods considered for the study. Since the kurtosis value is negative, it implies that the distribution is flat compared to the normal distribution.	The positive kurtosis value of others / unknown products share in GI is an indication that the distribution is peaked compared to the normal distribution. It denotes that data pertaining to share in GI is concentrated and less scattering.	Like others / unknown products, the share of services has also registered a positive kurtosis value, meaning that there is less scattering of data, meaning that share in GI in one year doesn't differ much from the share in another year. Hence exhibiting consistency	A kurtosis greater than +2 suggests a too peaked distribution, while less than -2 indicates a too flat one. Since in case of wines and spirits, the kurtosis value approaches to -2, it may be opined that the distribution may get flattened further, i.e. there may be further scattering of data pertaining to its share in GI.

				in performance.	
Skewness	-0.35	-0.47	1.35	0.91	0.045
Inference	Agricultural products have registered a negative skewness value indicating that the distribution is skewed towards the left with more GI share data clustered on the right. Since the skewness value is -0.35, i.e. not falling between -0.5 and 0.5, it may be deduced that the distribution	In case of handicraft products, since the GI share skewness value is almost near to -0.5, and if the skewness value lies between -0.5 and 0.5, then the distribution of value is considered to be almost symmetrical, in view of this, the skewness of GI of handicraft products may be considered to have somewhat symmetry.	If the skewness value lies between -2 and 2, it is generally acceptable. Hence, the skewness of GI of unknown / other products have shown a fairly good performance.	As skewness value lying between -1 and +1 is considered to be excellent and as it can be observed that the skewness of GI for services is 0.91, thereby exhibiting a robust performance.	Wines and spirts have also exhibited reasonably good performance, as its skewness value is positive, albeit on the lower side.

	is not symmetrical.				

Source: Based on the calculations of WIPO data

III. GI Scenario in India

India is progressing at an astounding pace in Geographical Indications (GIs) as evident from the number of GIs issued by the Department for Promotion of Industry and Internal Trade (DPIIT) which stood at 684 as on 31st December, 2024, comprising of 38 foreign products also. A whopping 635 GIs got registered as on March 31st, 2024, covering 37 foreign products. To provide fillip to the GI products among the users, lesser fee and simplified procedures for registration of Authorized Users have been espoused through GI (Amendment) Rules, 2020.[8]

Geographical Indications has registered a whopping 388% growth, as government congeals protection of indigenous products. In one of the salient initiatives of the government in promoting GI can be observed in the textile sector, wherein registration the Handloom Marketing Assistance (HMA) Scheme, National Handloom Development Programme (NHDP) implemented by the Office of the Development Commissioner (Handloom) and National Handicrafts Development Programme (NHDP) implemented by the Office of Development Commissioner (Handicrafts), Ministry of Textiles, GI registration have been initiated to provide impetus to the growth of GI in the textile sector.

implemented by Office of the Development Commissioner (Handloom) and National Handicrafts Development Programme (NHDP) implemented by Office of Development Commissioner (Handicrafts), Ministry of Textiles. The financial assistance provided under the schemes are:

i) Rs. 1.50 lakh for meeting the expenses in registering the designs/products.

ii) Rs.1.50 lakh to impart training to personnel of IA and for effective enforcement of G.I. registration.

iii) Also, financial assistance is provided for organizing seminars, workshops etc.

Total 106 handloom products, 6 products logos and 227 handicraft products have been registered under the GI Act, 1999. GI handloom products and handicraft products are also

[8] "Annual Report 2024-25, Department for Promotion of Industry & Internal Trade, Ministry of Commerce & Industry, Government of India", Accessed from https://dpiit.gov.in/sites/default/files/annualReport_English_21February2025_0.pdf

promoted in export market by O/o Dc (Handloom) and the O/o DC (Handicrafts). Further, to promote the GI handloom products exhibitions are organised across the country, including participation in various crafts melas and Dilli Haat programme.[9]

It is heartening to note that Government of India has set a massive target of reaching 10,000 GI tags by 2030, which will assist prodigiously in competing with China, which is currently a goliath in GI. This approach will act as a messiah for such Indian products which are witnessing constraints in safeguarding its GI tag. For example, several GI varieties of mangoes are now being cultivated in foreign lands and are being exported from those countries.Consequently, it has given birth to cut-throat competition for Indian mango growers, threatening their market dominance. Likewise, India's GI-marked Basmati rice is experiencing a challenge from its neighbouring country Pakistan as well as the European Union.The attempt to obtain independent recognition for the rice variety in the EU market has given birth to a dispute, thereby exerting a debilitating impact on India's dominance in Basmati exports to Europe.

An innovative measure suggested by the Government of India is showcasing of GI products in Indian embassies abroad, thereby evincing the One-District-One Product (ODOP) initiative of the Government of India. This approach will bolster the export potential of India's distinct and traditional products, thereby expanding the global footprints of Indian goods.

The gamut of India's GI tagged products encompasses Darjeeling tea from West Bengal, renowned s for its incomparable muscatel flavour; Kanchipuram Silk Sarees from Tamil Nadu, produced from pure mulberry silk with sophisticated designs; Mysore silk from Karnataka for its vivacious colours; Kashmir saffron for its rich fragrance etc. Thus, it may be opined that India possess wide range of GI tagged products, thereby creating a huge opportunity for augmenting exports. [10]

Government has also laid emphasis on the significance of superior branding of GI products and proposed for joining hands with the Food and Safety Standards Authority of India (FSSAI) and the Bureau of Indian Standards (BIS) to ameliorate quality and deal with the issue of imitated products.

To comprehend the efficacy of the processing of Geographical Indications in India, in terms of their filing, examination and registration status, the data pertaining to filed, examined and

[9] "Promotion of GI Tagged Indian Textiles", Accessed from https://www.pib.gov.in/PressReleasePage.aspx?PRID=2152551
[10] "Kumar Dhirendra, "India sets ambitious target of 10,000 GI tags by 2030 to close gap with rivals", Livemint.com, dated January 22, 2025.

registered status of GIs for the period from 2008 to 2024 have been considered. To comprehend the efficacy of GI processing in India, F-Test (One Factor Model) have been applied on the mentioned three-status of GI. The data filed, examined and registered status of GIs is presented in table 4 below-

Table 4

Filed, Examined and Registered Data of GIs in India [11]

Year	Filed	Examined	Registered
2008	37	48	31
2009	44	21	45
2010	40	46	14
2011	27	32	29
2012	148	37	23
2013	24	30	21
2014	75	42	22
2015	47	66	20
2016	17	200	26
2017	32	28	34
2018	38	18	25
2019	32	43	23
2020	42	51	22
2021	58	0	5
2022	116	46	50
2023	211	100	55
2024	134	98	160

***Null Hypothesis (H_0)*:** There is no significant difference in filed, examined and registered status of GI.

***Alternative Hypothesis (H_1)*:** There is a significant difference in filed, examined and registered status of GI.

The result of the F-Test (One Factor Model) is provided in the exhibit 4

[11] Annual Reports of the Office of the Controller General of Patents, Designs & Trade Marks, Department for Promotion of Industry and Internal Trade, Ministry of Commerce & Industry, Government of India

Exhibit 4

Results of the F-Test (One Factor Model)

Anova: Single Factor						
SUMMARY						
Groups	*Count*	*Sum*	*Average*	*Variance*		
Column 1	17	1122	66	2921.125		
Column 2	17	906	53.29411765	2079.221		
Column 3	17	605	35.58823529	1185.382		
ANOVA						
Source of Variation	*SS*	*df*	*MS*	*F*	*P-value*	*F crit*
Between Groups	7932.275	2	3966.137255	1.923527	0.157185	3.190727336
Within Groups	98971.65	48	2061.909314			
Total	106903.9	50				

Source: Analysis based on the data of Table 4 (GI Filed, Examined and Registered),

Decision: Since the calculated value of F, i.e. 1.923527 is lower than the tabled value of F at 5% level of significance, i.e. 3.190727336, we fail to reject the null hypothesis. Thus, it may be concluded that all the three processes relating to GI, i.e. filing, examination and registration have equal efficacy, i.e. government is ensuring quick processing of GI applications, thereby providing a stimulus to the ease of doing business and bolstering trade.

IV. Conclusion

Notwithstanding Geographical Indications (GIs) are displaying an exalting performance both globally as well as nationally, but still there are some bottlenecks that needs to be looked into to enhance GI registrations such as prolonged registration timeline, complexity in scrutiny, objections, and multiple rounds of documentations exert a debilitating impact on the growth of GIs.

Big delays have been witnessed previously for obtaining GI for various products. For instance, in case of India's Darjeeling Tea, the GI application took 7 years to obtain GI. Similarly, due to procedural complexities and administrative hurdles, the GI for Alphonso Mangoes consumed 6 years for GI registration. Another striking example of huge delay pertains to Nagpur oranges which took 13 years to obtain GI registration. [12]

The silver lining is that there has been a mammoth growth in GI registrations. According to the data of WIPO from a total of 86 national and regional authorities there were nearly 58,600 protected GIs in existence in 2023. Out of 58,600 GIs in force, upper middle-income countries comprised 52.2% of the total GIs in force across the globe, followed by high-income economies which stood at 42.9%. However, middle-income and low-income economies GI in force figures in world's total GI registration figures stood at a paltry 4.8% and 0.1% respectively.

In terms of regional distribution, EU secured the first position with GI registrations at 52.5%, followed by Asia registering 39.5% (Oceania stood at 3.6%, North America at 2.8% , Latin America and Caribbean (LAC) witnessed GI registrations to the extent of 1.6% and Africa 0.2% . Further, as per the World IP Indicators 2024, the dragon, i.e. China has topped the chart with 9,785 GIs in force and India with 530 GIs in force. The GIs in force data for other economies stood at Germany (7,586), Hungary (7,290), Czech Republic (6,657), European Union (5,376), Switzerland (4,954), Türkiye (1,507), US (763) and Republic of Korea (643). Thus, India needs to gear up to improve its position in GI registrations, as it is evident from the statistics that it is lagging far behind China and other economies of the globe. However, in view of the aforesaid innovative initiatives of the government of India and by enhancing the gamut of GI by including more products, the scenario may change drastically**.**

[12] Seem Akshi (2025). "From Roots to Riches – The Economic and Cultural Value of Geographical Indications", Accessed from https://www.maheshwariandco.com/blog/geographical-indications-in-india/

E-JAIRIPA
Vol. VII (Issue I), pp.- 19-37

FARMERS AS AGENTS OF SUSTAINABLE DEVELOPMENT: REASSESSING SEED REGULATIONS AND TRIPS FLEXIBILITIES IN INDIA

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Abstract

The intersection of intellectual property law and sustainable development has recently increased the interests of academicians, scientists and policy makers especially for the regulation of seeds and plant varieties. In developing countries, the ability to use, exchange, save, and sell seeds are essential to economic survival and ecological sustainability. In this regard, one of "World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)" requires its member nations to provide legal protection to plant varieties and seeds by either patenting plant varieties or establishing a "sui generis" system. Being party to this agreement, India as developing countries, enacted its own special intellectual property (IP) legislation for the regulation of seeds and plant varieties with exclusive rights to breeders and farmers. The exclusive rights and flexibilities provided under IP regime over seeds and plant varieties, however, can increase reliance upon the commercial seed markets, raise production costs, and weaken informal seed systems. As a result of these rights and flexibilities provided in TRIPS, the targets of SDG 1 (No Poverty), SDG 2 (Zero Hunger) and SDG 12 (Responsible Consumption and Production) could be impacted as damage inflicted upon rural economies of India.

Against this backdrop, authors aim to examine the contributions of the farmers as agent, for food security and sustainable development. They propose for the inquiry that

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farmers are critical agents of sustainable development; and their transformative nature of ability and traditional rights are being compromised through TRIPS obligations and flexibilities while regulating the seeds and plant varieties in India. Besides introduction and conclusion, the central parts of the article include the analysis on seeds and plant varieties in India; international and national IP framework related to it; contributions of the Indian farmers as agent in advancement of SDGs. This article employs doctrinal research method by analytical and descriptive approach to arrive on viable observations and conclusions.

Keywords: Seed and Plant Varieties Intellectual Property Rights, TRIPS Flexibilities, Sustainable Agriculture, Sustainable Development Goals (SDGs).

I. Introduction

The legal aspects of intellectual property and sustainable development are inherently interwoven especially for seeds which is foundation of human food and survival. Seeds represent more than agricultural products stored in packets or traded in markets.[3] For millions of farmers, particularly in developing countries, seeds carry memory, adaptation, and survival strategies refined across generations.[4] They ensure food availability for households, protect livelihoods in uncertain climatic conditions, and preserve the biological diversity that sustains ecosystems. When farmers select and conserve seeds, they do not simply cultivate crops; they sustain life systems on the planet.[5] They save seeds from one harvest, exchange them within communities, and adapt them to local soil and climate conditions.[6] The legal protection for plant varieties and seeds provided at the international and national level is widely depended on "the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the World Trade Organization."[7] It allows countries to choose between "patent

[3] Jack Kloppenburg, *First the Seed: The Political Economy of Plant Biotechnology,* 4-7 (University of Wisconsin Press, Madison,2nd edn., 2004).
[4] Vandana Shiva, *The Violence of the Green Revolution: Third World Agriculture and Politics,* 63-64. (Zed Books, London, 1991).
[5] Cary Fowler and Pat Mooney, *Shattering: Food, Politics and the Loss of Genetic Diversity,* 19-42 (University of Arizona Press,1990).
[6] FAO, "Coping with Climate Change: The Roles of Genetic Resources for Food and Agriculture" pp. 2, (Food and Agricultural Organizations of United Nations, Rome, 2015), *available at:* https://www.fao.org/4/am947e/am947e00.pdf (last visited on May 11, 2026).
[7] WTO, Agreement on Trade-Related Aspects of Intellectual Property Rights, April 15, 1994; Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197

protection and an effective *sui generis* system."[8] Yet even this flexibility operates within a broader structure that prioritizes proprietary protection and commercial innovation.[9] In India, these obligations have been complied with special legislation titled as "Protection of Plant Varieties and Farmers' Rights Act, 2001."[10] This legislation acknowledges the "farmers as cultivators, conservers, and, in certain cases, breeders."[11] In doing so, India positioned itself as a country trying to harmonize trade law with social justice.[12]

However, the expansion of exclusive rights over seeds has not remained neutral in its impact.[13] When companies obtain proprietary control over plant varieties, farmers increasingly turn toward commercial seed markets instead of relying on traditional seed-saving practices.[14] Now, access to seeds becomes more commercialized and less community-driven, the broader goals of poverty alleviation and food security face new pressures. In this context, the implementation of TRIPS regime further supports the "Sustainable Development Goal 1 (No Poverty)" and "Sustainable Development Goal 2 (Zero Hunger), "Sustainable Development Goal 12 (Responsible Consumption and Production)", "Sustainable Development Goal 13 (Climate Action)", and "Sustainable Development Goal 15 (Life on Land)." However, this TRIPS agreement contains certain flexibilities that allow states to design plant variety protection systems consistent with their own development priorities. Accordingly, India is also trying to achieve these goals by integrating farmers' right and community practices in compliance with TRIPS obligation and flexibilities provide in its domestic jurisdiction.

Against this backdrop, this article aims to examine the contributions of the farmers in food security and fight against hunger under the preview of 2030 Agenda of Sustainable

(1994). It is divided into 7 Parts and contains 73 articles.

[8] *Ibid,* art.23(b).

[9] Jayashree Watal, *"Intellectual Property Rights in the WTO and Developing Countries"* pp.3-6 (Kluwer Law International, The Hague, 2001)

[10] Rashmi Venkatesan, "TRIPS and Plant Variety Protection in India: Complicating the Globalization Debate", 9 *The Indian Journal of International Economic Law*, 44-61(2018).

[11] Sujith Koonan, "Farmers' Rights in India: Assessing Conceptual and Implementation Issues", 4 *Dehradun L. Rev*. 29,41 (2012).

[12] Biswajit Dhar and Sachin Chaturvedi, "Introducing Plant Breeders' Rights in India: A Critical Evaluation of the Proposed Legislation, 1(2) *Journal of World Intellectual Property* 245 (1998).

[13] Suman Sahai, "Plant Variety Protection and Farmers Rights Law", 36 *Economic & Political Weekly,* 3338 (2001).

[14] C. N. Niranjan Rao, "Indian Seed System and Plant Variety Protection", 39 *Economic & Political Weekly,* 845, 848 (2004).

Development. It proposed that farmers are critical agents of sustainable development; and their transformative nature of ability and traditional rights are being compromised through TRIPS obligations and flexibilities while regulating the seeds and plant varieties in India. This article argues that IP protection regime does not exist as an end in itself; rather it acts as a mechanism for advancing sustainable development goals and human rights objectives. Re-calibrating the implementation of TRIPS in order to align the incentives for innovation and the rights of farmers to use their traditional seeds would provide a practical approach to aligning global trade obligations with the SDGs. Besides introduction and conclusion, the central parts of the article have been structured to include: the analysis on seeds and plant varieties in India; international and national IP framework related to it; contribution of the farmers as agent in advancement of SDGs. This article employs doctrinal research by analytical and descriptive method to arrive on viable observations and conclusions.

II. Seeds and Plant Varieties in India: An Overview

Seeds lie at the heart of agricultural life, yet development discourse often treats them as neutral inputs rather than as sites of power, control, and possibility.[15] The seeds and plant varieties carry actual and potential value besides genetic material and information.[16] It is fruit of labour of generations, accumulation of information and tested practices of community cultivators as farmers and breeders who breed, saved and exchanged it given social and ecological environments.[17] Hence, the farmers have been recognized as agents of sustainable agriculture and development. Related SDGs are also centered around the contribution of farmers considering them as harbinger of life on land and water. Farmer's act and influence interfere with soil health, crops production, use of water and fishing.[18] Generally, farmers use the practice of informal seed exchange and traditional breeding by selecting seed conducive to local soils, climatic

[15] Craig Borowiak, "Farmers' Rights: Intellectual Property Regimes and Struggle over Seeds", 32 *Economic & Political Weekly,* 511 (2004).
[16] FAO, International Code of Conduct for Plant Germplasm Collecting and Transfer, art. 2.8-2.9 (Adopted by 27th Session of the FAO Conference, Nov 1993) *available at:* https://www.fao.org/4/aj634e/aj634e.pdf (last visited on May11,2026)
[17] Wanglin Ma, Marco A. Marini and Dil B. Rahut, "Farmers' Organizations and Sustainable Development: An Introduction", 94 *Ann. Pub. & Coop. Econ*. 683, 683–700 (2023).
[18] T. Bernard and D. J. Spielman, "The Role of Farmer Organizations in Supplying Supermarkets with Quality Food in Vietnam", 34 *Food Policy,* 60 (2009).

conditions, and their communities.[19] This continuous process generated diverse plant populations that responded dynamically to environmental pressures. Innovation occurred in fields rather than in laboratories. It emerged through practice rather than formal recognition. Farmers did not treat seeds as exclusive property; they treated them as renewable resources embedded within social relationships.

In India, law relating to seeds has transformed the shared genetic resources into regulated objects of proprietary claims.[20] When legal systems define a plant variety, they typically emphasize characteristics such as distinctiveness, uniformity, and stability.[21] These criteria reflect the needs of commercial breeding and large-scale agriculture not the traditional breeding exercised by the rural farmers. This legal shift has significant implications for farmers' agency. When breeders obtain exclusive rights over protected varieties, they acquire control over the production, sale, and sometimes reuse of seeds. Farmers who purchase such seeds may face restrictions on saving, exchanging, or replanting harvested material.[22] Even where legal systems recognize certain farmers' privileges, these privileges operate within boundaries set by intellectual property regimes. The exclusive rights over plant varieties undoubtedly serve certain policy objectives but are applied in calibrating them in ways that do not undermine sustainable developmental goals.[23]

Seeds therefore operate as a hinge between intellectual property law and sustainable development. They connect global trade obligations to local farming realities. A development-oriented interpretation of TRIPS requires states to view plant variety protection not merely as a compliance obligation but as a policy instrument. States can interpret the requirement of an "effective" *sui generis* system in light of their

[19] Vandana Shiva and Kunwar Jalees, "*Seeds of Suicide: The Ecological and Human Cost of Seed Monopolies and Globalization of Agriculture"* 1 (Navdanya, New Delhi, 4th edn.,2006).
[20] Sumit Chakravarty *et al.,* "Farmers Rights in Conserving Plant Biotechnology with Special Reference to Northeast India", 13 *Journal of Intellectual Property Rights* 225 (2008).
[21] Kathy J. Cooke, " Expertise, Book Farming, and Government Agriculture: The Origins of Agricultural Seed Certification in the United States", 76 *Agricultural Hist*ory 524, 524–45 (2002), *available at*: https://www.jstor.org/stable/3744729 (last visited on May 11, 2026).
[22] Rashmi Venkatesan, "Trips and Plant Variety Protection in India: Assessing Conceptual implementation issues", 4 *Dehradun Law Review* 29,49-50 (2012).
[23] Craig Borowiak, "Farmers' Rights: Intellectual Property Regimes and the Struggle over Seeds", 32 *Politics & Society,* 515, 515-516 (2004).

developmental priorities.[24] Effectiveness need not equate to maximal exclusivity.[25] It can instead refer to a system that stimulates innovation while promoting food security, environmental sustainability, and equitable participation. By situating plant variety protection within the broader framework of the SDGs, States can align intellectual property regulation with commitments to poverty reduction and ecological balance.[26] Indian legal system prioritizes exclusive rights and commercial interests without meaningful safeguards, they risk the scope of farmer-led innovation in sustainable agriculture.[27] The rural farmers will become seed consumers instead of seed custodians due to reduced autonomy.

Farmers are the catalyst of sustainable agriculture and development. They cultivate the land, maintain genetic diversity, and are the first to respond to climate changes. When law recognizes their practice as valid and important, they allow farmers to actively contribute to sustainable development. On the other hand, when the law limits the practices without solid reasons, they reduce farmers' ability to act beyond simply using resources. The difference between these outcomes often depends on how countries use the flexibility found in international intellectual property law. In this context, discussion about seeds and plant varieties is not just about technical classifications. The focus is on who holds authority in agricultural systems. The question is whether development policy will see farmers as beneficiaries of top-down innovations or as partners in creating resilient food futures. By looking at how plant variety protection interacts with TRIPS flexibilities, one can determine whether current regulations support farmers as key agent in achieving sustainable development goals or restrict them within systems that limit their potential for change. Seeds has thus become starting point for a broader inquiry of international intellectual property law. It can support rather than hinder development focused agricultural governance.

III. International and National IP Framework on Seeds and Plant Varieties:

[24] Daniel Gervais, *The TRIPS Agreement: Drafting History and Analysis* 43-51 (Sweet & Maxwell, London, 2nd edn.2003).
[25] *Ibid.*
[26] *Id.*
[27] Philippe Cullet and Radhika Kolluru, *Plant Variety Protection and Farmers' Rights: Towards Broader Understanding*, 24 *Delhi Law Review*, 41-59 (2002)

An Analysis

Legal protection provided to seeds and plant varieties according to rights to the breeders and farmers in current times has been closely inspired by international legal regime for last three decades. Human generations, nations, and institutions have been inclined to protect and conserve their seeds, plant varieties, and biological resources,[28] as it plays decisive role in improving the overall economic development of the country. In recent times, introducing technology in agriculture led to the grant of intellectual property protection to the plants and seeds.[29] Biotechnology has also paved the way for new vistas in improved or modified varieties of plants. As a result, it became important to provide an effective system of plant variety protection by the way of patent, plant variety protection and *sui-generis* system based on international IP framework.[30] Therefore, it is essential to examine the international and national legal regime on the protection of plant varieties which exists since last three decades. The legal protection to seeds and plant varieties has been accorded by cross-sectional regimes under international law. For example, the '*Union International Pour La Protection Des Obtentions Végétales* (UPOV)' protects the plant varieties, the 'Convention on Biological Diversity (CBD)' deals with all genetic resources, the 'International Undertaking on Plant Genetic Resources (IUPGR)' covers only plant genetic resources and the 'Agreement on Trade Related Aspects of Intellectual Property Law (TRIPS)' regulates the microorganism and genetic information based on plants under intellectual property rights (IPRs). Accordingly, each nation makes its own legal framework for the protection of plant varieties and farmers varieties as per national interest and demand for trade, food security and environment.

(a) International Frameworks:

The 'International Convention for Protection of New Varieties of Plants known as UPOV is a multilateral treaty to protect new plant varieties which was adopted in Diplomatic Conference held in Paris on 2nd December 1961 by a group of Western European Nations with the specific aim of introducing private property rights on plant

[28] W.R. Cornish, *et.al*., *Intellectual Property: Patents Copyright, Trademarks and Allied Rights,* 48 (Sweet & Maxwell, London, 2013)
[29] *Ibid.*
[30] P. Narayanan, *Intellectual Property Law,* 30-31 (Eastern Law House, Kolkata, 4th edn. 2006).

varieties.'[31] After its subsequent revisions in 1972, 1978 and 1991, it protects interests and rights of the breeders on new plant variety; and establishes a uniform and clear international principles related to it. The breeder of a signatory to the UPOV have the advantage of priority rights for a period of twelve months from the date of filing his first application over applications of other breeders.[32] However, the date of filing application is excluded while calculating the period of priority rights. It also allows a breeder to make a choice in which country he first wants to apply for the protection.[33] However, breeder has to file independent applications for a single plant variety in each and every contracting party.[34] Corresponding to the UPOV 1961 and 1978, Articles 5 to 9 of UPOV, 1991 contain the conditions for the grant of a breeder's right. The new variety needs to be new, distinction, uniform and stable (NDUS).[35] A 'variety' must be new or novel. But the criteria of novelty are different from that of patent. As per UPOV, a 'variety' will be new if it has not been offered for sale or marketed with the consent of the breeder, prior to the filing of an application for protection in the territory where the application is filing.[36] The criteria of 'distinctness' simply requires that "a variety must be clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application."[37] The variety is deemed to be uniform if it is sufficiently uniform in its relevant character. However, the variations which are expected from a particular feature of the propagation do not affect the criteria of uniformity while examining the concerned variety.[38] "A variety is deemed to be stable if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle."[39] On these conditions, the term of protection to new plant varieties to 20 years in all plants genera and species and 25 years in cases of vine and trees. The UPOV system offers protection to the 'breeder' of

[31] See, UPOV, International Convention for Protection of New Varieties of Plants', Dec. 2, 1961, 815 U.N.T.S. 89.
[32] The UPOV 1961 and 1978, Art. 12; and the UPOV 1991, Art. 11(1).
[33] The UPOV 1961 and 1978, Art. 11(1); and the UPOV 1991, Art. 10(1).
[34] The UPOV 1961 and 1978, Art. 11(3); and the UPOV 1991, Art. 10(2).
[35] *Ibid*. Art. 5.
[36] *Id*. Art. 6(1) (i).
[37] *Id*. Art. 7
[38] *Id*. Art. 8.
[39] *Id*. Art. 9.

a plant variety, in the form of a 'breeder's right,[40] if his or her 'variety' satisfies the conditions set out in the Convention. However, the term 'breeder'[41] includes "(a) the person who bred, or discovered and developed, a variety; or (b) the person who is the employer of the aforementioned person or who has commissioned the latter's work, where the laws of the relevant contracting party so provide; or (c) the successor in title of the first or second aforementioned person, as the case may be." The phrase 'the person, who bred' can include a plants-man, a farmer, a company or a scientist, must be the one who bred the variety by means of plant breeding techniques. Thus, any person, irrespective of their scientific or legal background, irrespective of the breeding method used and irrespective of the effort breeding method used and irrespective of the effort expended to create the variety, is a potential breeder including farmer. Another aspect of the UPOV system is the recognition of farmer's privilege for sowing, re-sowing, exchanging and even selling their own traditional plant varieties and seeds. UPOV,1978 provided farmer's privilege by allowing them to use their own harvested material of the protected varieties for the next production cycle on their farm and to undertake limited exchange of seeds on non-commercial scale, however, UPOV,1991 restricts this privilege. Notwithstanding the fact that the UPOV system is the first system of plant variety protection at international level.

The Convention on Biological Diversity (CBD) provides the legal protection to agricultural biodiversity, farmers' livelihoods, and sovereign rights to biodiversity.[42] The Conventions establishes three main goals: the conservation of biological diversity, the sustainable use of its components; and the fair and equitable sharing of the benefits of the use of genetic resources.[43] In the preamble the convention states that the contracting parties recognize "the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitable benefits arising from the use of traditional knowledge,

[40] *Id*. Art. 1(v).
[41] *Id*. Art. 1(iv).
[42] UNO, Convention on Biological Diversity, 1992; 1760 UNTS 79 (1992). It was adopted at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro, 1992. It was opened for signature on 5 June 1992 and entered into force on 29 December 1993.The CBD contains 42 articles and 2 annexures in *toto*.
[43] *Ibid*. Art. 1.

innovations and practices, relevant to the conservation of biological diversity and sustainable use of its components."[44] However, no article in the convention directly addresses farmers' rights or mechanisms for the compensation of indigenous knowledge. It refers to 'indigenous practices but not to rights of farmers or local communities,'[45] The convention has recognized the rights of local communities to a share in the benefits accruing from the use of genetic resources. The Convention further recognizes both: 'the dependence of local communities on biological resources and the role played by such communities in the conservation and sustainable use of the resources.'[46] It points out 'the need for equitable sharing of benefits arising from the use of their traditional knowledge, innovations and practices, relevant to the conservation of biodiversity and the sustainable use of its components.'[47] The CBD though does not specifically deal with the issue of plant varieties protection, but is of direct relevance because it encompasses all biological resources which are used in generating new plant varieties and patented drugs.

The 'International Treaty on Plant Genetic Resources for Food and Agriculture was adopted by the FAO conference in November 2001.'[48] The Treaty is essentially an adaptation of the IUPGR and is overseen by the FAO Commission on Genetic Resources along with governing body set up under the Treaty.[49] It encourages the conservation and protection of plant genetic resources through "national commitments and international cooperation"[50] for collections of seeds and plants as set out in its objectives. "The objectives of this Treaty are the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security."[51] Further, all the parties to this Treaty has been given responsibility for "realizing Farmer's Right, as they relate to plant genetic resources for food and

[44] *Id.* Preamble.
[45] *Id.* Art. 10(c).
[46] *Id*. Art. 8(j).
[47] *Id*. Art. 15.
[48] FAO, International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), Nov. 3, 2001, 2400 U.N.T.S. 303. It came into force on 29th June 2004.
[49] *Ibid*. Art. 15(1) (d).
[50] *Id*. Art. 7.
[51] *Id*. Preamble.

agriculture" and "to take measures through national legislation to protect and promote Farmer's Right."[52] Besides, it does not provide limitation to extent "the rights of farmers to save, use, exchange and sell farm-saved seed and varieties."[53] It is also important to mention that the Treaty does not ignores the efforts of farmers, but it seeks to recognize their role in protection of traditional knowledge, sharing of benefits, access to and transfer of technology.

The 'Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) annexed as Annexure IC the Agreement establishing the World Trade Organization'[54] deals with aspects and subject matters of intellectual property including plant varieties and seeds. It recognizes dual need to "promote effective and adequate protection of IPRs; and to ensure that measures and procedures to enforce IPRs do not themselves become barriers to legitimate trade."[55] The Agreement requires all parties to meet certain minimum standards for protecting IP, defined as including copyrights, patents, plant varieties, industrial designs, geographic designations, the lay out design of integrated circuits and trade secrets. As per this agreement, the member states are free to decide and exclude plants and animals (other than micro-organisms) and essentially biological processes for the production of plants and animals (other than non-biological and microbiological processes) from patent regime. But where the member states opted for excluding plant from patents, then they were under obligation to protect plant varieties either "by patents or by an effective *sui generis* system or by any combination thereof."[56] By leaving 'plant varieties' undefined, TRIPS Agreement claims to provide effective protection of all plant varieties. Without setting substantive standards of protection, Article 27(3) (b) narrow down member's choice or regime by the 'effectiveness' requirement. The member states can even develop 'the best' method to protect plant varieties and seed that is suitable to their agriculture, trade and economic development.

The TRIPS Agreement also provides important flexibilities that allow member states

[52] *Id.* Art. 9 (2)
[53] *Id.* Art. 9 (3).
[54] WTO, Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994). It is divided into 7 Parts and contains 73 articles.
[55] *Ibid,* Preamble, Para. 1.
[56] *Ibid*. Art. 27(3) (b).

to adapt intellectual property protection to their national priorities and agricultural conditions.[57] It may be noted as: *firstly,* Article 27(3)(b) allows countries to exclude plants and animals from patent protection, while requiring them to provide protection for plant varieties through patents, an effective *sui generis* system, or a combination of both.[58] This flexibility enables governments to avoid strict patent regimes over seeds and plant varieties where such systems may not suit domestic agricultural practices. Scholars have noted that this policy space allows developing countries to design intellectual property systems that support their agricultural and developmental priorities.[59] *Secondly,* the Agreement does not define what constitutes an "effective *sui generis* system", thereby giving countries considerable freedom to develop plant variety protection laws suited to their social, economic, and agricultural realities.[60] This flexibility is particularly significant in countries where farming communities play a central role in conserving traditional seeds and maintaining crop diversity. Research on agricultural biodiversity highlights that farmers' traditional practices of saving, exchanging, and cultivating seeds contribute significantly to the conservation of plant genetic resources.[61] These flexibilities therefore provide an important policy space for countries to develop national legal frameworks that balance intellectual property protection with the needs of farmers, agricultural sustainability, and biodiversity conservation.

(b) National Framework:

In India, almost 75% of human population is dependent either directly or indirectly on agriculture. For the first time, India enacted its legislation for protection of seeds in year 1966. 'The Seeds Act, 1966' provides for measures/provisions regulating the quality of certain seeds for sale.[62] However, the sale of seeds from own holding of

[57] Agreement on Trade-Related Aspects of Intellectual Property Rights arts. 1, 8, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.
[58] Id. art. 27(3)(b).
[59] Carlos M. Correa, *Intellectual Property Rights, the WTO and Developing Countries: The TRIPS Agreement and Policy Options* 199–210 (2000).
[60] Daniel Gervais, The TRIPS Agreement: Drafting History and Analysis 357–366 (Thomson Reuters, 5th ed., 2021).
[61] Food and Agriculture Organization, *The State of the World's Biodiversity for Food and Agriculture* 89–94 (2019).
[62] The Seeds Act, 1966, Preamble.

notified kinds of seeds were exempted under the Act.[63] Even today since independence, improved or new variety/varieties of seeds are mainly produced/created by National Seed Corporation, State Farms Corporation of India, Agricultural Universities and Research Institutes established under public sector. Additionally, in order to save the Indian agriculture sector from the effect of patents, the Government of India exempted plants in whole (including seeds, varieties and species) from the ambit of patents under the Patents Act, 1970.[64] Till the year 1994, India managed to find an escape route to protect the interest of Indian farmers and did not introduce any form of protection over plants or its varieties or seeds. By ratifying TRIPS Agreement in 1994, India was under obligation to provide legal protection to seeds and plant varieties. Though plants as such can be exempted from the ambit of patents under Article 27 of TRIPS,[65] but then the signatory countries were bound to introduce either a patent protection or a *sui generis* protection or by any combination thereof.[66] Accordingly, the "Protection of Plant Varieties and Farmers' Rights Act, 2001" was enacted as a *sui generis* legislation in compliance with TRIPS obligations and flexibilities. Being a *sui generis* legislation, the unique aspects of this legislation relating to farmers are as such, "farmer is recognized as breeder, conserver and preserver of traditional varieties of crops and wild species in addition to cultivator, either directly or indirectly; protection is provided not only to new varieties; protection of varieties other than extant and farmer's varieties is limited to those genera or species notified; lenient procedure for the protection of farmer's varieties."[67]

The farmer's right includes the following main aspects: "right to register farmer's varieties; entitlement for benefit sharing for the use of biodiversity conserved by the farming community; right to save, use, sow, re-sow, exchange, share or sell farm produce including seed of registered variety but not the branded seed; right to claim compensation for under performance of a right protected variety from its promised level under defined production conditions; mandatory need to secure consent of farmer(s)

[63] *Ibid*. Sec. 24
[64] The Patent Act, 1970.
[65] The TRIPS, 1994, Art. 27 (3) (b)
[66] *Ibid.*
[67] *Id.*

when a farmer variety is used to develop an essentially derived variety (EDV); protection from legal proceedings related to alleged infringement; exclusion from paying fee in any legal proceedings in the tribunal and higher courts."[68] This Act protects plant varieties and seeds into four protectable categories: "(a) New Variety; (b) Extant variety, which refers to an existing variety discovered for the first time; (c) Farmer's Variety, based on community property concepts and (d) Essentially Derived Variety (EDV). A variety would be eligible for protection provided it is novel, distinct, uniform and stable."[69] Further, "every application for registration must include a denomination to the variety and describe (a) the geographical origin of the material; and (b) all information regarding the contribution of the farmer, community or organization in the development of the variety."[70] Also, "the application must state that the genetic or parental material used to develop the variety has been lawfully acquired."[71] Moreover, Section 40 necessitates the breeder to disclose information "regarding the use of genetic material conserved by any tribal or rural families in the breeding or development of such new variety."[72] This Act bears a set of public interest exceptions to registration of a new variety. For instance, "a new variety becomes un- registerable if it is likely to deceive the public, hurt the religious sentiments of any class or section of Indians, or cause confusion regarding the variety's identify or is not different from every denomination which designates a variety of the same botanical species or of a closely related species registered under the Act."[73]

This Act defines the term *'farmer'* from a community rights perspective as "those who cultivate crops by cultivating the land and those who supervise cultivation directly or indirectly through other people, or anyone who conserves and preserves, severally or jointly, with any other person… through selection and identification of their useful properties."[74] The manner of providing protection of "farmer's variety"[75] reflects a keen

[68] Protection of Plant Variety and Farmer's Right Act, 2001; Sec. 39- 46.
[69] *Id*. Sec. 15 (1)
[70] *Id*. Sec. 18 (1) (e)
[71] *Id*. Sec. 18 (1) (h)
[72] *Id*. Sec. 40 (1)
[73] *Id*. Sec. 15 (4)
[74] *Id*. Sec. 2 (k)
[75] *Id*. S. 2 (l)

sense of consideration for "community and traditional rights by including provisions for benefit sharing, community compensation"[76] immunity from "prosecution for innocent infringement"[77] and the "creation of a Gene Fund to collect breeder's annual fees."[78] Each of the rights not only represents a deviation from UPOV but also showcases rights contoured to suit unique national conditions.

Keeping this view in mind, this Act provides 'effective' protection to plant varieties in India. It includes definition of plant variety; creates a setup for the protection of plant variety; define the scope of protection and duration of protection; grants special rights to breeders of plant variety; balances the breeder's rights by providing exceptions such as farmer's privilege, researcher's right, compulsory licensing, etc. It also includes provisions of CBD such a prior consent and benefit sharing and creation of gene fund. In order to provide for the establishment of an effective system for protection of plant varieties, "the rights of farmers and plant breeders and to encourage the development of new varieties of plants the Protection of Plant Varieties and Farmer's Rights Authority (the Authority) has been established."[79] While granting protection to new plant varieties, the Act does not transgress the traditional rights of farmers and recognizes the historic contribution of generations of farmers for preserving, protecting and enriching this biodiversity, plant varieties, seeds and crop improvements in order to achieve the sustainable development goals (SDGs).

IV. Contribution of the Farmers as Agent in Advancement of SDGs: Custodians of Seeds and Plant Varieties in India

Farmers play a fundamental role in sustaining agricultural biodiversity and strengthening food systems across the world. In India, farming communities have historically preserved seeds and plant varieties through practices such as seed saving, selective breeding, and community exchange. From decades, farmers used to breed, develop and preserved the seeds and crops through continues trials and tests with local

[76] *Id*. Sec. 41

[77] *Id*. Sec. 42

[78] *Id*. Sec. 45

[79] *Id*, Sec. 3, The Authority's office is located at NASC Complex, DPS Marg, New Delhi – 110012

varieties and ecosystems. This has further helped modern agricultural research and global agriculture innovation.[80] As per international reports and documents, farmers' are the major conservers, producers and agents of sustainable agriculture using indigenous and innovative knowledge and practices in it. Their contributions in modern agriculture are immensely assessed and acknowledged especially building resilient food systems.[81] Besides, contribution of farmers as custodians of seeds has also been co-related with promotion of sustainable development preserving traditional crop varieties and maintaining diverse cropping systems. This clearly indicates towards achieving the SDG 2, SDG 13, and SDG 15.[82]

Farmers have preserved crop diversity for centuries through careful seed selection and cultivation practices. After each harvest, farmers typically select seeds from the healthiest plants or those that perform best under local environmental conditions. By repeating this process over generations, they gradually develop crop varieties that adapt to specific ecological environments.[83] Based on community networks and affiliation, farmers regularly exchange seeds with neighbors, relatives, and members of local farming communities to ensure that traditional seeds remain available for cultivation.[84] For this purpose, farmers procure seeds, share knowledge about cultivation techniques, and encourage the revival of indigenous crops.[85] In major States of India, farmers have established local seed banks so that their seeds could be collected, stored and distributed.[86] The preservation of traditional crop varieties plays an important role in climate adaptation. Many indigenous crops possess natural traits that allow them to withstand extreme weather conditions such as drought, floods, and

[80] FAO, "The State of the World's Biodiversity for Food and Agriculture" 3–5 (2019), *available at*: https://openknowledge.fao.org/items/b355c300-72ed-4a63-be07-8295c80ec7f1 (last visited on May 12, 2026)
[81] FAO, "The State of Food and Agriculture 2021: Making Agrifood Systems More Resilient to Shocks and Stresses" 15–18 (2021), *available a*t: https://www.fao.org/3/cb4476en/cb4476en.pdf (last visited on May 12, 2026).
[82] UNO, UN General Assembly Resolution 70/1, 2015, "Transforming Our World: The 2030 Agenda for Sustainable Development" (Oct. 21, 2015).
[83] Jack R. Kloppenburg Jr., *First the Seed: The Political Economy of Plant Biotechnology* 45–52 (The Board of Reagents of the University Wisconsin System, United States of America, 2nd edn. 2004).
[84] Vandana Shiva, *Earth Democracy: Justice, Sustainability, and Peace* 91–95 (Zed Books Ltd. London, 2005).
[85] FAO, "*Community Seed Banks: Origins, Evolution and Prospects*" 4–7 (Routledge, New York 2014).
[86] Ronnie Vernooy *et al., Community Seed Banks: Origins, Evolution and Prospects*, 23–28 (Routledge, New York, 2015).

high temperatures.[87] In Kerala's Kuttanad region, farmers cultivate traditional rice varieties that survive prolonged flooding. Because this region lies below sea level and frequently experiences waterlogging during the monsoon season, flood-resistant rice varieties developed by farmers allow agriculture to continue in this challenging environment.[88] Similarly, in coastal regions of Tamil Nadu and Kerala, farmers cultivate saline-tolerant rice varieties that survive in fields affected by seawater intrusion.[89] Farmers in drought-prone regions of Maharashtra have also revived traditional sorghum and millet crops that tolerate prolonged dry conditions.[90] The increasing global recognition of millets as climate-resilient crops led the United Nations to declare the International Year of Millets 2023.[91]

Farmers' preservation of crop diversity contributes not only to environmental sustainability but also to nutritional security. Traditional farming systems often involve the cultivation of multiple crops within the same agricultural landscape.[92] In central India, tribal communities' practice mixed cropping systems that combine millets, pulses, oilseeds, and vegetables. These diverse cropping patterns improve soil fertility while providing balanced diets within rural communities.[93] Traditional vegetable varieties preserved by farmers also contribute to dietary diversity. Many indigenous leafy vegetables and pulses contain high levels of micronutrients. Farmer-led initiatives and grassroots movements have played a significant role in conserving seed diversity in India. One well-known initiative is Navdanya, which works with farmers to preserve

[87] Intergovernmental Panel on Climate Change, *Climate Change and Land: Special Report, 2019;* 439–445 (Cambridge University Press, Cambridge, 2019), *available at:* https://www.ipcc.ch/site/assets/uploads/2019/11/SRCCL-Full-Report-Compiled-191128.pdf (last visited on May 12, 2026)

[88] K. N. Ninan and M. Sathyapalan, "The Economics of Biodiversity Conservation: A Study of Rice Varieties in Kerala", 42 *Ecological Economy,* 303, 305–07 (2002).

[89] R. K. Singh *et al*., "Traditional Rice Varieties for Climate Resilience in Coastal Ecosystems", 59 *Current Science,* 179, 181–83 (2010).

[90] FAO, *Sorghum and Millets in Human Nutrition* 33–35 (Publisher, Rome, 2018), *available at:* https://openknowledge.fao.org/handle/20.500.14283/t0818e (last visited on May 12, 2026).

[91] UNO, General Assembly Res. 76/253, "International Year of Millets 2023" (Mar. 3, 2022), *available at*: https://www.fao.org/millets-2023/en (last visited on May 12,2026).

[92] FAO, "The State of Food Security and Nutrition in the World" 72–74 (2022), *available at:* https://openknowledge.fao.org/server/api/core/bitstreams/67b1e9c7-1a7f-4dc6-a19e-f6472a4ea83a/content (last visited on May 12, 2026).

[93] B. Padulosi et al., "Underutilized Species and Climate Change: Current Status and Outlook", 2 *Crop Sci*. 15, 19–21 (2013), *available a*t: http://www.nuscommunity.org/uploads/tx_news/NUS_and _climate _change_2011.pdf (last visited on May 12, 2026).

indigenous seeds and promote biodiversity-based agriculture.[94] Another important example is the work of the Deccan Development Society. Women farmers associated with this organization maintain community seed banks and cultivate traditional millet varieties suited to dryland agriculture.[95] In southern India, farmers have also revived traditional rice varieties such as Mapillai Samba in Tamil Nadu.[96] The northeastern Indian state of Sikkim provides another example of farmer participation in sustainable agriculture through organic farming practices.[97]

Farmers across the world play a similar role in preserving agricultural biodiversity. In Peru, farmers cultivate hundreds of native potato varieties adapted to different altitudes and climatic conditions.[98] Likewise, farming communities in Ethiopia have preserved traditional varieties of crops such as teff, barley, and sorghum.[99] Despite their contributions, farmers face several challenges that threaten their role as seed custodians. The expansion of commercial agriculture has encouraged the widespread use of hybrid seeds that farmers cannot easily reproduce from their harvest.[100] As farmers increasingly depend on purchased seeds, traditional seed-saving practices decline.[101] Climate change further intensifies these challenges by increasing environmental uncertainty and disrupting traditional cropping systems.[102] In this way, farmers in India can also be appreciated as agent for promotion of food security and sustainable

[94] Vandana Shiva, *Navdanya: Biodiversity Conservation and Farmers' Rights* 14–18 (2007); *available at*: https://navdanya.org/biodiversity-based-organic-farming/ (last visited on May 12, 2026).
[95] P. S. Rao, "Women Farmers and Agro-Biodiversity Conservation: The Experience of the Deccan Development Society", 37 *Economic and Political Weekly,* 3456, 3458–60 (2002).
[96] S. Karthikeyan, "Revival of Traditional https://docs.un.org/en/A/RES/70/1 Rice Varieties in Tamil Nadu", 54 *Economic and Political Weekly,* 52, 54–56 (2019)
[97] The World Economic Forum, The Indian State has gone 100% Organic, October 12, 2018; *available at:* https://www.weforum.org/stories/2018/10/this-indian-state-has-gone-100-organic/ (last visited on May 12, 2026).
[98] Karl Zimmerer, *Changing Fortunes: Biodiversity and Peasant Livelihood in the Peruvian Andes* 32–38 (University of California Press, California,1996), available at https://www.jstor.org/stable/jj.2711649 (last visited on May 12, 2026).
[99] Melaku Worede *et al*., Ethiopian Farmers' Role in Conserving Crop Genetic Resources, 26 *Plant Genetic Resources Newsletter* 1, 3–6 (2000).
[100]UNEP, *Agriculture at a Crossroads* 64–68 (2009), *available at:* https://www.unep.org/resources/report/agriculture-crossroads-global-report (last visited on May 12, 2026)
[101] Food & Agric. Org. of the U.N., *The Future of Food and Agriculture: Trends and Challenges* 32–36 (2017), available at https://openknowledge.fao.org/handle/20.500.14283/i6881e (last visited on May 12, 2026).
[102] Intergovernmental Panel on Climate Change, *Climate Change 2022: Impacts, Adaptation and Vulnerability* 1045– 52 (2022), *available at:* https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FullReport.pdf (last visited on May 12, 2026).

development.

V. Conclusion

Farmers play a vital role as custodians of seeds and plant varieties for achieving sustainable development goals. Using practices such as seed saving, crop diversification, and community exchange, they preserve agricultural biodiversity and strengthen sustainable food systems. These traditional practices have helped farming communities conserve plant genetic diversity and maintain resilient agricultural systems that adapt to changing environmental conditions.[103] Not only this, farmers contribute to these SDGs by "maintaining diverse cropping systems, protecting soil health, and sustaining community-based seed systems that support long-term food security."[104] The existing seed legislations and TRIPS flexibilities, can basically support the mission of sustainable development and role of farmers as agent is instrumental in it. The sustainable agriculture and production based on the seeds and plant varieties and preserved by the farmers can help in promoting resilient food systems and food sustainability in India. Recognizing the farmers as custodian of seeds and plant varieties and agent of sustainable development goals will strengthen the principles, practices and goals of sustainable development.

[103] Food & Agriculture Organization, *The State of the World's Biodiversity for Food and Agriculture* (2019), *available at*: https://openknowledge.fao.org/handle/20.500.14283/ca3129en (last visited on May 12, 2026).

[104] UNO, United Nations General Assembly Resolution 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development* (Sept. 25, 2015), *available at:* https://docs.un.org/en/A/RES/70/1 (last visited on May 12, 2026).

E-JAIRIPA
Vol. VII (Issue I), pp.- 38-62

CONSENT, CONDITION AND CONVEYANCE: RETHINKING EXHAUSTION AND PARALLEL IMPORTATION IN INTELLECTUAL PROPERTY LAW

A Comparative Analysis of India, the United States and the European Union/EEA

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Abstract

Exhaustion is a concept that helps determine how long an intellectual property owner can exercise control over their creation after it has been sold, legally or otherwise. Parallel importation seeks to identify how far territorial rights extend across legal boundaries. In scholarly literature, the issue has been presented as a conflict between national, regional and international exhaustion, with the issues of consent, state of the good, and ownership being considered separately. However, limitations of this approach make it impossible to comprehend the reason why countries with the same territorial label reach different conclusions regarding the issue of post-sale control. The purpose of this article is to determine the extent of post-sale control that the USA, the EU and the EEA, and India allow to the copyright holders. To achieve this goal, I will conduct a doctrinal and functional comparison of the treaties, WTO materials, laws, and court cases in trademarks, patents, and copyright. Article 6 of the TRIPS Agreement, together with the Doha Declaration and the India-UK trade agreement, creates lack of clarity over these four questions in favour of domestic law. The United States accepts international exhaustion for patents and copyrights but retains a high degree of segmentation through licensing and contractual arrangements, whereas the European Union erects its external walls but ensures free movement through evidence and repackaging. India is territorially the laxest country, although its standing is based on interlocutory rulings, unclear Section 107A(b) of the Patents Act, and unresolved Section 30(4) of the Trademarks Act of India, as well as its

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territorial copyright rule. The contribution of the framework is minimal but useful because it presents an explanation for the outcomes the labels cannot reflect and suggests the specific remedy. It proposes a draft of a consent-based Section 107A(b) and a different approach to compulsory licensing and structured Section 30(4), which puts the onus on the rights of holders, and promotes attribution.

Keywords: exhaustion of rights; parallel importation; article 6 TRIPS agreement; section 107A(b) patents act 1970; sections 30(4) trademarks act, 1999; legitimate reasons; digital exhaustion; pharmaceutical parallel trade.

I. Introduction

A graduate student has cheaper foreign editions of American textbooks bought in Thailand and resells them in the United States. A Delhi trader imports hard disk drives pulled from decommissioned foreign servers, wipes them and sells them under its own label. A distributor buys a patented medicine where its price is low and ships it to a market where the price is high. Each scenario asks whether the intellectual property owner's authority over a particular article survives an authorised sale of that article. Inside one legal system, the doctrine of exhaustion answers that question. Parallel importation asks it again at the border, because the goods are genuine and were sold with the owner's authority, yet the owner holds a separate right in the country of import that does not depend on what happened abroad.[2]

All three scenarios have reached courts in the last fifteen years, and the answers have moved. The United States Supreme Court held in 2013 that the copyright first-sale rule covers copies made abroad and in 2017 that an authorised sale anywhere exhausts a United States patent.[3] The Court of Justice of the European Union (CJEU) has allowed the resale of downloaded software while refusing it for e-books.[4] In India, the Delhi High Court read Section 30(3) of the Trade Marks Act, 1999 as adopting international exhaustion in 2012, and between 2024 and 2026 it applied that reading to used and refurbished hard drives. Every one of those Indian rulings was made at the interlocutory stage, and the Supreme Court has not decided the appeal

[2] Paris Convention for the Protection of Industrial Property arts. 4bis, 6(3), Mar. 20, 1883, as revised at Stockholm July 14, 1967, 21 U.S.T. 1583, 828 U.N.T.S. 305; *see* World Intell. Prop. Org. [WIPO] Secretariat, *Interface Between Exhaustion of Intellectual Property Rights and Competition Law*, ¶¶ 10–12, WIPO Doc. CDIP/4/4 Rev./Study/INF/2 (June 1, 2011) [hereinafter WIPO Exhaustion Study].

[3] *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519 (2013); *Impression Prods., Inc. v. Lexmark Int'l, Inc.*, 581 U.S. 360, 137 S. Ct. 1523 (2017).

[4] Case C-128/11, *UsedSoft GmbH v. Oracle Int'l Corp.*, ECLI:EU:C:2012:407 (July 3, 2012); Case C-263/18, *Nederlands Uitgeversverbond v. Tom Kabinet Internet BV*, ECLI:EU:C:2019:1111 (Dec. 19, 2019).

against the 2012 judgment, which has been pending since 2013.[5] Section 107A(b) of the Patents Act, 1970, usually described as India's parallel-import clause, has never been authoritatively construed.

This article is concerned with the question of the degree to which an intellectual property rights holder can exercise its control over products sold to the first buyer and subsequently imported by the latter without any further authorisation. India, the United States and the European Union as well as the European Economic Area (EEA) are compared. The paper also investigates what caused the disparity in the regulations adopted in the three jurisdictions, how their courts interpret the notion of consent, condition of goods and limitations imposed on goods sold, whether the rules regulating the distribution of physical goods can be applied to digital copies and what India needs to amend.

The argument states that the difference between national exhaustion, regional exhaustion, and international exhaustion is less significant than it seems. The issue in whether it is possible to stop the person who imports certain articles relies on the answers to three crucial questions: what constitutes an initial disposal by or with the consent of the right holder (consent); when does the ownership of the goods allow for bringing an objection to the right holder despite exhaustion (condition); and whether the transfer did actually take place or simply related to the licence granted (conveyance). Applying these questions to the three jurisdictions shows that the United States, despite moving to international exhaustion for patents and copyright, leaves owners substantial control through licensing and contract; that the European Union, despite its regional fence, uses evidential and repackaging rules to make internal movement real; and that India has the most open geographical position of the three in trademarks and, on the usual reading, patents, but has left all three questions largely unanswered. Thus, reform in India does not require any new geographical concept, rather it needs legal solutions to threefold questions together with a precise demarcation between IP exhaustion and a license to trade.

Part II is focused on the literature review and identifying the gap. Part III discusses the method and the framework used. Part IV deals with the WTO and treaties. Part V provides an examination of the three jurisdictions. Part VI brings comparisons together. Part VII puts the theory to the test in terms of medicines and digital products. Part VIII includes the recommendations for reforms along with the drafts. Finally, part IX gives conclusions.

[5] *Samsung Elecs. Co. v. Kapil Wadhwa*, Civil Appeal No. 8600 of 2013 (India) (pending; last listed Aug. 20, 2025, according to the Supreme Court's case-status record).

II. The WTO And Treaty Frame

A. Article 6 and the Structure of TRIPS

TRIPS leaves Members free to choose how to implement its obligations within their own legal systems, but it also sets minimum rights that each Member must grant.[6] For a patented product, those rights include preventing third parties from "not having the owner's consent" from importing it.[7] Exhaustion is handled in a single provision. Article 6 states that, "[f]or the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights."[8] The text records a failure to agree rather than a rule.[9]

Read narrowly, Article 6 is procedural: it keeps exhaustion out of dispute settlement without confirming any substantive freedom. Two features of the Agreement point to broader reading. Footnote 6 makes the patent importation right expressly subject to Article 6, which would serve little purpose if Article 6 left the scope of that right untouched.[10] And in the Doha Declaration the Ministerial Conference stated that the effect of the TRIPS provisions relevant to exhaustion "is to leave each Member free to establish its own regime for such exhaustion without challenge," subject to most-favoured-nation and national treatment.[11] The Declaration was not adopted as an amendment, and its exact legal status is debated, but it is a consensus statement by every Member and carries real interpretive weight. No panel or Appellate Body report has interpreted Article 6; the WTO's own analytical index records paragraph 5(d) as the only relevant practice.[12]

Four limits remain, and each bearon the Indian proposals in Part VIII.

The first is non-discrimination. Article 6 preserves Articles 3 and 4, so an exhaustion regime may not treat foreign right holders worse than nationals or favour the nationals of some Members over others. Russia's 2022 decision to legalise parallel imports only for goods and brands on a government list shows how far exhaustion can be used as an instrument of trade

[6] Agreement on Trade-Related Aspects of Intellectual Property Rights art. 1.1, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 [hereinafter TRIPS Agreement].
[7] TRIPS Agreement, *supra* note 17, art. 28.1(a).
[8] *Id.* art. 6.
[9] Calboli, *supra* note 8, at 5–6 & n.15.
[10] TRIPS Agreement, *supra* note 17, art. 28.1(a) n.6.
[11] World Trade Organization, Ministerial Declaration of 14 November 2001 on the TRIPS Agreement and Public Health, ¶ 5(d), WTO Doc. WT/MIN(01)/DEC/2, 41 I.L.M. 755 (2002) [hereinafter Doha Declaration].
[12] World Trade Organization, *WTO Analytical Index: TRIPS Agreement – Article 6 (Practice)* (June 2024).

policy; whether a brand-selective regime of that kind is compatible with Articles 3 and 4 is, in the author's view, a real question that Article 6 does not answer.[13]

The second concerns what Article 6 covers. It protects measures addressing "exhaustion," and exhaustion is conventionally understood as the consequence of a sale by or with the consent of the right holder. Footnote 13 to Article 51 supports that understanding: Members need not apply border measures to goods "put on the market in another country by or with the consent of the right holder."[14] Some scholars argue that Article 6 also covers goods first sold abroad under a compulsory licence, because consent is not mentioned in it.[15] The point has never been tested. A measure that allows imports of goods made without any authority of the patentee is safer if it is grounded not only in Article 6 but also in the provisions on exceptions and compulsory licences: Article 30, whose three conditions are cumulative,[16] and Articles 31 and 31bis, which govern the supply of medicines made under compulsory licence.[17]

The third concerns other WTO agreements. Article 6 speaks of "this Agreement." Abbott argued that rules blocking parallel imports may themselves breach Article XI of the GATT and cannot be saved by Article XX(d), because they are not necessary to protect rights that owners can protect by contract.[18] The argument is respectable but untested, and many Members have maintained national exhaustion for at least some rights without challenge. It is best treated as a pressure in favour of open borders rather than a rule.

The fourth is bilateral. Members can give away their Article 6 freedom by treaty, as the United States–Australia agreement did for patents.[19] India's agreement with the United Kingdom, in force since 15 2026, takes the opposite course. Article 13.11 provides that "nothing in this Agreement prevents a Party from determining whether or under what conditions the exhaustion of intellectual property rights applies under its legal system," and the patent rights in Article

[13] G.P. Ivliev & B.A. Shakhnazarov, *Pravovoe regulirovanie otnosheniy v sfere parallel'nogo importa: Opyt gosudarstv evraziyskogo regiona* [*Legal Regulation of Relations in the Field of Parallel Import: The Experience of the States of the Eurasian Region*], 76 Lex Russica 56 (2023) (Russ.) (discussing Government Decree No. 506 of Mar. 29, 2022).
[14] TRIPS Agreement, *supra* note 17, art. 51 n.13.
[15] Calboli, *supra* note 8, at 13 & nn.72–73 (discussing Carlos Correa's argument).
[16] Panel Report, *Canada-Patent Protection of Pharmaceutical Products*, ¶ 7.20, WTO Doc. WT/DS114/R (adopted Apr. 7, 2000).
[17] TRIPS Agreement, *supra* note 17, arts. 31(f), 31bis.
[18] Abbott, *supra* note 5, at 632–33; *see also* WIPO Exhaustion Study, *supra* note 1, ¶ 13.
[19] Calboli, *supra* note 8, at 18 (discussing United States–Australia Free Trade Agreement art. 17.9.4, May 18, 2004).

13.46 are expressly made subject to it.[20] The phrase "or under what conditions" matters: it preserves not only the choice of territorial scope but also the conditions attached to exhaustion, which are the subject of this article. The same chapter reaffirms the Doha Declaration and confirms that it does not prevent measures to protect public health.[21] On its text, therefore, the agreement leaves India's reform options open.

B. Copyright Treaties and Digital Copies

The WIPO Copyright Treaty grants a distribution right "through sale or other transfer of ownership" and leaves exhaustion to the contracting parties.[22] An agreed statement limits "copies" in that right to fixed copies that can circulate as tangible objects.[23] The statement does not prohibit digital exhaustion, but it means that international law offers no positive support for it. The question falls to domestic law and, in practice, to the conveyance question.

Iii. The Three Jurisdictions

A. The United States: Three Rights, Three Rules

United States law has no single exhaustion rule. Copyright exhaustion is statutory, patent exhaustion is judge-made, and trademark law polices imports through the Lanham Act, the Tariff Act and customs regulations. *Kirtsaeng* and *Lexmark* moved copyright and patents in the same direction, but neither governs trademarks, and the reasons each gives are specific to its statute or doctrine.

1. Copyright

Section 109(a) of the Copyright Act lets "the owner of a particular copy or phonorecord lawfully made under this title" sell or otherwise dispose of that copy, while Section 602(a)(1) treats unauthorised importation of copies acquired abroad as infringing distribution.[24] *Quality King* held that Section 602 is subject to Section 109, so goods made in the United States and re-imported could not be blocked.[25] Copies made abroad divided an evenly split Court in

[20] Comprehensive Economic and Trade Agreement, India–U.K., arts. 13.11, 13.46 & n.15, July 24, 2025 (entered into force July 15, 2026); Press Release, Press Info. Bureau, Gov't of India (June 17, 2026) (announcing entry into force).
[21] Comprehensive Economic and Trade Agreement, *supra* note 31, arts. 13.5.1, 13.6.2.
[22] WIPO Copyright Treaty art. 6, Dec. 20, 1996, 2186 U.N.T.S. 121; *see also* WIPO Performances and Phonograms Treaty arts. 8(2), 12(2), Dec. 20, 1996, 2186 U.N.T.S. 203.
[23] WIPO Exhaustion Study, *supra* note 1, ¶ 9 n.6 (reproducing the agreed statement concerning WCT Articles 6 and 7).
[24] 17 U.S.C. §§ 106(3), 109(a), 602(a)(1).
[25] *Quality King Distribs., Inc. v. L'anza Rsch. Int'l, Inc.*, 523 U.S. 135 (1998).

Costco v. Omega[26] and were brought within Section 109 in *Kirtsaeng*, where the majority read "lawfully made under this title" as a standard of lawfulness rather than a place of manufacture, noting that the provision "says nothing about geography."[27] The rule protects owners, however, not licensees. Under *Vernor v. Autodesk*, a software user is a licensee where the copyright owner specifies a licence, significantly restricts transfer and imposes notable use restrictions.[28] And in *ReDigi* the Second Circuit held that moving a purchased music file to a buyer creates a new phonorecord, a reproduction that Section 109 does not excuse.[29] The court left any change to Congress, which has not acted on the Copyright Office's 2001 view that digital first sale should not be adopted.[30] California has since required sellers of digital goods to disclose clearly when a "purchase" conveys only a revocable licence.[31]

2. Patents

Quanta confirmed that the authorised sale of a patented item ends the patentee's rights in it.[32] The Federal Circuit had nonetheless held that restrictions communicated at sale could survive exhaustion and that foreign sales did not exhaust United States patents.[33] *Lexmark* rejected both positions. A sale exhausts patent rights whatever restrictions accompany it, and whatever rights the seller keeps are "a matter of the contracts with its purchasers, not the patent law."[34] An authorised sale abroad exhausts the same way as one at home, and the Court rejected the complaint about lost price differentials on the ground that the Patent Act guarantees no particular price.[35] Justice Ginsburg dissented on the foreign-sale point.[36]

The consent question survives in *Lexmark*. The Court preserved *General Talking Pictures*: a licensee that knowingly sells outside its licence makes no authorised sale, so nothing is exhausted.[37] A foreign sale with which the United States patentee had nothing to do also does not exhaust.[38] A patentee that manufactures abroad through licensees with territorial limits can

[26] *Costco Wholesale Corp. v. Omega, S.A.*, 562 U.S. 40 (2010) (per curiam) (affirming by an equally divided Court).
[27] *Kirtsaeng*, 568 U.S. at 530.
[28] *Vernor v. Autodesk, Inc.*, 621 F.3d 1102, 1111 (9th Cir. 2010).
[29] *Capitol Recs., LLC v. ReDigi Inc.*, 910 F.3d 649, 656–57 (2d Cir. 2018).
[30] *ReDigi*, 910 F.3d at 659–60, 664; U.S. Copyright Off., DMCA Section 104 Report (2001).
[31] Cal. Bus. & Prof. Code § 17500.6 (West 2025).
[32] *Quanta Comput., Inc. v. LG Elecs., Inc.*, 553 U.S. 617, 625 (2008).
[33] *Lexmark Int'l, Inc. v. Impression Prods., Inc.*, 816 F.3d 721 (Fed. Cir. 2016) (en banc); *Jazz Photo Corp. v. Int'l Trade Comm'n*, 264 F.3d 1094, 1105 (Fed. Cir. 2001).
[34] *Lexmark*, 137 S. Ct. at 1531–33.
[35] *Id.* at 1537–38.
[36] *Id.* at 1538–39 (Ginsburg, J., concurring in part and dissenting in part).
[37] *Lexmark*, 137 S. Ct. at 1535 (distinguishing *Gen. Talking Pictures Corp. v. W. Elec. Co.*, 304 U.S. 175 (1938)).
[38] *Lexmark*, 137 S. Ct. at 1537 (citing *Boesch v. Graff*, 133 U.S. 697 (1890)).

therefore keep foreign-made goods out, which is the outcome of Abbott's contractual model anticipated.[39] The condition of question also survives, in the form of the repair and reconstruction line. Exhaustion permits a purchaser to repair the article, including replacing worn unpatented parts, but not making a new one.[40] The cartridges in *Lexmark* had been refilled and resold by remanufacturers, and the decision proceeded on the basis that such refurbishment of exhausted articles did not itself infringe.

3. Trademarks

Neither Kirtsaeng nor Lexmark governs trademarks. The import of genuine goods is controlled by Section 42 of the Lanham Act and Section 526 of the Tariff Act. *K Mart v. Cartier* upheld, in substantial part, customs regulations that admit genuine goods where foreign and domestic owners are under common control.[41] Under the *Lever* rule, however, even goods from an affiliated source may be excluded if they are physically and materially different from those authorised for the United States, unless they carry a conspicuous label disclosing the difference.[42] Courts set the threshold of materiality low.[43] American trademark law is thus best described as conditional international exhaustion, with a strong condition test and a disclosure cure.

4. The Regulatory Gate

Medicines show that exhaustion is not the only barrier. Federal law allows only the manufacturer to re-import prescription drugs made in the United States, and wider importation depends on programmes authorised under Section 804 of the Federal Food, Drug, and Cosmetic Act.[44] Florida's programme was authorised in January 2024, yet no drugs had been imported under it by mid-2025.[45] After *Lexmark* the binding constraint is regulatory, not patent law.

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[39] Kim, *supra* note 10, at 963–65; Abbott, *supra* note 5, at 614.
[40] *Aro*, 365 U.S. at 346.
[41] *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281 (1988); 15 U.S.C. § 1124; 19 U.S.C. § 1526.
[42] *Lever Bros. Co. v. United States*, 981 F.2d 1330 (D.C. Cir. 1993); 19 C.F.R. § 133.23 (2024).
[43] *Société des Produits Nestlé, S.A. v. Casa Helvetia, Inc.*, 982 F.2d 633 (1st Cir. 1992).
[44] 21 U.S.C. §§ 381(d)(1), 384.
[45] Jones Day, *Canadian Drug Importation May Undermine Intellectual Property Protection* (May 2024), https://www.jonesday.com/en/insights/2024/05/canadian-drug-importation-may-undermine-ip-protection; Hyman, Phelps & McNamara, *Will FDA's Section 804 "Enhancements" Really Speed Up Drug Imports from Canada?*, FDA L. Blog (May 2025), https://www.thefdalawblog.com/2025/05/will-fdas-section-804-enhancements-really-speed-up-drug-imports-from-canada/.

B. The European Union and the EEA

Territorial precision matters here because different instruments reach different areas. Free movement of goods within the European Union rests on Articles 34 and 36 of the Treaty on the Functioning of the European Union. For Iceland, Liechtenstein and Norway, the EEA Agreement contains parallel provisions, and its Protocol 28 requires the EEA states to provide for exhaustion of intellectual property rights as laid down in Union law.[46] The judge-made patent cases, the codified trademark rule and the copyright directives therefore operate, with differences explained below, across an area larger than the Union itself.

Patents. Patent exhaustion grew out of the free-movement case law. In *Centrafarm v. Sterling Drug,* a patentee could not use a national patent to block imports of goods it had marketed, or allowed to be marketed, in another Member State.[47] *Merck v. Stephar* applied the rule even where the goods had been marketed in a Member State where no patent was available, because the patentee chose to market there.[48] In European law, then, consent to marketing triggers exhaustion whether the patentee earned a monopoly price. For European patents with unitary effect and proceedings before the Unified Patent Court, exhaustion is now written into law, again with an exception for "legitimate grounds"; those instruments apply only in the participating Member States.[49] The accession of treaties since 2003 also contains a "Specific Mechanism" allowing patentees to block parallel imports of certain medicines from newer Member States in which protection had not been obtainable.[50]

Trademarks. A mark does not allow its proprietor to prohibit use for goods put on the market in the Union by the proprietor or with its consent, unless there are legitimate reasons to oppose further commercialisation, especially where the condition of the goods is changed or impaired.[51] Through the EEA Agreement the relevant market is the EEA. The rule is a ceiling as well as a floor: *Silhouette* held that states bound by the Directive may not adopt international exhaustion.[52] Consent must relate to each item placed on the EEA market,[53] and it must be unequivocally shown; silence or the absence of resale restrictions is not enough.[54] Removing

[46] Agreement on the European Economic Area, Protocol 28, art. 2, 1994 O.J. (L 1) 194.
[47] Case 15/74, *Centrafarm BV v. Sterling Drug Inc.*, 1974 E.C.R. 1147.
[48] Case 187/80, *Merck & Co. v. Stephar BV*, 1981 E.C.R. 2063.
[49] Agreement on a Unified Patent Court art. 29, Feb. 19, 2013, 2013 O.J. (C 175) 1; Regulation (EU) No 1257/2012, art. 6, 2012 O.J. (L 361) 1.
[50] Calboli, *supra* note 8, at 21–22; Case C-539/13, *Merck Canada Inc. v. Sigma Pharms. plc* (Feb. 12, 2015).
[51] Directive (EU) 2015/2436, art. 15, 2015 O.J. (L 336) 1; Regulation (EU) 2017/1001, art. 15, 2017 O.J. (L 154)
[52] Case C-355/96, *Silhouette Int'l Schmied GmbH & Co. KG v. Hartlauer Handelsgesellschaft mbH*, 1998 E.C.R. I-4799.
[53] Case C-173/98, *Sebago Inc. v. GB-Unic SA*, 1999 E.C.R. I-4103.
[54] Joined Cases C-414/99 to C-416/99, *Zino Davidoff SA v. A & G Imports Ltd.*, 2001 E.C.R. I-8691.

the proprietor's marks from goods in a customs warehouse and applying new ones before first EEA marketing infringes, because it denies the proprietor control of that first marketing.[55]

Inside the fence, the Court uses evidential rules to favour trade. Where the burden of proving consent would let a proprietor partition national markets, it shifts: *Van Doren* established the principle,[56] and *HP v. Senetic* requires a proprietor whose goods carry no market markings, and who refuses to verify them, first to prove that the particular items were initially marketed outside the EEA.[57] Consent can also be found where marks were split by assignment, but the separate owners coordinate their use or are economically linked.[58]

The condition test is most developed for medicines. Under *Bristol-Myers Squibb v. Paranova*, a proprietor may oppose repackaging unless it is necessary to market the product, does not affect its original condition, identifies the repackager and maker, is not presented so as to damage the mark's reputation, and is preceded by notice.[59] Necessity concerns the fact of repackaging, not every feature of how it is done.[60] A proprietor may also rely on the mark to protect identification codes that serve legitimate purposes such as product recall, though not codes used to trace and obstruct parallel traders.[61] In 2022 the Court held that the safety features required by the Falsified Medicines Directive do not by themselves make re-boxing necessary, because new anti-tampering devices can usually be applied to the original pack, but that re-boxing may be justified where a significant share of patients strongly resists relabelled or visibly opened packs.[62] The test protects the integrity of the product while denying the proprietor a veto over trade.

Copyright. The Information Society Directive provides that the distribution right is exhausted within the Union only by a first sale or transfer of ownership there, and *Laserdisken* held that Member States may not adopt international exhaustion.[63] On conveyance, the CJEU has drawn a sharp line. In *UsedSoft*, interpreting the Software Directive, it held that making a program

[55] Case C-129/17, *Mitsubishi Shoji Kaisha Ltd. v. Duma Forklifts NV* (July 25, 2018).
[56] Case C-244/00, *Van Doren + Q. GmbH v. Lifestyle Sports + Sportswear Handelsgesellschaft mbH*, 2003 E.C.R. I-3051.
[57] Case C-367/21, *Hewlett Packard Dev. Co. v. Senetic S.A.* (Jan. 18, 2024).
[58] Case C-291/16, *Schweppes SA v. Red Paralela SL*, ECLI:EU:C:2017:990 (Dec. 20, 2017).
[59] Joined Cases C-427/93, C-429/93 & C-436/93, *Bristol-Myers Squibb v. Paranova A/S*, 1996 E.C.R. I-3457, ¶ 79.
[60] Case C-348/04, *Boehringer Ingelheim KG v. Swingward Ltd.*, 2007 E.C.R. I-3391.
[61] Case C-349/95, *Frits Loendersloot v. George Ballantine & Son Ltd.*, 1997 E.C.R. I-6227.
[62] Case C-147/20, *Novartis Pharma GmbH v. Abacus Medicine A/S* (Nov. 17, 2022); Case C-204/20, *Bayer Intell. Prop. GmbH v. kohlpharma GmbH* (Nov. 17, 2022); Case C-224/20, *Merck Sharp & Dohme BV v. Abacus Medicine A/S* (Nov. 17, 2022); Joined Cases C-253/20 & C-254/20, *Impexeco NV v. Novartis AG* (Nov. 17, 2022).
[63] Directive 2001/29/EC, art. 4(2) & recitals 28–29, 2001 O.J. (L 167) 10; Case C-479/04, *Laserdisken ApS v. Kulturministeriet*, 2006 E.C.R. I-8089.

available for download under a licence of unlimited duration for a fee matching the copy's economic value is a sale, so the distribution right in that copy is exhausted, provided the reseller makes its own copy unusable and does not split a multi-user licence.[64] In *Tom Kabinet*, interpreting the Information Society Directive, the Grand Chamber held that supplying an e-book by download for permanent use is communication to the public rather than distribution, treated the Software Directive as a special regime, and stressed that digital copies do not deteriorate and so substitute perfectly for new ones.[65] A back-up copy of software on a physical medium cannot be resold without consent.[66] European digital exhaustion is therefore confined to software sold outright.

C. India

1. Trademarks

Importing goods under a mark is a use capable of infringing.[67] Section 30(3) then provides that where goods bearing a registered mark are lawfully acquired, further dealing in them is not infringement merely because the goods were put on the market under the mark by the proprietor or with his consent. Section 30(4) disapplies that defence where there are legitimate reasons for the proprietor to oppose further dealings, where the condition of the goods has been changed or impaired after they were put on the market.[68] The wording of Section 30(4) follows the European provision closely, but India imported the words without the European case law that gives them content.

Two features of the text are easily overlooked. Section 30(3) protects only goods that were "lawfully acquired," so a reseller who obtained goods by theft, fraud or in breach of an import prohibition cannot invoke it, whatever the territorial scope of exhaustion. And it removes liability only "by reason only of" the goods having been put on the market with consent. The defence responds to the claim made on behalf of the owner that he no longer exercises possession over the goods; however, it does not respond to any other type of objections, such as those based on a false description of the goods or their modifications. Read this way, the two sub-sections are not a rule and an exception pulling in opposite directions. Section 30(3) states what the first authorised sale settles, and Section 30(4) identifies what it does not. That

[64] *UsedSoft*, ECLI:EU:C:2012:407; Directive 2009/24/EC, art. 4(2), 2009 O.J. (L 111) 16.
[65] *Tom Kabinet*, ECLI:EU:C:2019:1111; Court of Justice of the European Union, Press Release No. 162/19 (Dec. 19, 2019).
[66] Case C-166/15, *Ranks v. Microsoft Corp.* (Oct. 12, 2016).
[67] Trade Marks Act, 1999, § 29(6)(c) (India).
[68] Trade Marks Act, 1999, § 30(3)(b), (4) (India).

reading matters for the reform proposals in Part VIII, because it suggests that the legitimate reasons in Section 30(4) should be tied to interests the first sale could not have exhausted: the integrity of the goods and the accuracy of what the mark tells purchasers.

The Act does not say which "market" means. A single judge of the Delhi High Court read it as the Indian market.[69] On appeal from that interim injunction, a Division Bench held that "the market" in Section 30(3) is "the international market," relying on legislative history, including a draft statement of objects that had referred to international exhaustion.[70] It added that Section 30(4) "embraces all legitimate reasons to oppose further dealings," including differences in warranty, after-sales service and packaging.[71] Yet it set aside the injunction, allowing the imports on condition that the sellers prominently disclose that the goods were imported and were not covered by the Indian subsidiary's warranty or service.[72] Two qualifications follow. The Bench expressly described its opinion as prima facie, given for the purpose of the interim application.[73] And its broad description of Section 30(4) was not needed for the result, since the differences it listed did not stop the imports; it is better read as an observation than as a holding. The appeal against the judgment has been pending in the Supreme Court since 2013.[74] Meanwhile, the customs authorities told their officers not to treat genuine, trademarked imports as infringing unless the goods have been materially altered or impaired.[75]

The refurbishment cases took the doctrine further, but also at the interlocutory stage. In *Seagate v. Daichi*, deciding interim applications in a group of suits over end-of-life hard drives, Justice Anish Dayal treated international exhaustion as established by *Kapil Wadhwa*, said that "[t]he only caveat is in Section 30(4)," and allowed sales subject to detailed disclosure of the original manufacturer, the refurbished status of the goods and the absence of the manufacturer's warranty.[76] In *Western Digital v. Hansraj Dugar*, Justice Amit Bansal vacated an ex parte injunction against imports of used drives and released goods detained by customs, again on disclosure conditions.[77] In March 2026 a Division Bench dismissed the manufacturers' appeals

[69] *Samsung Elecs. Co. v. Kapil Wadhwa*, 2012 SCC OnLine Del 1004 (India); *see* Jhanwar, *supra* note 13, at 120–21.
[70] *Kapil Wadhwa v. Samsung Elecs. Co.*, FAO(OS) 93/2012, ¶¶ 53–62, 71 (Del. HC Oct. 3, 2012) (India), *reported at* 2012 SCC OnLine Del 5172.
[71] *Kapil Wadhwa*, FAO(OS) 93/2012, ¶ 68.
[72] *Id.* ¶ 75.
[73] *Id.* ¶ 76.
[74] *See supra* note 4.
[75] Central Board of Excise & Customs, Circular No. 13/2012-Customs, ¶ 4(ii) (May 8, 2012) (India).
[76] *Seagate Tech. LLC v. Daichi Int'l*, CS(COMM) 67/2024, ¶¶ 89–92, 112–16 (Del. HC May 21, 2024) (India) (common judgment on interlocutory applications in connected suits).
[77] *W. Digit. Techs. Inc. v. Hansraj Dugar*, CS(COMM) 586/2019 (Del. HC May 16, 2025) (India) (order on interlocutory applications).

from these interim orders. According to published reports of the judgment, it held prima facie that refurbishers who had removed the original marks were not using them and so could not infringe under Section 29; that "reverse passing off" is not recognised in Indian law; and that "changed" in Section 30(4) must be read with "impaired," so that a change which restores or improves the goods without prejudice to the proprietor is not a legitimate reason. It also declined to disturb the disclosure directions as a matter of appellate restraint over discretionary interim orders.[78] In May 2026 the Supreme Court declined to entertain a special leave petition arising from the litigation.[79] A dismissal without reasons does not declare law.[80] The suits remain to be tried.

The concept of the condition test in Indian law resembles that of Penelope's shroud. It takes full shape in 2012. Gradually, however, it has been unpicked altogether in 2026. They both have one aspect in common. In the first case, the concept is interpreted as broad enough to encompass warranty differences. In the latter case, its meaning becomes narrow. At the same time, neither of the interpretations can be considered final.

This leaves space for many questions, such as whether the term "market" has a clear meaning, whether differences in terms of warranty or descriptions of goods qualify as independent grounds for a claim, whether the first sale of goods abroad by the affiliate is treated as a sale with the consent of the owner of the trademark, and whether importation of goods infringes Section 29(6). The judgment of 2026 shows additional differences from the Mitsubishi case. The right holder has the right to prevent debranded goods from being imported into EEA countries but may not intervene with regard to lots of debranded goods sold outside of India since the removal of the trademark makes goods no longer being subject to legal protection.

2. Patents and Section 107A(b)

According to Section 48, a product patentee is entitled to prohibit any third party "without his consent" from making, using, offering for sale, selling, or importing the patented product in India.[81] According to Section 107A(b), the law states that "It does not amount to infringement to import patented articles", under valid authorisation by the responsible person for

[78] *W. Digit. Techs. Inc. v. Geonix Int'l Pvt. Ltd.*, FAO(OS)(COMM) 146/2024 (Del. HC Mar. 9, 2026) (India) (Division Bench) (as reported in *Sale of Used HDDs With Disclosure Does Not Amount to Trademark Infringement: Delhi High Court*, LiveLaw (Mar. 10, 2026), https://www.livelawbiz.com/trademark/delhi-high-court-greenlights-refurbished-hdd-sales-rejects-reverse-passing-off-claims-by-tech-giants-525871).
[79] *W. Digit. Techs. Inc. v. Hansraj Dugar*, Special Leave Petition (Civil) No. 17783 of 2026 (India) (dismissed May 27, 2026).
[80] *Kunhayammed v. State of Kerala*, (2000) 6 SCC 359 (India).
[81] Patents Act, 1970, § 48(a) (India).

manufacturing and selling the product.[82] In 2002, the law was put in place, and at that time it talked about a "person duly authorized by the patentee in regard to any selling or distributing of the product". The current wording has replaced that phrase since 1 January 2005.[83]

There are three interpretations yet none has been accepted by the court. According to the first reading, the phrase "duly authorized in terms of the law" is still interpreted as valid authorization provided by the patent holder, irrespective of whether he/she is the actual owner or licensee, thereby showing that the provision reflects a principle of principles of international exhaustion. Hence, this reading is consistent with section 48 which presents the definition of the right in terms of consent and keeps the provision in line with the conventional term "exhaustion." Its weakness is textual: Parliament deliberately removed the words "by the patentee." Second, the phrase refers to any authority conferred by the law of the place of manufacture or sale. That would cover goods made under a foreign compulsory licence and, arguably, goods made where no patent exists. It respects the 2005 change in wording, but on its widest version it would leave little of the importation right in Section 48, and it would be hard to defend under Articles 28 and 30 of TRIPS. On the third, the authority must arise under Indian law, and the import must come directly from the authorised person, which would make the provision far narrower than its reputation.[84]

The better reading of the existing text, in the author's view, lies between the first two. The words "duly authorised ... to produce and sell" suggest a positive authorisation relating to the patented product, not merely the absence of a prohibition. On that view the provision covers goods sold by or with the consent of the patentee anywhere, and goods produced under a governmental authorisation such as a compulsory licence that substitutes for consent, but not goods made in a country where no patent exists. That is an argument, not settled law. The executive has treated Section 107A(b) as permitting parallel imports,[85] and since 2018 customs officers no longer enforce patents at the border at all.[86] A patentee who objects must therefore sue, and the court will face the interpretive question with no authority to guide it. The TRIPS position varies with the reading. The consent of reading sits within Article 6. The middle

[82] Patents Act, 1970, § 107A(b) (India).
[83] Patents (Amendment) Act, 2002, No. 38 of 2002, § 44 (India) (w.e.f. May 20, 2003); Patents (Amendment) Act, 2005, No. 15 of 2005, § 58 (India) (w.e.f. Jan. 1, 2005); *see* Patents Act, 1970, § 107A n.5 (as consolidated by the Office of the Controller General of Patents, Designs & Trade Marks to Aug. 1, 2024).
[84] Basheer & Kochupillai, *supra* note 11; J. Sai Deepak, *Section 107A(b): Does It Really Endorse International Exhaustion? – II*, SpicyIP (Oct. 5, 2010), https://spicyip.com/2010/10/section-107ab-does-it-really-endorse.html.
[85] Circular No. 13/2012-Customs, *supra* note 86, ¶ 4(i).
[86] Intellectual Property Rights (Imported Goods) Enforcement Amendment Rules, 2018, Notification No. 56/2018-Customs (N.T.) (India).

reading depends partly on the contested view that Article 6 extends to non-consensual first sales and is safer if supported by Articles 30 and 31. The widest reading is exposed.

Section 107A(b) also leaves a domestic gap. It deals only with importation. The Patents Act contains no provision stating that a patented article sold in India by or with the consent of the patentee may be used, resold or repaired without further permission. Indian courts would probably reach that result through the implied-licence reasoning inherited from English law, under which a purchaser takes free of restrictions not brought to its notice,[87] but implied licence differs from exhaustion in one important respect: it can be excluded by express conditions. The repair and reconstruction line has likewise received no reported appellate treatment in India, although the refurbishment of patented components raises it directly. A patent statute that addresses imported goods but is silent on goods sold at home has its priorities in an odd order.

3. Copyright and Digital Copies

Section 14(a)(ii) of the Copyright Act gives the right to issue copies "not being copies already in circulation," and the Explanation to Section 14 treats a copy sold once as already in circulation.[88] The courts have read this territorially. In *Penguin Books*, importing American editions of titles licensed for India was held to infringe.[89] In *John Wiley & Sons v. Prabhat Chander Kumar Jain*, the court restrained the export of low-priced editions licensed only for the subcontinent.[90] A proposal in the Copyright (Amendment) Bill, 2010 to treat lawfully published foreign copies as non-infringing was dropped, and a study commissioned afterwards by the Ministry of Human Resource Development recommended only a cautious opening for printed books.[91] One economic explanation is that India's software and film industries make it a net exporter of copyright goods, while its firms hold relatively few patents.[92]

On conveyance, the most relevant authority comes from tax law. In *Engineering Analysis*, deciding whether payments for software were royalties, the Supreme Court held that end-user licences and distribution agreements for packaged software did not transfer any right under Section 14, and described the 1999 amendment to Section 14(b)(ii) as statutory recognition of the "doctrine of first sale/principle of exhaustion."[93] Earlier, packaged software had been

[87] *Betts v. Willmott* (1871) LR 6 Ch App 239 (Eng.).
[88] Copyright Act, 1957, § 14(a)(ii) & Explanation (India).
[89] *Penguin Books Ltd. v. India Book Distributors*, AIR 1985 Del 29 (India).
[90] *John Wiley & Sons, Inc. v. Prabhat Chander Kumar Jain*, 2010 (44) PTC 675 (Del) (India).
[91] Nat'l Council of Applied Econ. Rsch., *The Impact of Parallel Imports of Books, Films/Music and Software on the Indian Economy with Special Reference to Students* (2014).
[92] Maskus, *supra* note 9, at 107.
[93] *Eng'g Analysis Ctr. of Excellence Pvt. Ltd. v. Comm'r of Income Tax*, (2022) 3 SCC 321, ¶ 120 (India).

treated as "goods" for sales taxes.[94] These decisions support the exhaustion of the distribution of rights in a copy of a program that is sold. They do not decide whether a downloaded copy is "sold," whether a resale that requires a new reproduction is permitted, whether contractual bans on resale bind later buyers, or how other works are treated. They do not establish a general digital resale right, and a tax court's characterisation of a transaction is not a ruling on the scope of the reproduction right.

Table 1: Exhaustion rules by jurisdiction and right

Jurisdiction and right	Exhaustion rule	Principal authority	Status	Consequence for parallel trade	Key qualification
US: copyright	International, for owners of lawfully made copies	17 U.S.C. § 109(a); *Kirtsaeng* (2013)	Settled for physical copies	Genuine copies made abroad may be imported and resold	Licensees are not owners (*Vernor*); no digital resale (*ReDigi*)
US: patents	International	*Lexmark* (2017)	Settled	Authorised foreign sale exhausts; restrictions enforceable only in contract	No exhaustion for sales outside a licence (*General Talking Pictures*); repair v. reconstruction
US: trademarks	International, subject to common control and material difference	15 U.S.C. § 1124; *K Mart*; *Lever*; 19 C.F.R. § 133.23	Settled rule; outcome fact-dependent	Affiliated genuine goods admitted unless materially different	Labelling cure; low materiality threshold
EU/EEA: trademarks	Regional (EEA); international precluded	Dir. 2015/2436 art. 15; EEA Prot. 28; *Silhouette*; *Davidoff*	Settled	Goods first marketed outside the EEA can be blocked	Burden may shift (*HP v. Senetic*); repackaging conditions (*BMS*)
EU/EEA: patents	Regional	*Centrafarm*; *Merck v. Stephar*; UPCA art. 29 (participating states)	Settled	Free movement within the area; external imports can be blocked	Specific Mechanism for certain medicines
EU/EEA: copyright	Regional; international precluded	Dir. 2001/29 art. 4(2); *Laserdisken*; Dir. 2009/24 art. 4(2)	Settled; digital position split	Physical copies move freely within the area	Downloaded software exhausted (*UsedSoft*); e-books not (*Tom Kabinet*)
India: trademarks	International	Trade Marks Act § 30(3)(b); *Kapil Wadhwa* (DB, prima facie)	Contested: interlocutory rulings; Supreme Court appeal pending	Genuine imports permitted with disclosure	Scope of § 30(4) unsettled (2012 v. 2026 readings)
India: patents	Probably international; scope disputed	Patents Act § 107A(b)	Contested: no judicial construction	Executive treats parallel imports as lawful; no border enforcement since 2018	Meaning of "duly authorised under the law"
India: copyright	National in effect	Copyright Act § 14(a)(ii) & Expl.; *Penguin*; *Wiley*	Settled at High Court level	Imports of copies licensed for other territories infringe	Software sold outright: first sale recognised in a tax case (*Engineering Analysis*)

Source: author's analysis of the authorities discussed in Parts IV and V. "Status" refers to the position as at October 2026.

[94] *Tata Consultancy Servs. v. State of Andhra Pradesh*, (2005) 1 SCC 308 (India).

IV. What The Framework Shows

Table 2 applies the three questions to the material in Part V. The test set in Part II was whether the framework explains outcomes that the territorial label leaves unexplained. Three examples suggest that it does.

Table 2: The consent, condition and conveyance questions compared

Question	United States	European Union / EEA	India
Consent	Authorised sale, including by a licensee within its licence; post-sale restrictions bind only in contract	Unequivocal consent (*Davidoff*); graduated burden (*Van Doren*; *HP v. Senetic*); economic links (*Schweppes*)	Trademarks: "by the proprietor or with his consent," undefined; patents: "duly authorised under the law," contested
Condition	Trademarks: material differences, low threshold, labelling cure; patents: repair v. reconstruction (*Aro*)	Legitimate reasons (art. 15(2)); *BMS* repackaging conditions; 2022 safety-feature rulings	§ 30(4): broad observation (2012) v. impairment-centred prima facie reading (2026); disclosure directions
Conveyance	Owner v. licensee (*Vernor*); reproduction bars digital resale (*ReDigi*); state disclosure law (California)	Downloaded software exhausted (*UsedSoft*); e-books not (*Tom Kabinet*)	Software sold outright recognised in a tax case (*Engineering Analysis*); no rule for downloads

Source: author's analysis. The framework is the author's proposal, not a test adopted by any court.

The first concerns United States patents. On a territorial classification, *Lexmark* makes the United States an international-exhaustion country, which suggests that genuine patented goods sold anywhere may be imported. In fact a patentee that sells abroad through licensees whose licences exclude the United States can still treat those goods as infringing, because no authorised sale occurred. The consent question, not the territorial rule, decides the case. This is the pattern Abbott described a quarter of a century earlier: territorial division by contract, with exhaustion limited to policing what contract cannot reach.[95]

The second concerns India's refurbished drives. On a territorial classification, Indian and EEA law simply differ one is international, the other regional. That explains why the drives could be imported into India, but not why debranded goods are treated no differently in the two systems. The advantage is based on the inquiries regarding conditions and consent. Regarding the establishment of the EEA, the Owner's ability to control the first sale in a particular region is safeguarded, and so debranding is a violation at this early stage, while in the case of Mitsubishi. The Indian legislation views an overseas first sale as the point of concern. Hence, it is about the issue of indirect "use" and the question of whether or not goods could have been harmed.

[95] Abbott, *supra* note 5, at 614.

The third concerns copy of software. The European Union is regional in its territorial scope, and yet *UsedSoft* and *Tom Kabinet* reach opposite results for downloaded software and e-books within that same regional rule. Only the conveyance question explains why.

The comparison also yields two findings about India specifically. India's regime is inconsistent across rights: trademark and, on the usual reading, patent law follow international exhaustion, while copyright remains territorial. Since most branded goods carry copyright-protected labels, packaging, manuals or software, the narrower rule can be used to stop what the wider rules permit. Australia addressed this by providing that copyright in an "accessory" to an article is not infringed by importing it with the article.[96] Second, India's position in the trade is unusual. For many goods, and for price-controlled medicines in particular, Indian prices are lower than those in high-income markets, so India is more often a source of parallel exports than a destination for parallel imports.[97] Its own rules therefore matter mainly for the minority of products, such as some patented medicines, electronics and luxury goods, where Indian prices are not the lowest. For those products, clear rules on the three questions matter more than another statement of territorial scope.

Disclosure also has a home outside trademark law, which the Indian cases have not yet used. Packaged goods sold in India must already declare, among other things, the name and address of the importer where the goods are imported.[98] Misleading statements about warranty or origin can be unfair to trade practices under consumer-protection law.[99] The disclosure directions in *Kapil Wadhwa* and *Seagate* therefore fit an existing regulatory pattern. They do not require trademark law to do all the work. Competition law is relevant in the other direction. The Competition Commission has treated manufacturers' restrictions on the supply of spare parts and diagnostic tools to independent repairers as an abuse of dominance,[100] which suggests that attempts to use intellectual property rights to close the aftermarket for refurbished goods may face scrutiny beyond Sections 30(3) and 30(4).

[96] Calboli, *supra* note 8, at 27–28 (discussing Copyright Act 1968 (Cth) s 44C (Austl.)).
[97] Jhanwar, *supra* note 13, at 126–27.
[98] Legal Metrology (Packaged Commodities) Rules, 2011, r. 6 (India).
[99] Consumer Protection Act, 2019, § 2(47) (India).
[100] *Shamsher Kataria v. Honda Siel Cars India Ltd.*, Case No. 03/2011 (Competition Comm'n of India Aug. 25, 2014).

V. Two Stress Tests

A. Medicines

Exhaustion removes a patent or trademark objection to an import. It does not authorise anyone to sell medicine. In India, an imported drug must be registered, which covers both the foreign manufacturing site and the product, and the importer must hold an import licence; new drugs need separate permission under the 2019 Rules.[101] Labelling should conform to the requirements of India, which differ from those of other countries. This means that relabelling or repackaging of products may be required.. A parallel importer may satisfy patent law under Section 107A(b) and trademark law under Section 30(3) and still be unable to sell lawfully. The same separation exists in the united state, where the import programme rather than patent law is barrier,[102] and in the european union, where parallel importers obtain a simplified marketing authorisation for products already authorised in the importing state.[103]

Keeping the two layers distinct clarifies the policy argument. Safety concerns, including the risk that counterfeits enter parallel supply chains, are real, but patent law cannot address them, because a patent does not distinguish between a safe and an unsafe genuine product. They belong to the drug regulator. Equally, the access case for parallel imports is weaker than it is sometimes made to sound. Swedish data show parallel trade reducing originator pricing power by twelve to eighteen per cent on average, yet later work found that much of the saving went to traders and pharmacies rather than patients or payers.[104] The industry argument that parallel trade undermines tiered pricing is strongest where originators supply poorer markets at low prices, and weakest where they do not supply them at all.[105] For India, the practical stakes lie in high-cost patented therapies that face no generic competition during the patent term. Two further points should be kept separate. Parallel trade in patented medicines is not trade in generics, which raises questions of infringement or compulsory licensing rather than

[101] Drugs and Cosmetics Act, 1940, §§ 10, 12 (India); Drugs Rules, 1945, pt. IV (India); New Drugs and Clinical Trials Rules, 2019 (India).
[102] *See supra* Part V.A.4.
[103] Commission Communication on Parallel Imports of Proprietary Medicinal Products for Which Marketing Authorisations Have Already Been Granted, COM (2003) 839 final (Dec. 30, 2003).
[104] Maskus, *supra* note 9, at 110–11 (discussing Mattias Ganslandt & Keith E. Maskus, *Parallel Imports and the Pricing of Pharmaceutical Products: Evidence from the European Union*, 23 J. Health Econ. 1035 (2004)); Calboli, *supra* note 8, at 11–12.
[105] Calboli, *supra* note 8, at 10–11; *see also* Sarah McKeith, *Pharmaceutical Patents in Developing Nations: Parallel Importation and the Doctrine of Exhaustion*, 6 Afr. J. Legal Stud. 287 (2013) (proposing a regional approach).

exhaustion. And whether savings reach patients depends on pricing and procurement rules, including the Drugs (Prices Control) Order, 2013, not on exhaustion law.

B. Digital Copies

Four things must be kept apart: ownership of a copy, the distribution of right in that copy, the reproduction of right, and the licence terms. Exhaustion only restricts the distribution of right and applies only to copies which have already been sold. A physical book may be resold without needing to be reproduced. On the other hand, a digital file cannot usually be transferred without making another copy, thus activating a reproduction right unaffected by exhaustion, which is the reason for ReDigi's failure. UsedSoft addressed the issue in software by applying the use of the buyer's copy in accordance with the directive on software and rendering the seller's copy useless. Tom Kabinet, on the other hand, did not see this approach suitable for e-books as the digital copies do not get worn out.

Three types of transactions should be differentiated. A one-time payment for continuous use of the downloaded copy is essentially a sale. A subscription or streaming service gives only limited access and is more like leasing or a service; no jurisdiction considers it exhausting anything, and it shouldn't either. Cloud software does not give the user any copy at all. Tokens linked to digital works add confusion, since transferring a token does not in itself transfer the copyright in, or even a copy of, the associated work; what the buyer acquires depends on the attached licence terms. Presently, Indian legislation doesn't respond to any of the questions above directly. Engineering Analysis is in favor of exhaustion in a situation where a copy of software has been sold. However, it has dealt only with tax issues and cannot be expanded to cover the right to resell digital products in general. Licensing proponents argue about the damaging nature of resale markets that sell perfect copies, which makes them very hard to control. The case for ownership is that consumers who pay a purchase price often receive less than they think, and that resale, lending and preservation depend on first sale.[106] A narrow rule for software sold outright, with deletion as a condition and with access-based models excluded, takes both concerns seriously.

[106] *See* Perzanowski & Schultz, *supra* note 15; Rosati, *supra* note 16, at 591.

Vi. Reform Proposals For India

The proposals below follow the analysis. Each is assessed for legal certainty, administrative feasibility, consistency with India's international obligations, and its effects on consumers, competition and innovation. Proposed statutory wording is a legislative recommendation, not existing law.

A. Consent and Section 107A(b)

The ambiguity in Section 107A(b) helps nobody. Importers cannot be sure the defence applies, and patentees cannot predict when imports will be stopped. A court could adopt the reading proposed in Part V, but legislation would be clearer and would separate two distinct policies: exhaustion based on consent, and access to goods made under governmental authorisation. The following text is proposed:

> **Proposed Section 107A(b)–(c) and Explanation (legislative recommendation; not existing law)**
>
> (b) the importation, by any person, of a patented product, or of a product obtained directly by a patented process, which has been put on the market in India or elsewhere-
>
> (i) by the patentee; or
>
> (ii) with the consent of the patentee, including by a licensee acting within the terms of its licence or by an enterprise which controls, is controlled by or is under common control with the patentee;
>
> (c) the importation of a patented product produced and sold outside India under a compulsory licence or other governmental authorisation granted in a manner consistent with Articles 31 and 31bis of the TRIPS Agreement, where the importation has been permitted under Chapter XVI on payment of such remuneration to the patentee as may be determined,
>
> shall not be considered as an infringement of patent rights.
>
> Explanation.-A contractual restriction on resale, export or import attached to a sale referred to in clause (b) does not make the importation of the product an infringement, but this Explanation does not affect any remedy in contract between the parties to that restriction.

Clause (b) is a consent-based rule of international exhaustion and sits squarely within Article 6 of TRIPS, as preserved by Article 13.11 of the India–United Kingdom agreement. The Explanation has taken the position of Lexmark, which states that restrictions on resale function in contract law and not in patent law and at the same time maintains the General Talking Pictures limit for licensees who are outside their licenses. Clause (c) keeps public-health imports available but grounds them in compulsory-licensing provisions and remuneration, so that their defence does not depend on the contested view that Article 6 covers non-consensual first sales. The proposal narrows the widest reading of the present text, which some value for

its breadth; but breadth that no court has confirmed protects nobody in practice, and a clear rule is more likely to be used. Contractual export bans that go beyond protecting legitimate interests would remain open to review under Section 3(4) of the Competition Act, 2002.[107]

Two further points belong to this proposal. The Act should also state the domestic rule that a patented article sold in India by or with the patentee's consent may be used and resold, with repair permitted but reconstruction not, so that domestic exhaustion no longer depends on an implied licence that contract can exclude. And clause (c) should be read with Section 92A, which already permits compulsory licences for export to countries with insufficient manufacturing capacity, so that India's import and export routes for compulsorily licensed medicines follow the same TRIPS logic.[108]

B. Section 30: Exhaustion, Legitimate Reasons and Disclosure

International trademark exhaustion has been applied consistently in the High Court since 2012, but it rests on interlocutory reasoning and an undecided appeal. A short amendment to Section 30(3)(b), referring to goods put on the market "in India or elsewhere," would settle the point. The Supreme Court could achieve the same result by deciding the appeal. The harder problem is Section 30(4). The following replacement is proposed:

> **Proposed Section 30(4)–(6) (legislative recommendation; not existing law)**
>
> (4) Sub-section (3) shall not apply where the registered proprietor establishes that there exist legitimate reasons to oppose further dealings in the goods, which shall be limited to cases where-
>
> (a) the condition of the goods has been changed or impaired after they were put on the market, in a manner that adversely affects their quality, safety or performance or is liable to harm the reputation of the trademark;
>
> (b) the goods differ materially from goods put on the market in India by or with the consent of the proprietor, in characteristics likely to be relevant to a purchaser's decision, and the difference is not disclosed in accordance with sub-section (5);
>
> (c) the goods have been repackaged or relabelled, unless the repackaging is necessary for the lawful marketing of the goods in India, does not affect their original condition, identifies the person who carried it out and the manufacturer, is not presented in a manner

[107] Competition Act, 2002, § 3(4) (India).
[108] Patents Act, 1970, § 92A (India).

liable to damage the reputation of the trademark, and the proprietor was given prior notice; or

(d) a batch number, code or other marking applied for the purposes of traceability, safety or recall has been removed or obscured.

(5) A difference in warranty, after-sales service, accessories, instructions or labelling shall not by itself constitute a legitimate reason where the goods, at the point of sale and in any advertisement or online listing, carry a clear and prominent statement that they are imported or, as the case may be, used or refurbished, and that the proprietor's warranty and service in India do not apply.

(6) For the purposes of sub-section (3), goods are put on the market with the consent of the proprietor if they are put on the market by a licensee acting within the terms of its licence or by an enterprise which controls, is controlled by or is under common control with the proprietor, but not if they are put on the market by an independent proprietor of the same or a similar mark in another country.

Explanation.-A difference in price between markets, or a contractual restriction on the territory of resale, is not by itself a legitimate reason.

Several features deserve comment. The draft places the burden on the proprietor, consistently with *HP v. Senetic*, because the proprietor controls the information about where and how goods were first marketed. The requirements of the condition test are limited to adverse variations and customer-specific disadvantages, following the 2026 Division Bench interpretation instead of the sweeping 2012 point of view. Clause (c) applies the Bristol-Myers Squibb requirements for repackaging, which will be necessary according to Indian labelling law for drugs imported into India. The language of sub-section (5) treats disclosure as the normal remedy in cases of differences in warranty or services, encoding the principle established in Kapil Wadhwa and Seagate. The definition of consent in sub-section (6) addresses the concern behind Jhanwar's proposal of partial international exhaustion without creating a second territorial rule: goods first sold abroad by an independent owner of the foreign mark are not exhausted, while goods sold by an affiliate are. The proposal leaves materiality a matter of judgement, but it gives courts and customs officers a structured test. It falls within the freedom preserved by Article 6 of TRIPS and by Article 13.11 of the India–United Kingdom agreement, which extends to the "conditions" under which exhaustion applies.

C. Medicines

It is important that the Central Drugs Standard Control Organisation can approve parallel-imported drugs that are already recognized in India using a simpler registration process dependent on the initial registration. The responsibility of labeling, storage, drug safety, and retrieval would then remain with the importer. The proposal requires regulatory capacity and coordination with price control, so that any savings reach patients.

D. Copyright and Digital Goods

Three steps are proposed. To begin with, India ought to adopt an accessory-copyright provision modelled on Australia's system, whereby copyright on labels, packaging, manuals, or incidental software cannot impede the importation of goods that have been exhausted under patent or trademark law. Additionally, as suggested by the government's own study, a limited exception to Section 2(m) for printed books might help assess the impact before any more expansive change, though it must be checked against the commitments made by India. Thirdly, the Copyright Act should provide that a single payment for perpetual use of a downloaded computer program exhausts the distribution right in that copy, on condition that the transferor's copy is made unusable, and that subscription, streaming and cloud access do not. Extending the rule to e-books and other works should await evidence. Alongside this, the Central Consumer Protection Authority could require sellers to disclose whether a digital "purchase" conveys a copy or a revocable licence, as California now does, and non-transfer clauses in standard terms for perpetual licences could be reviewed as unfair contracts.[109] Legislation is preferable to judicial extension here, because deletion, verification, and scope need precise rules.

VII. Conclusion

The question at the centre of this article is how far an intellectual property owner may control genuine goods after their first authorised sale, especially when they cross a border. The usual answer is a choice of territorial scope. The comparison suggests that this answer is incomplete. In the United States, the European Union and the EEA, and India, much of the real allocation of control happens at three points: what counts as consent to the first disposal, when the condition of the goods lets the owner object, and whether ownership of a copy passed at all.

[109] Consumer Protection Act, 2019, § 2(46) (India).

Article 6 of TRIPS, read with the Doha Declaration, leaves Members free to choose their territorial rule and leaves these three questions largely to domestic law, subject to non-discrimination, to the other provisions of TRIPS, and to bilateral commitments. The treaty involving India and the United Kingdom reflects that freedom. The USA provides patent and copyright protection but does not make any licensing and contracting obligations so important and interprets trademarking quite separately. The EU keeps the regional border and makes sure the movement within the EEA is effective with the help of evidence and repackaging rules.

The current law in India is based on a prima facie ruling of a Division Bench from 2012, which is yet to be challenged by the Supreme Court, on certain interim orders passed on the refurbishment cases, on a provision of patent law not interpreted by any court so far, and on principles of copyright law that are against it. The suggested amendments preserve the open territorial approach of India and provide answers to three legislative questions: a consent-based Section 107A(b) with an independent trajectory for goods produced under a compulsory license; a structured Section 30(4) putting the burden of proof on the right holder and viewing disclosure as the basic remedy; a regulatory path for parallel imports of medicines and a narrow conditional rule for software sold fully. In this scheme, the right holder gets its remuneration at the first legitimate sale, wherever it takes place, and has the right to objection only provided that it is based on reasons linked to integrity of the goods, content of the message of the mark, and safety of users.

E-JAIRIPA

Vol. VII (Issue I), pp.- 63-73

SCRUTINISING PROTECTION OF INNOVATION IN INDIA UNDER TRADE SECRET LAWS: A CRITICAL STUDY

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Abstract

Trade secrets are one of the most important, yet under-institutionalised, forms of IP in India. Patents, trademarks, copyright and designs, have s0pecific statutory protection, but trade secrets are protected only as a collection of contract law, equity, copyright law, the IT Act, 2000 and the leftover criminal provisions. This is even though India has committed under Article 39(2) of the TRIPS Agreement, which aims to enunciate appropriate safeguard against commercial misuse of the undisclosed information. This article discusses the doctrine of trade secrets in India from a critical perspective, highlighting the judicial journey of the doctrine from various significant cases. It examines the jurisprudence of courts using Section 27 of the Indian Contract Act, 1872, equitable breach of confidence principles and copyright law to bridge the legislative gap and the issues involved in the identification of the problems of definitional uncertainty, inconsistent remedies, weak deterrence and litigation risk, spurred by the absence of confidentiality safeguards in court proceedings. The study uses a doctrinal and comparative approach and contends that the current reliance of India on a common law approach, based on an ad hoc, employer-employee paradigm, is insufficient for an economy that is innovative, based on a digitally networked economy, marked by high labour mobility and cross-border data flows. It's the need of the hour for a codified definition and protection of a sui generis trade secrets statute that strikes balance between interest of the owner and the mobility of the employees, competition and public interest while bringing India's innovation protection regime in line with international best practice and investor, start up and research-intensive industries' confidence.

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Introduction

The concept of innovation is key to the modern knowledge economy and its legal protection is traditionally linked to the legally protected regimes of IP: patents for inventions, copyright for creative expression, trademarks for brand identity and designs for aesthetic form. However, a considerable amount of commercially valuable innovation remains unused in the public domain entirely. It is not rare to see formulae, algorithms, customer databases, manufacturing processes, marketing strategies, negative know-how and unpatented research data protected by secrecy, rather than disclosure-based monopolies. Such intangible assets are referred to as trade secrets. A trade secret does not give a monopoly for a period of time, as a patent does, but in principle it can last forever as long as it remains a secret, like the formula for Coca-Cola[2]. This is particularly appealing to industries in which the rate of innovation exceeds the time it takes to get a patent approved, or where the innovation is not patentable subject matter, or where disclosure would compromise competitive advantage. In India's booming, start-up and information-technology, pharmaceutical, and manufacturing industries, trade secrets are often the only or primary means of protection for commercially sensitive innovations.

Even though this is practically significant, there is no specific trade secrets law in India. Protection is gathered from the general law of contract, the equitable doctrine of breach-of-confidence, the protection of compilations under the copyright law, protection in the Information Technology Act, 2000 and, in extreme cases, the criminal law. It then critically assesses the Report No. 289 of 2024 of the Law Commission of India around Trade Secrets and Economic Espionage and the annexed Draft Protection of Trade Secrets Bill, 2024[3], in comparison with the Defend Trade Secrets Act, 2016 of the US[4] and the EU's Trade Secrets Directive. It also does not align with India's TRIPS commitment under Article 39(2) of the TRIPS Agreement that the member states are to provide legal possibilities for preventing disclosure of undisclosed information that has a commercial value to, acquisition by, or use by others without consent of the rights holder, which is in conflict with honest commercial practices[5].

[2] See World Intellectual Property Organization, Trade Secrets, https://www.wipo.int/en/web/trade-secrets.
[3] The Protection of Trade Secrets Bill, 2024 (Draft), annexed to Law Commission Report No. 289
[4] Defend Trade Secrets Act of 2016, Pub. L. No. 114-153, 130 Stat. 376.
[5] Agreement on Trade-Related Aspects of Intellectual Property Rights art. 39(2), Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299.

Lack of a defined trade secrets law in India has legal uncertainty for both employees and employers. A combination of contract, equity, copyright and criminal law principles was not intended to protect confidential information, which leads to uncertain results in court, limited remedies for aggrieved parties, and poor protection for confidential information in today's digital and mobile economy. The central problem tackled by this article is if the current patchwork of common-law and statutory provisions of India is sufficient to safeguard innovation through the use of trade secrets and what amendments are required to ensure that the Indian regime matches international standards and domestic innovation policy objectives, in particular in the form of the draft Protection of Trade Secrets Bill, 2024.

Conceptual Framework: What Is A Trade Secret?

There is no definition of a 'trade secret' in Indian laws. The meaning of the term, however, has been assembled judicially, most often in employer-employee conflicts. The Delhi High Court in the matter of *American Express Bank Ltd v Priya Puri*[6] has defined a trade secret as something which an employee holds during the course of the employment which thereby is protected and confidential and ought not to be known to others in the interest of the employer and notes that it may be a 'formula, technicalities of know-how or any business method which may be adopted by an employer which may be unknown to others. This distinction between the protected use of information and the general skill, experience, and know-how of an employee that the employee is free to use after the employment relationship ends is critical, and can explain how the court has been able to balance the need to protect such information with an employee's rights of earning a living.

The Bombay High Court, in the case of *Bombay Dyeing and Manufacturing Co Ltd v Mehar Karan Singh*[7], went further and laid down a multi factor test, taking into consideration the factors namely knowledge of the information outside business, knowledge of the information to the employees regarding the business, the precautions taken by the holder to guard the secrecy of information, the weight of information to the holder as compared with other businessmen; effort and expenditure required to develop the information; and the scope where the information can be acquired or duplicated by others easily. Applying this test, the court recognized that the customised software and manual which had been developed at substantial cost was a trade secret, but that discussions in the boardroom and general business strategy

[6] Am. Express Bank Ltd. v. Priya Puri, (2006) III L.L.J. 540.
[7] Bombay Dyeing & Mfg. Co. v. Mehar Karan Singh, (2010) 112 Bom. L.R. 375

were not. The court emphasized that what it recognized as a trade secret had to be created at significant expense and that it could not simply be an employer's unilateral declaration that something was 'confidential'.

This multi-factor concept of judicial development, though very broad, is alike to the internationally accepted concept in Article 39(2) of TRIPS[8] which covers information that (a) is secret, (b) commercially valued, (c) person lawfully in control of the information has taken the reasonable steps to keep it secret. This tripartite approach is expressly incorporated into the draft Protection of Trade Secrets Bill, 2024[9], which defines the trade secret that is not known generally or otherwise easily accessible to the public, has economic value that is derived from the fact that it is not generally known or readily accessible by others, has resulted from the application of reasonable measures for the maintenance of its secrecy; and disclosure of which could be detrimental to the position of the person to whom the information is attributable.

One of the recurring challenges that one faces in Indian jurisprudence is the difference between the term 'trade secrets' and the larger category of ‘confidential information'. Others use the terms interchangeably; still others consider that trade secrets constitute a limited class of confidential information, only that which is of more or less technical or commercial importance, as opposed to normal internal letters or information that is otherwise commonly or generally known in the business. This boundary is not clearly defined by statute, which adds to uncertainty in the outcome of disputes.

Trips And Others: Sight Over The International Agreements

India is a founding member of the World Trade Organization (WTO) and is therefore a member of the TRIPS Agreement, which under Article 39, obligates the countries to provide protection against unfair competitions under Article 10bis of the Paris Convention[10], which covers the protection of the undisclosed information therein. Article 39(2) does not require a legislation to take a particular shape[11]; it leaves to the discretion of member states to protect the trade secrets by means of unfair competition law, by contract law or by a special legislation as long as the substantive threshold of protection is fulfilled. This obligation has been met in India, in

[8] TRIPS Agreement, supra note 4.
[9] Trade Secrets Bill, 2024, supra note 5, cl. 2(f).
[10] Paris Convention for the Protection of Industrial Property art. 10bis, Mar. 20, 1883, as revised at Stockholm, July 14, 1967, 828 U.N.T.S. 305.
[11] TRIPS Agreement, supra note 10.

a composite common-law fashion, but the effectiveness of this common-law approach, in terms of remedies, deterrence, and procedural safeguards, is not uncontested.

The EU Trade Secrets Directive introduces a harmonization of the definition of a trade secret, which is materially very close to the definition under Article 39(2) of TRIPS[12], and also provides for procedural measures to ensure confidentiality of the trade secret in court proceedings, such as the need to limit access to documents, conduct closed court hearings and ensure the confidentiality of court personnel. This procedural aspect directly subverts the one of the most important practical deterrents against litigation in India, namely the requirement for the claimant to provide the very information that it is trying to defend in order to plead and prove the case in open court.

Trade Secrets Through Domestic Regulatory Lenses

The American and European experience shows that the codification of a principle does not necessarily mean the elimination of flexibility, indeed, the specification of a principle and the possibility of adapting remedies and procedures to fit the specific case can yield a more predictable and better enforced system than one derived solely from general contract and equity principles. If there is no specific statute to protect trade secrets, at least five different sets of Indian law have been invoked by the courts to achieve this goal, but they are not all equally effective. The following are comparative models to inform the recommendations that are advanced in Part VIII of this article.

a. <u>The Indian Contract Act, 1872</u>

In Indian scenario, the trade secret protection is mostly based on a contractual basis through confidentiality clauses in employment and commercial contracts. But Section 27 of the Act, 1872 vitiates any agreement to the contrary, except under a very limited statutory exemption for the sale of goodwill[13]. The Indian courts have repeatedly ruled that post-employment non-compete covenants will not be upheld under Section 27, but confidentiality clauses that only restrict the disclosure or use of confidential information of the employer (and not prevent the recipient from working at all) will be enforceable as they do not constitute a restraint of trade in the statutory sense. This separation, which was upheld in cases involving non-solicitation clauses, means that an Indian employer can enforce workplace confidentiality, but not stop

[12] EU Trade Secrets Directives, 2016/943.
[13] The Indian Contract Act, No. 9 of 1872, s. 27.

competitors, is consistent with the constitutional protection of the freedom to engage in any profession or trade (Article 19(1)(g)[14]) and is subject to case-by-case judicial interpretation.

Equity: The Doctrine of Breach of Confidence- A contract does not need to expressly provide this but Indian courts have admitted such an obligation of confidence, which is enforceable through the mechanism of an injunction. The Delhi High Court in *Diljeet Titus v Alfred A Adebare*[15] had ruled that the duty of confidentiality might exist without a contract between the parties, based on the relationship that the parties had, and could be imposed on the former associates of a law firm who tried to access the data of their client while being associated with the firm. This equitable jurisdiction will supplement the contract law and a third party who is the defendant, is not in privity of contract with the trade secret holder, will also be bound by the obligation of confidence in *Zee Telefilms Ltd v Sundial Communications Pvt Ltd* before the Bombay High Court.[16]

b. The Copyright Act, 1957

In regard to the confidential information contained in a compilation, like a client database, catalogue or manual, Indian courts have often relied on the "sweat of the brow" doctrine of copyright, which applies to a compilation that reflects the application of labour, skill and judgment in its selection and arrangement, on the basis of the early decision in *V Govindan v E M Gopalakrishna Kone*[17]. In *Burlington Home Shopping Pvt Ltd v Rajnish Chibber*[18], Delhi High Court stated that a customer database compiled after spending time, money and manpower was an original literary work protected by copyright and prevented one of its former employees from using a database that was substantially similar. Diljeet Titus also acknowledged the copyright of a specific list of customers as well. But this approach does not confer any copyright on the confidential information itself, which courts have since clarified, in Navigators Logistics Ltd v Kashif Qureshi[19], are not eligible for copyright protection; this leaves an important class of routine but commercially sensitive data unprotected by this means.

c. The Information Technology Act, 2000

[14] Indian Const. art. 19, cl. 1(g).
[15] Diljeet Titus, Advocate v. Alfred A. Adebare, (2006) 130 D.L.T. 330.
[16] Zee Telefilms Ltd. v. Sundial Commc'ns Pvt. Ltd., (2003) 5 Bom. C.R. 404.
[17] V. Govindan v. E.M. Gopalakrishna Kone, AIR 1955 Mad 391
[18] Burlington Home Shopping Pvt. Ltd. v. Rajnish Chibber, 1995 IV AD (Delhi) 732
[19] Navigators Logistics Ltd. v. Kashif Qureshi, 2018 SCC OnLine Del 10944

Sections 43 and 66 of the IT Act, 2000[20], make it an offence to access with the intention of downloading any data from a computer system or to access a computer system to extract any data, if the data is stored or transmitted in electronic form, and Section 72 makes it an offence to breach confidentiality by accessing electronic records under statutory powers[21]. These provisions have been applied to prevent computer data being stolen, but are focused on unauthorised computer access, not on the misappropriation of trade secrets in general, and do not provide a detailed civil remedy framework for the misappropriation of trade secrets.

Precedents Framing Trade Secrets Concepts

A precedent-setting decision came up in mid-90s by the Delhi High Court and is often termed to as the beginning of trade secret jurisprudence in India. The court ruled that a list of customers compiled by a past employee "in the course of his employment" was an original literary work that is subject to copyright umbrella, considering the facts that the information in the list was unoriginal or publicly ascertainable. It created an important principle, namely that the function of aggregation and organisation of otherwise ordinary information can itself be considered a protectable subject-matter, which remains relevant for today's data-driven companies.[22]

Further ruling *American Express Bank Ltd*[23] provided Indian law's most often-quoted definition of trade secret. It was also important, however, for what it didn't protect, the court rejected the former banking employee's attempts to prevent him from relying on general banking knowledge and skill, or from approaching customers who were free to choose their bank, ruling that customer names, addresses and portfolio information, which were confidential in relation to the banking relationship, could not be monopolised to the extent of restricting any customer's freedom of choice. It's a fine balancing act that is playing out throughout this field, that is, balancing the rights of customers and the mobility of employees with the ability to maintain genuine secrecy.

The clash of departing lawyers at a law firm established that confidentiality is not required by contract, but rather is inherent in the nature of the professional relationship of trust, and that confidentiality may exist with regard to compiled client information even if the facts themselves are not particularly unusual. The decision of *Diljeet Titus* [24] is important because of

[20] The Information Technology Act, No. 21 of 2000, ss. 43, 66.
[21] *Id,* s. 72.
[22] Burlington Home Shopping v Rajnish Chibber 61 (1995) DLT 6.
[23] American Express Bank Ltd v Priya Puri (2006) SCC OnLine Del 638.
[24] Diljeet Titus v Alfred A Adebare, 130 (2006) DLT 330.

its attempt to be expansive in its protection of professional service providers, a sector that is not well-served by patent or trademark law, but also because of the doctrinal unction of the court's reliance on copyright as a substitute remedy for a trade secret cause of action, which was grounded in the plaintiff's authorship of the database, instead of a de novo property right claim.

Bombay Dyeing and Manufacturing Co Ltd[25] provides the most analytically mature judicial treatment of trade secrets in India, and sets out the six-factor test. Its split decision protects the proprietary software and manual, but not the boardroom discussions on the strategy, shows that the judges are willing to draw fine lines between what is truly secret but has commercial value in terms of technological information and what is more business planning and thus less secret. Its bifurcated holding protects proprietary software and manual, but not boardroom strategy discussions which illustrates judicial willingness to make fine distinctions between technological information that is truly secret but commercially valuable, and business planning, which is less secret.

This latter decision is helpful to clear up any misimpression that Burlington and Diljeet Titus protect all business databases. The Delhi High Court[26] found that a customer database created by a mere mechanical process does not enjoy any copyright protection and separately found that if a customer database is created by a company, the company must identify the human author to prove ownership of the copyright. The ruling reveals the structural flaws of any reliance on copyright to serve as a replacement for a trade secret action: while copyright could cover the expression and arrangement of the data, it doesn't encompass the confidentiality of the data or the value of the underlying information, and so mundane but sensitive information, such as pricing sheets, vendor terms, operational factors, can be lost between the copyright originality barrier and the lack of a standalone trade secret action.

Scrutinising The Regulatory Gaps And Inconsistencies

The statutory provisions in the Indian arena shows certain limitations and gaps which finds out the vulnerability of the Trade secrets regulation. There is no statutory definition of trade secret, so courts deal with trade secret protection on a case-by-case basis. This leaves businesses with a limited amount of guidance to go on when designing a confidentiality procedure ex ante. Remedies are mostly confined to injunctions. Civil remedies are not well deterrent where there

[25] Bombay Dyeing and Manufacturing Co Ltd v Mehar Karan Singh, 2010 (112) BomLR 375.
[26] Navigators Logistics Ltd v Kashif Qureshi (2018) 254 DLT 307.

is no specific damages regime. In fact, India has no specific criminal law on trade secret misappropriation, compared to that in the United States (Economic Espionage Act)[27] and China (Anti-Unfair Competition Law).[28] Doctrinally it is a strain and weak prosecution to rely on general penal provisions for tangible property. Enforcement necessitates that claims must be made in public. Without such protective orders and sealed-record regimes that exist in the US or EU, this litigation paradox is a deterrent for enforcement, particularly for resource constrained start-ups. Precisely, when one see ticks, he sees that the law is the result of problems with the departing worker, leaving non-employment scenarios underdeveloped, such as competitor misappropriation, cyber-intrusion, joint ventures, and cross-border supply chains. Lastly, modern assets, such as algorithms, AI training data, cloud processes, are easily stolen and cannot be always be protected by bilateral contracts. This is an ancient common-law system that's poorly equipped to serve the digital world.

Towards Codification: The Protection Of Trade Secrets Bill, 2024

The Department of Legal Affairs, after detailed consultation with the judiciary, academia, industry and government departments, submitted a report to the 22nd Law Commission of India, which in 2024, presented its Report No. 289 titled 'Trade Secrets and Economic Espionage'. The Report suggests the adoption of sui generis legislation and proposes an annexe to the Report, namely a draft Protection of Trade Secrets Bill, 2024.

The Draft Bill includes the following key features:

The 'trade secret' covered by clause 2(f)[29] defines it as ‘information that is not known generally or easily accessible, has economic value because of its secrecy realm, has been taken to be the subject of reasonable measures designed to avoid disclosure and whose disclosure could be detrimental to the owner'.

The concepts of unfair competition and misappropriation that underlie a common law approach to protecting a trade secret are also based on breach of a common law duty of confidence principle, and that doctrine is left unchanged to maintain a sense of doctrinal continuity with previous case law, while providing statutory structure. Allowing for compulsory licensing and compulsory government use of trade secrets within specific public-interest conditions, as would also be the case with patents. Protection of the whistle-blower, such that disclosures for

[27] Economic Espionage Act of 1996, Pub. L. No. 104-294, 110 Stat. 3488.
[28] Fan Bu Zhengdang Jingzheng Fa, Anti-Unfair Competition Law, (2019).
[29] Trade Secrets Bill, 2024, supra note 5, cl. 2(f).

disclosing illegal activities are not treated as misappropriations and therefore protected from liability.

What Can We Underline Through These Progresses?

The draft Bill is a major conceptual improvement as it would, for the first time, provide a single statutory definition for Indian law, codify the equitable and contractual principles that have been formulated over the years by courts, and add confidentiality-preserving procedure. It explicitly rejects the property concept of a trade secret, with a view to avoiding the possibility of a trade secret claim being used against a legitimate competitor or to prevent an employee from departing from a firm. Its explicit rejection of the idea of a trade secret as a property is a deliberate and defensible policy choice, and one that aims to avoid the possibility of a trade secret claim being used against a legitimate competitor and to prevent an employee from leaving a firm. Meanwhile, the Bill's failure to include specific criminal penalties and the inconsistencies between compulsory licensing and the very secrecy that makes a trade secret valuable are areas for valid concern. The Bill is currently in draft status, and has not been introduced in Parliament, so it is unclear how it will change or be amended during the parliamentary process and what form it will take when it eventually becomes law.

Conclusion

In the last 30 years, India's judiciary has fashioned a remarkably consistent field of trade secret law from its doctrinally disconnected sources like contract, equity and copyright while always keeping an eye out for genuine commercial secrecy without stifling employee mobility, customer choice, or competition. The decisions of the above-mentioned tagged case laws are a good example of the ingenuity of the judges in the absence of any legislation. But there is no substitute for codification when it comes to ingenuity. The resulting exposure of the Indian innovator to definitional uncertainty, inconsistent remedies, weak deterrence, lack of meaningful criminal sanctions, and perhaps most damaging to a litigation averse business world the paradox of being required to disclose a secret in order to protect it leaves them vulnerable. The rationale for establishing a codified, sui generis trade secrets regime, as recommended by the 22nd Law Commission and embodied in the draft Bill on Trade Secrets protection of 2024, is all the stronger in the era where India is aspiring to become a global start-up hub, research and development, and digital innovation hub. Such a law thoughtfully designed in light of the comparative histories of the US and the EU, and mindful of India's constitutional dedication to the freedom of trade and employment would be a stark and overdue

move to bring India's innovation protection system more into line with the requirements of a modern knowledge economy.

E-JAIRIPA

Vol. VII (Issue I), pp.- 74-89

SPACE LAW: THE NEW WILD WEST

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Abstract

For most of our evolutionary existence space has always been out of reach of humankind. However, with technological advancements of the 20th century space is no longer the last frontier. With India successfully landing on the Moon to NASA trying to mine an asteroid from outside our solar system, a space race is truly on. The development in space technology despite being desirous for the whole of humankind, is lopsided between countries struggling to launch satellites to countries undertaking space tourism. A set of treaties were formulated amongst the states to govern the space law. However, much water has passed since 1967 when the Outer Space Treaty was formulated. No amendment has been made or suggested despite the quantum increase in space traffic.

The Outer Space Treaty states that no nuclear weapons or other mass destruction weapons can be installed on the celestial bodies. However, with the exclusion of conventional weapons in the provision and advancement of technology, states would militarize outer space. With the launching of space crafts or satellites by countries, there are often missions that are not successful which results in creating space debris which in turn creates an obstacle for satellites that were successfully launched. It poses a threat to already active satellites or space missions, and the ones which shall be embarked on in the future. However, no such issue has been included in the treaty. The current system of space law is threatened by space mining, an emerging venture to take precious materials from celestial bodies. Legal ambiguities resulting from a lack of clarity concerning property rights and resource distribution in space could hinder the growth of this promising venture.

Keywords – outer space, exploration, space law, space militarization, space debris

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Introduction

Heavens and heavenly objects have fascinated humans since time immemorial. Art, literature, and science have delved into this subject long before technology could get space into touching distance. While human civilization's advancement has pushed the boundaries of science, this has also led to the need for regulatory mechanisms such as international law.

The expanse of space, with its countless galaxies and celestial bodies, as well as the unlimited possibilities they hold, compels humanity to venture beyond the boundaries of our earthy home. It has generally been recognized that space is for the benefit of all humanity and should be explored without distinction, and no single nation may take Outer Space for its benefit. Space operations, like all other human actions in all other domains, are governed by laws, known as the Space Laws.

The inability to extend conventional laws of sovereignty over space above the land mass compelled the superpowers to act. The signing of the Nuclear Test Ban Treaty in 1963, as well as the Outer Space Committee resolution, barred the testing of nuclear weapons in space. The General Assembly adopted a resolution in 1963 in the 1280th plenary meeting which is known as the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space[2]. The Outer Space Treaty is a fundamental document that provides for the peaceful use of outer space and the prohibition of weapons of mass destruction in orbit.

The Rescue Agreement, born in the wake of the Outer Space Treaty, addresses the basic component of manned space missions - the commitment and cooperation to rescue astronauts in trouble. As the scope of space activities expanded, the necessity to manage accountability for any harm became critical. The 1972 Liability Convention navigates the legal boundaries of liability in the universe. The 1975 Convention on the Registration of Objects Launched into Outer Space emerges as a diligent keeper of humanity's extraterrestrial accomplishments. Lunar explorations led to The Moon Agreement, a one-of-a-kind legal framework to oversee lunar activity, which was adopted in 1979 and came into force in 1984.

These international accords and agreements illustrate space's geostrategic and economic importance. When the national government was the principal accessor of space, these UN-mandated regulations and national laws were well-competent in controlling the huge area. With

[2] Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space, 1962.

the entry of private companies, strained ties between governments, and more countries fighting for a piece of the same pie, albeit vast, these policies have been deemed insufficient in addressing state and technological challenges. Maximilian Bertamini, aptly named his article on space law "Of Old Wisdoms and New Challenges[3]." Outer Space is no longer the lovely paradise it once was. It is congested, fiercely disputed, and competitive. Agreements leading to the creation of space law were reached during a nearly Jurassic period when government-controlled space activities and commercial space enterprises were in the early stages of development. The current scenario of regulations is slow to adapt to the evolving nature of the outer space race.

There is no agreement on guidelines for space weaponization and militarization, space debris, and space mining and sustainability. National governance, variations in state interpretations, and lack of enforcement mechanisms may allow space operators to use "flags of convenience," either to avoid costly assessments, designs, or operational mandates or to dodge tighter restrictions in other ways. Since space regions are non-assignable, usable space resources are similarly ambiguous. A technique for determining each country's control over the air above is yet to be agreed upon.

Space law cannot be a static set of rules; rather, it should be a dynamic realm that evolves in tandem with technological progress and our growing understanding of the vastness of space. At its heart, Space Law should handle a wide range of concerns, from defining sovereign jurisdictional limits in space to setting norms for the use of celestial resources. It should strike a balance between encouraging exploration and creativity and avoiding the anarchy that could result from unfettered activity in the ultimate frontier.

War Away From Home: Space Militarization And Weaponization

The Cold War has become history, and the space race born from that era continues to unfold. By the end of the Cold War, the USA and the then-Soviet Union wanted to establish their dominance over space. Due to the rivalry between the two states, President Reagan introduced the Strategic Defence Initiative aka Star Wars[4], to intercept the Soviet Union's ICBMs (Intercontinental Ballistic Missiles) at different phases in space with earth-based direct energy weapons. However, due to the disintegration of the Soviet Union, the Star Wars was halted

[3] Of Old Wisdoms and New Challenges: Comment on Volume 1 of the MILAMOS Project, *available at*: https://voelkerrechtsblog.org/of-old-wisdoms-and-new-challenges/ (last visited on July 11, 2024).
[4] National Institute of Advanced Studies, "India and Weaponization of Space" 7 (2021).

from further development. During the Gulf War, the USA used space assets known as Force Enablers to enhance capabilities for terrestrial operations. China's Anti Satellite (ASAT) weapon test further compounded the space militarization.

With such advancements taking place, treaties, and agreements regulating outer space were introduced. Article IV of the Outer Space Treaty provides that state parties to the treaty should not place in orbit around the Earth any objects carrying nuclear weapons or any other weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space in any other manner[5]. Due to the wordings – nuclear weapons or other weapons of mass destruction, this has led to numerous interpretations of the article.

Due to this ambiguity and lack of proper definition of weapons that are prohibited from being used or placed in outer space, two concepts regarding weapons have developed-– space weaponization and space militarization which have been used synonymously multiple times. Space militarization is when states use outer space as an aid for their military operations, such as satellites[6]. In space militarization one state uses outer space to collect data or information that aids its military forces. On the other hand, space weaponization is when there is an actual deployment of weapons in outer space[7]. In this case, damage or destruction is being caused to space assets or objects of other states. However, with the advancement and the need to lead the space race, the lines between space militarization and space weaponization have blurred-putting space militarization and space weaponization into a single box that needs regulations.

Erstwhile Soviet Union introduced anti-satellite technology in 1982 followed by the USA. Initially, the space race was between the USA and the Soviet Union, but soon other states, great and medium powers alike, realized the importance of the race and joined it.

Developments in Space Technology were driven by the states' ambition to use higher platforms to control the challengers. Satellites launched in various orbits for civil and commercial purposes, later on developed dual-use capabilities. Space was critical for critical military power- armed forces have relied on space-based or space-supported technologies such as the Global Positioning System (GPS) for navigation, dedicated military satellite-based

[5] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, 1967, art. 4.
[6] Z. Shapira and G. Baram, "The Space Arms Race: Global Trends and State Interests" 3 *Cyber, Intelligence, and Security* 5 (2019).
[7] R.Q. Ahmed, M. Arif, et.al., "Emerging Trends of Space Weaponization: India's Quest for Space Weapons and Implications for Security in South Asia" 18 *The International Journal of Space Politics & Policy* 159 (2020).

communications for secure digital connectivity, and spy satellites for intelligence. GPS could be said to be one of the first instances and the most successful instance of space militarization and dual-use technology. These dual-use weapons are ostensibly civil but covertly provide military capabilities or functions, making differentiating between weapon and non-weapon nearly impossible.

From satellites launched to help the militaries in intelligence and reconnaissance missions, the world is witnessing the rapid development of anti-satellite (ASAT) weapons. The race for these weapons not only increases the risk of global conflict but could jeopardize all future space exploration. ASATs are designed to destroy satellites, mainly those used for military purposes through kinetic energy ASATs (KE-ASATs) which physically collide with the target, and non-kinetic ASATs employing non-physical mechanisms such as blinding satellites with lasers, launching cyberattacks, or jamming frequencies to render the target inoperative[8]. As a result, regulating ASATs and many other space-based weapons systems is tricky and extremely difficult.[9]

More and more nations are joining the space arms bandwagon and that is causing the rapid proliferation of weapons in space. The USA believes in the philosophy that war in space is inevitable, so, they must stay technologically ahead of others. They have carried out numerous experiments relating to close approach and rendezvous in Low Earth Orbit (LEO) and Geosynchronous Orbit (GEO). One of the experiments conducted by the US regarding a satellite servicing mission involved a robotic arm that could successfully capture a space object. They also have the capability and knowledge to deploy ground-based laser weapons that are capable of damaging satellites present in the LEO. Russia, the other initial contender in the space race, suffered a setback after the disintegration of the Soviet Union, but over time it started rebuilding itself. It is believed that Russia has developed an anti-ballistic missile system which was first used in 2021, named S-500[10], and is a dual-use technology with anti-satellite capabilities. Russia just like its fellow contenders, has the capabilities for space weaponization due to its adequate knowledge and capability in electronic counter space methodologies. China's capabilities and knowledge of lasers and other direct energy weapons that could be

[8] The Military Use of Outer Space, Stockholm International Peace Research Institute, *available at:* https://www.sipri.org/sites/default/files/11%20%282001%29.pdf (last visited on July 13, 2024).
[9] Anti-Satellite Weapons and the Emerging Space Arms Race, *available at:* https://hir.harvard.edu/anti-satellite-weapons-and-the-emerging-space-arms-race/ (last visited on July 13, 2024).
[10] National Institute of Advanced Studies, "India and Weaponization of Space" (2021).

used as a countermeasure in outer space is growing. According to a Chinese scientific journal in 2013, China conducted a successful laser blinding test against satellites in the LEO[11]. These three states form the group of space superpowers, while states such as EU, India, and Japan form the medium space powers, and emerging space powers are states such as Brazil, Pakistan, etc.[12]

Space weapons are not only offensive in nature but are also desired because of their conflict-deterrent capabilities. ASATs can function as a conflict deterrent by risking mutual impotence in much similar way as two nuclear armed opponents risked mutually assured destruction(MAD). India, a country that is against the militarization and weaponization of outer space, started developing anti-satellite missiles and in March 2019, it successfully conducted a mission of the same by destroying its satellite. So, states wanting to be on the same footing as other states, have always developed and conducted experiments, even in the outer space, but without being regulated.

The weaponization of space can lead to certain threats which could lead to a conflict in the future. The OST lays that the state parties shall be regulated by principles of international law in outer space such as the principle of non-aggression, which by itself is ambiguous. It can be interpreted either as weaponizing and militarizing outer space with weapons for peaceful use, or as a peaceful means. Another international law - the principle of self-defence can be quoted by one state to attack another state in outer space by stating that there is a threat to its security due to the satellite system. States can very well exploit the principles for their gain. Another threat due to weaponization and militarization is the alteration of the environment- experiments in outer space can leave behind debris or residue.

Apart from ASATs or conventional weapons being placed in orbit, there are various other threats as well. Kinetic energy weapons wherein any state with medium-range ballistic missile capability reaches the LEO; co-orbital satellites stay in orbit and can approach, maneuverer, and damage other satellites; jamming of communication of one state's satellite with its user, etc. are some other threat. So, weapons in the space are truly a dangerous dilemma- Damn if you have them and damn if you don't have them. Space is likely to be lost to mankind due to accidental war or even due to a benign desire to clear up the orbits. The use of ASATs for any

[11] B. Weeden and V. Samson, "Global Counterspace Capabilities: An Open Source Assessment" 19 (2019).
[12] Z. Shapira and G. Baram, "The Space Arms Race: Global Trends and State Interests" 3 *Cyber, Intelligence, and Security* 9 (2019).

reason whatsoever is going to compound the misery by adding more debris to the already littered orbits. Space could very easily achieve critical mass as predicted in the Kessler effect theory either through offensive or defensive actions.

One of the most prominent treaty proposals, called Prevention of the Placement of Weapons in Outer Space with a "No first placement of weapons in outer space", was introduced by China and Russia in 2008, but the US vetoed it. The proposal defined weapons in outer space under Article 1(c), and also defined what use of force or threat of force means providing more guidance than the present scenario as Article II prohibits the state parties from resorting to the threat or use of force against outer space objects. The US vetoed all the drafts presented by China and Russia and claims that such proposals are pointless since there are no weapons deployed in outer space and there is no arms race in outer space. Apart from such initiatives, there have been numerous debates and talks regarding the prevention of weapons being used in outer space and to ban the use of ASATs. UN General Assembly has also been engaged in ensuring a future arms-free Outer Space. On 27 October 2022 during a joint meeting between the first and the fourth committee of the UN, the speakers addressed the concerns of the growing weaponization of heavens and discussed the need to have a multilaterally negotiated and legally binding instrument that would work towards prohibiting the same[13]. However, there will be no recourse to the issue unless all the states come together and decide upon a regulation that shall be binding upon all.

Space Debris: Littering The Heavens

Space was once a romantic dimension, with astronauts exploring its far reaches. With the development of the Superpowers, the race to the Moon became the ultimate mile race. Michael Jackson passed away and so did the Moonwalk. Space has become more competitive, with everyone vying for a toehold, including millionaires.

Growing financial and geopolitical interests are increasingly influencing space exploration, similar to the mythological El Dorado. Unlike early public-sector-funded space activity, private investment has increased dramatically over the last decade. Some recent activities undertaken by new commercial entrants range from providing satellite services, particularly in internet-related communications or launch services, to advancing National "territorial" claims or

[13] General Assembly, *Speakers Renew Calls for Treaty to Prevent Arms Race in Space as First, Fourth Committees Convene Joint Meeting -Concerns Also Raised About Proliferation of Space Debris*, UN GAOR, UN Doc Ga/Dis/3699-Ga/Spd/761 (Oct. 27, 2022).

fostering the development of high-value jobs, particularly in the zone of LEO or Medium Earth Orbit (MEO), as well as outward movement of humans from Earth leading to permanent settlements in space or on other celestial bodies. The space sector is an ever-transforming sector with the advancement of technology. Since space objects like satellites have both civilian and military usage, they are vastly used and placed in outer space and more so in LEO, MEO, or GEO. Satellites are a very profitable venture. New entrants looking to supply LEO or MEO services are putting pressure on the commercial satellite market. Over the last decade, a slew of new corporations, start-ups, and research organizations have raised billions of dollars to fund new uses for space-based activities. This has decreased the cost of launch systems, particularly in LEO, allowing a larger number of people to launch constellations of smaller satellites. Although industries involved in growing digital connectivity on Earth, such as direct-to-consumer broadband access, are witnessing the most growth, new areas of concentration include hyperspectral remote sensing, energy generation, manufacturing, mining, and tourism.[14]

Due to the rapid development, there is a huge risk of space congestion which could prohibit any state from putting any space object in outer space. Since the launch of Sputnik 1 by the Soviet Union, approximately 11,000 satellites have been launched to the LEO, and it is estimated that around 70,000 more will be put into orbit[15]. Since the circumference of the earth is 40,070 km, it is astonishing to imagine where the upcoming 70,000 satellites will be placed. According to a source, in 2023, an Australian satellite and a suspected Chinese satellite had a near-collision[16]. The reason behind the collision could be the overcrowding which is taking place in outer space. China complained to the UN Space Agency regarding two instances wherein the state had to take evasive action to avoid colliding with the satellites of Elon Musk.

States like China are developing technology to launch a n-number of satellites in orbit. According to recent news, China is launching its internet network system via satellites called the Guo Wang, a constellation of 13,000 satellites to provide 6G[17]. Rwanda, one of the poorest

[14] World Economic Forum, "The Global Risks Report 2022" 71 (2022).
[15] "Space Congestion: An Increasingly Contested and Crowded Frontier", Zurich, July 05, 2022, *available* at: https://www.zurich.com/media/magazine/2022/from-moonshot-to-musk-how-the-rules-of-the-game-are-changing-in-space (last visited on July 17, 2024).
[16] A. Greene, "Details Emerge of Near Collision Between Australian and Chinese Satellites", *ABC.Net*, Oct. 18, 2023, *available at*: https://www.abc.net.au/news/2023-10-18/space-incident-australia-china-satellite-conjunction/102988030?utm_campaign=abc_news_web&utm_content=link&utm_medium=content_shared&utm_source=abc_news_web (last visited on July 17, 2024).
[17] "China Breaks New Ground in 6G and Satellite Internet Technologies", Digwatch, Oct. 17, 2023, *available at*: https://dig.watch/updates/china-breaks-new-ground-in-6g-and-satellite-internet-technologies (last visited on July 17, 2024).

states in the world, had in 2021 filed a request with the International Telecommunication Union to put approximately 3,30,000 satellites[18]. States are not the only ones placing satellites, private entities are seeking approvals to put satellites in various orbits. One of the most used services, Amazon, announced Project Kuiper in 2019 and got approval from the state in 2020 to build a satellite constellation consisting of 3,236 satellites in the LEO[19] to deliver broadband services in the United States. Another private entity, SpaceX, which wants to provide low-cost internet to remote locations, aims to put a satellite network, the Starlink, in orbit. The life span of a Starlink satellite is approximately five years and they hope to place almost 42,000 satellites in outer space.[20] As of July 2023, there are approximately 4,500 Starlink satellites in orbit most of which are functional, and due to their size and scale, they are becoming a major source of collision. With such approvals and authorizations, the Satellite Industry Association, in its white paper in 2021[21], provided an estimate of approximately 1,47,671 satellites of which 10,000 satellites are in LEO, 30,000 satellites in medium, and 1,07,671 in high orbit.

Investment in the space sector would not only impact aerospace and defence but also IT Hardware and telecom sectors. It would also impact the mineral and mining sector, which shall be discussed subsequently. According to Morgan Stanley[22], by 2040, the space sector will generate a revenue of $1 trillion, which currently sits at $350 billion.

However, with such expansion comes the cost of collision and the creation of debris. Satellites that are launched into orbit can remain in orbit for hundreds of years. Because of the cheap cost of launch and fewer regulatory restrictions, the proliferation of smaller, low-cost satellites increases the chance of collisions or requires emergency makeovers to prevent such collisions.

The human race has an exceptional ability to generate waste. We are successfully filling up Space with rubbish that we have launched into it, despite having learned nothing from the waste generated. As the author mentioned above, we may have 100,000 satellites in orbit by 2029.

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[18] "Rwanda Files at ITU for Nearly 330,000 Satellites", Spacewatch, Oct. 22, 2021, *available at:* https://spacewatch.global/2021/10/rwanda-files-at-itu-for-nearly-330000-satellites/ (last visited on July 17, 2024).

[19] "Amazon Receives FCC Approval for Project Kuiper Satellite Constellation", Aboutamazon, July 30, 2020, *available at:* https://www.aboutamazon.com/news/company-news/amazon-receives-fcc-approval-for-project-kuiper-satellite-constellation (last visited on July 18, 2024).

[20] Starlink satellites: Everything you need to know about the controversial internet megaconstellation, *available at*: https://www.space.com/spacex-starlink-satellites.html (last visited on July 18, 2024).

[21] The Future of Space and Space Traffic Coordination and Management, Satellite Industry Association, *available at:* https://sia.org/wp-content/uploads/2020/09/REVISED-White-Paper20-STCM-Sept-23rd-V1.0.pdf (last visited on July 18,2024).

[22] *Space: Investing in the Final Frontier*, Morgan Stanley, *available at* https://www.morganstanley.com/ideas/investing-in-space (last visited on July 18,2024).

Some experts are concerned that the amount of metal that will be burned up in the Earth's atmosphere as ageing satellites are deorbited could cause unpredictability in the planet's climate[23]. Nowhere in any of the treaties or agreements the term space debris has been defined. However, it has been defined in the Space Debris Mitigation Guidelines[24] as all man-made objects, including fragments and elements in the Earth's orbit or re-entering the atmosphere, that are non-functional.

Space debris can be created due to various reasons. One of the reasons for the creation of space debris is defunct or decommissioned satellites or space objects. Since the space objects have stopped working, they become pieces of metal floating in outer space, which may end up colliding with live satellites. For example, in February 2009, Iridium 33, a US communication satellite collided with Cosmos 2251, a decommissioned satellite of Russia, at a relative speed of 11.7km/s. This collision took place while both of them were passing over Serbia and upon the collision, there was the formation of a debris cloud and thousands of fragments.[25]

Another reason for the creation of space debris is the anti-satellite weapons. During the testing or usage of the anti-satellite weapons, the said weapons physically collide with the targeted satellites at high-speed causing the satellite to break which would lead to the generation of debris. In the 1970s and 80s, both the US and the Soviet Union developed and tested various ASAT weapons. These tests in itself created 700 large pieces of debris, out of which 300 remained in the orbit. Since then, debris creation has been continuing.

In the LEO, debris travels thirty times faster than a commercial jet aircraft. Due to the excessive amount of debris, which would be travelling at a high speed, the satellites that are placed in the LEO would be in danger of getting damaged or destroyed. Space debris is not only a threat to the satellites, but soon, with the increase in number of space debris, it will form a blanket around the atmosphere of the earth, making it impenetrable from the inside and the outside.

According to the European Space Agency's space debris office in Germany, the number of satellites in space is around 10,590, and around 8800 of them are still functional. More than 640 estimated breakups, explosions, or collisions can take place resulting in fragmentation.

[23] E.T. Pultarova and E. Howell, "Starlink Satellites: Facts, Tracking and Impact on Astronomy", *Space.Com, available at:* https://www.space.com/spacex-starlink-satellites.html (last visited on July 19, 2024).
[24] Space Debris Mitigation Guidelines of the Committee on the Peaceful Uses of Outer Space, United Nations Office for Outer Space, *available at:* https://www.unoosa.org/documents/pdf/spacelaw/sd/COPUOS-GuidelinesE.pdf (last visited on July 19,2024).
[25] The impact of Space Debris, The European Space Agency, *available at:* https://www.esa.int/ESA_Multimedia/Images/2021/03/The_impact_of_space_debris (last visited on July 19,2024).

Around 35,340 space debris objects were tracked by the Space Surveillance networks.[26] According to a statistical model, there are around 36,500 space debris whose size is greater than 10cm, 10,00,000 space debris objects between 1cm to 10 cm, and around 130 million space debris objects from the range of 1mm to 1 cm.[27]

The creation of space debris, knowingly or unknowingly, does not benefit mankind, it poses a threat to the satellites and space objects that are present and shall be present in the future. Therefore, one can deduce that there is an underlying obligation on the states via the preamble of the Outer Space Treaty to not create debris. A NASA scientist, Donald Kessler in 1978 propounded the Kessler Syndrome, discussing the scope of space debris and its creation. He provided a situation, where one space object collides with another space object, further causing the objects to fragment into several pieces called space debris. These pieces of space debris into various orbits, would subsequently collide with other space objects, creating a vicious circle of collision and creation of space.

What's astonishing is that no state is actively trying to reduce the debris that is being caused in outer space. Professor Pini Gurfil, in an article, mentioned that this disc formation, would impact the magnetic fields of the Earth which protects us from radiation and light that comes from the Sun, and it may further also affect the weather of the Earth[28]. Similar to plastic on Earth, it becomes difficult to discard the fragments created by the destruction of space objects and satellites. This is in clear violation of Article IX of the OST which puts an obligation on states to conduct exploration in outer space in such a manner that it does not contaminate or cause adverse changes to the environment of the Earth as well as the outer space. Despite it being an obligation, states are taking no initiative as the terms "harmful contamination" or "adverse changes" have not been defined. If the issue of space debris is not solved or guidelines for the same are not provided in the next couple of years, there will be a debris disc around the earth.

Exploring Celestial Riches: Space Mining

Space is an area with unexplored natural resources for which states, whether developing or developed, want to stake their claims for it. Space mining is the exploration, exploitation, and

[26] Space debris by the numbers, The European Space Agency, *available at:* https://www.esa.int/Space_Safety/Space_Debris/Space_debris_by_the_numbers (last visited on July 21, 2024).
[27] *Id.*
[28] S. Askenazi, "Waste in Space: Near Space is Getting More Crowded, and More Polluted", *Calcalistech*, Sept. 26, 2023, *available at:* https://www.calcalistech.com/ctechnews/article/j3izlquus (last visited on July 21, 2024).

utilization of natural resources such as minerals, gases, metals, and water on the Moon, other planets, and near-Earth asteroids (NEAs). Space mining, billed as an activity that will maintain human life in the future by providing energy and raw minerals, is the key to the future of space exploration which requires an appropriate lock to prevent over-exploitation.

Article I of the OST provides that exploration and use of outer space shall be carried out for the benefit and in the interest of all countries. Outer space including the moon and other celestial bodies shall be free for exploration and use by all states and there shall be free access to all areas of celestial bodies.[29] The principle of sovereign equality is maintained by this article in space- space and its resources are res communis. Although Res communis or common heritage is based on jus utendi here it means that everybody owns the celestial bodies, and forbids jus abutendi in the form that nobody owns the celestial bodies so cannot dispose of the same. Developing Countries believe that Article 1 creates a positive obligation on the states to share the knowledge gained by them upon exploration or at least give up a share of the resources. This belief stems from the words benefit and interest of 'all' countries. However, for developed countries, it is simply a statement of goals to be achieved and the states have the right to decide what and how to share the information. As the world progresses, the majority of the states would adopt the second view to protect their endeavours.

Article II of the said treaty states that outer space, including the Moon and other celestial bodies, is not subject to national appropriation by claim of sovereignty, by means of use or occupation, or by any other means.[30] The term "national appropriation" has not been defined in any set of treaties causing states to interpret national appropriation accordingly. Resource extraction does not constitute "national appropriation" and hence is not forbidden for enterprises that are not states. The Artemis Accords, signed by the United States and eight allies, makes use of the view that OST allows for the extraction and resale of commodities from outer space, as "extraction of space resources does not inherently constitute national appropriation under Article II of the Outer Space Treaty."

The wording of Article II of the OST does not clarify certain aspects that are related to space mining. With technological advancement and the increase in knowledge about outer space

[29] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, 1967, art. I.
[30] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, 1967, art. II

resources, there is no proper definition of resource utilization. The article further does not address the ownership of resources that would be extracted from such bodies.

In the preamble of the Agreement Governing the Activities of States on the Moon and other celestial bodies, the states have acknowledged the fact that the benefits which could be derived from the exploitation of resources, could lead to an international conflict. The provisions of the moon treaty apply only to the moon, and other celestial bodies within the solar system. The agreement has already limited the application of itself to the solar system and not beyond it. Under Article 6[31], there shall be freedom of scientific investigation on the Moon by all states without any discrimination allowing the state parties to have the right to collect and remove from the moon samples of its mineral and shall remain at the disposal of the states which collected them. It enforces a menial obligation on the states to have regard to the desirability of making a portion of the sample available to other interested parties. However, countries could choose how to make such portions of samples to be made available and what portion of them to be made available.

Hence, both the OST and the Moon Agreement create a grey area that is being exploited by countries as shown above in the case of the USA. With companies investing in technology to extract water, precious rocks, and metals in space, the regulatory grey zone under the OST and the Moon agreement has come under focus. These two treaties, long hailed as the cornerstone of Space Laws neither make any mention of property rights nor does it expressly condone or forbid mining. Due to this murky area, Barack Obama in 2015 guaranteed private firms the right to possess, trade, and profit from space mining[32] and passed the Commercial Space Launch Competitiveness Act (CSLCA). According to the OST, a state or other legal body cannot own a planet or space object, although such entities can harvest and sell resources generated from these objects for private profit—this privilege is granted in the CSLCA.[33] According to an article by the Luxembourg Space Agency[34], many such missions will be planned by states and private entities. The involvement of state and private entities in a mission

[31] Agreement Governing the Activities of States on the Moon and other Celestial Bodies, 1979, art. 6
[32] A. Ram, "US and Luxembourg Frame Laws for New Space Race", *Financial Times*, Oct. 19, 2017, *available at*: https://www.ft.com/content/af15f0e4-707a-11e7-93ff-99f383b09ff9 (last visited on July 23, 2024).
[33] U.S. Commercial Space Launch Competitiveness Act, 2015, s. 402.
[34] Resources in Space, Luxembourg Space Agency, *available at*: https://space-agency.public.lu/en/space-resources/ressources-in-space.html (last visited on July 23, 2024).

to outer space to extract and use extraterrestrial resources can lead to lines getting murkier regarding the regulations.

The next big business initiative in the globe is space mining start-ups. According to Goldman Sachs, space start-ups have received $13.3 billion in financing since 2010. In Luxembourg, more than 60 start-ups have already filed to profit from space mining. As above mentioned, by 2040 the space sector shall generate revenue of $1Trillion[35]. Psyche, a giant metal-rich asteroid is a NASA mission now. It is said that the asteroid contains a core of metals and gold which would be worth $10,000 quadrillion. This figure could put the USA at the forefront of the space race as well as the race to be a state with plenty of wealth.

Way Forward

The overwhelming majority of space initiatives have been undertaken for utilitarian motives, such as gathering information, strengthening state might, or profit. When conducting space activities, outer space should be viewed as a universal commons in which all states have an equal stake. The Outer Space Treaty grants rights for exploration, and operations to be conducted in the best interest of humanity and international cooperation, and should give due regard to other state parties.

However, despite such ideals, International Space Laws are a relic of an age gone by. It was designed to contain the Cold War space race, but it never considered the trend of space development. From the creation of OST in 1967 to the present day, rules have remained static while nation-states have taken space exploration to a whole new level. Failure of international space law to catch up in the short term creates possible concerns since parties risk major conflict due to disputes over space resource rights. The global space governance system, in its current form, excludes certain space operations and allows companies to operate under broad and usually inconsistent interpretations of existing agreements. While several attempts have been made to reform the governance structure, progress has halted, owing in large part to geopolitical differences among international actors, and this has harmed the long-term evolution of space. For example, the USA vetoed the Prevention of the Placement of Weapons

[35] Space: Investing in the Final Frontier, Morgan Stanley, *available at:* https://www.morganstanley.com/ideas/investing-in-space (last visited on July 23, 2024).

in Outer Space, a treaty proposed by China and Russia. The proposal provided a definition for weapons in outer space, which the author believes is an apt definition.

Hence, the author believes that a separate treaty should be formed between all the member states of the UN and it should be binding upon all, irrespective of their status of development since the main objective of the UN Charter and the space treaties and agreements is to allow space exploration and use for 'peaceful' purposes. Militarization and weaponization are the antithesis of peaceful exploration and usage. In the future, if countries have a conflict between resources since outer space is weaponized and militarized, there could be another war taking place.

Due to the overcrowding in the LEO and GEO, there are continual and substantive risks of collision, which need to be mitigated to avoid an increase in space debris. There are various definitions of Space traffic management (STM). The traffic management definitions cover the opposite ends of the spectrum, from – technical and regulatory provisions for the promotion of safe access, operation, and return without any physical or radio interference,[36] to oversight, coordinate, regulation, and promotion of space activities (including preservation of the space environment) at several distinct phases of the mission – launch, operations in space, and return from space.[37] Hence, the states and the Outer Space Agency should be investing their mind and time in providing a system of space traffic management. The Space surveillance network is only able to track approximately 4 percent of the LEO space population and 4 percent of the GEO space population. Due to the deficiency in tracking the space population, there is an urgent need to have a space surveillance system. It could be a respective state that would regularly provide the information to a centralized agency to keep a record of the space population in outer space. If the overcrowding issue in outer space is controlled, then there would be some relief regarding space debris. However, with the existent space debris, the states should collectively take the initiative to collect space debris. If a space object becomes defunct or has completed its purpose, states should bring back the space object to prevent it from damaging or destroying other space objects.

Since outer space works on the principle of res communis any activity conducted in outer space should be in the interest and benefit of the states. However, due to the ambiguous and

[36] D.L. Oltrogge, "The "We" Approach to Space Traffic Management" *American Institute of Aeronautics and Astronautics* 1 (2018).
[37] *Id.*

incomplete provisions regarding space resources and mining, the states are interpreting the provisions on their own and exploiting the resources for their benefit. With the advancement of space technology and the involvement of private players in this space race for exploration and exploiting resources, revision of the provisions has been a need of the hour. The treaties and agreements need to be revised – there should be proper definitions, explicitly providing what could be done and not be done with the outer space resources, etc. If space mining is to be allowed, then a set of guidelines have to be prepared which would be binding upon the states and should revolve around the concept of res communis. There should be a revision done regarding the liability of state and non-state players. Private entities should be held responsible for any violation of the laws and guidelines in outer space.

In the end, the space law amendments would be a watershed moment in the ongoing saga of space exploration and international cooperation. It is a global familial commitment to adapt and strengthen the legal systems that regulate human operations beyond Earth. As we reflect on the voyage thus far, it becomes clear that the amendments would be more than just a legal document; it would be a contribution to the shared duty for space as well as an acknowledgment that as we move farther into the unknown heavens, our laws must grow in tandem with our ambitions. The amendments or introduction of new laws would represent our steadfast commitment to establishing a future in space based on collaboration, sustainability, and the never-ending pursuit of knowledge beyond the bounds of our home planet.

E-JAIRIPA
Vol. VII (Issue I), pp.- 90-121

COMPULSORY LICENSING IN INDIA: A CRITICAL ANALYSIS OF THE LEGAL FRAMEWORK, JUDICIAL INTERPRETATION, REGULATORY CHALLENGES AND FUTURE REFORMS

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Abstract

India's Patents Act, 1970 offers one of the broadest compulsory licensing regimes permitted by the TRIPS Agreement, including affordability as an independent ground. Yet since the 2005 amendments only one license has been granted under Section 84, and the emergency powers in Section 92 have never been invoked, even during the COVID-19 pandemic. Existing scholarship usually attributes this disuse to political caution or to procedural rigidity. This article asks whether the design of Chapter XVI itself explains the gap between availability and use. Using doctrinal analysis of the statute, rules and decisions of the Controller, the Appellate Board and the Bombay High Court, with a functional comparison with the United States, Brazil and Canada, it advances a structural thesis. Chapter XVI frames what is in substance a public-interest determination as a private list. The procedure must be started by a rival commercial organization which will provide all the required evidence. The Controller has no option for carrying out investigations which entail that the patentee possesses most of the relevant information. The example of shifting burden by the Bombay High Court can be seen in Bayer after the prima facie concept is applied and the following negative decisions on dasatinib and saxagliptin applications confirm that it is impossible to achieve success without the provision of patentee's information. The transformation introduced in 2024 implying the introduction of triennial simplified working statements has expanded this gap. The aim of this article is to connect

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adjudication processes and information with the outcome of the case by proposing the so-called graded approach to public inquiry. This approach will involve the method of balanced private inquiry with the possibility of shifting a burden along with the indication of the time limits of an inquiry and public inquiry for health authorities.

Keywords: compulsory licensing; Patents Act 1970; Section 84; Natco v. Bayer; TRIPS flexibilities; access to medicines; burden of proof

1. Introduction

1.1 Background and Context of Compulsory Licensing

A patent is a bargain struck in public. The State confers a temporary right to exclude, and in exchange the patentee discloses the invention and, in India at least, undertakes that the invention will be worked for the benefit of those who live under the grant. Compulsory licensing is the clause in that bargain which allows the State to step in when the exchange has visibly failed. Chapter XVI of the Patents Act, 1970 permits the Controller of Patents, on application by "any person interested", to license a patented invention without the patentee's consent where the reasonable requirements of the public are unmet, where the invention is not available at a reasonably affordable price, or where it is not worked in the territory of India.[2] Further provisions allow licences on government notification in national emergencies, extreme urgency or public non-commercial use, and licences for export to countries without pharmaceutical manufacturing capacity.[3]

On paper, few legal systems offer a more generous menu. The scope of grounds for compulsory licensing in India is wider than what is mandated under TRIPS agreement, the government has altered its laws and regulations on compulsory licencing following the Doha Declaration of 2002, and the judiciary has been using clear expressions concerning public health.[4] In practice, the regime has produced a single licence under Section 84: the 2012 license granted to Natco Pharma for Bayer's anti-cancer drug sorafenib tosylate,

[2] The Patents Act, 1970, N0. 39 of 1970 (India)[hereinafter Patents Act].
[3] *Id.* §§ 92, 92A.
[4] World Trade Organization, Ministerial Declaration on the TRIPS Agreement and Public Health ¶ 5(b), WT/MIN(01)/DEC/2, 41 I.L.M. 755 (2002) [hereinafter Doha Declaration].

marketed as Nexavar.[5] Subsequent applications of note have been unsuccessful, and at no time has a license been issued by the government under Section 92, even during the COVID-19 pandemic, at which time the Supreme Court wondered why the government has not used this power.[6]

2. Conceptual and Theoretical Foundation of Compulsory Licensing

2.1 Meaning Nature and Legal Character of Compulsory Licensing

A compulsory license refers to an obligatory authorization given by a state to a rights holder, allowing a third party to use a patent subject to a certain fee. The legal nature of such a license is often misinterpreted. It does not invalidate a patent; a license does not transfer ownership; and in practice, no authorization is given for importation from abroad.[7] Under Indian law the order operates as if it were a deed of license executed by the patentee on terms settled by the Controller.[8] Thus, the statute provides a substitute for consent: instead of having to provide it, the law has its own agreement. This framing is significant as it explains why the statute requires attempts at voluntary licensing and why the payment is calculated as if there were negotiations.

In addition, the term also encompasses other legal mechanisms.

The applicant-initiated license under Section 84 differs from the notification-based license under Section 92, and both differ from government use under Section 100 and from revocation in the public interest under Section 66.[9] Comparative work on India, Brazil and China has argued that these mechanisms ought to be classified separately, since an adjudicated license between private parties raises different questions from an executive decision to use an invention in the public interest.[10] That distinction is central to the argument of this article.

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[5] Natco Pharma Ltd. v. Bayer Corp., Compulsory License Application No. 1 of 2011 (Controller of Patents, Mumbai, Mar. 9, 2012) (India); see also Payal Thaorey & Anushree Mukte, Compulsory Licensing of Pharmaceutical Patents in India: Issues and Challenges, 1 MNLU Nagpur IPR J. 1, 11 (2023).
[6] *In re* Distribution of Essential Supplies and Services During Pandemic, Suo Motu Write Petition (Civil) No. 3 of 2021, Order (S.C. Apri 30, 2021) (India).
[7] Patents Act § 90(1)(iv)–(vi), (2).
[8] *Id.* § 93.
[9] *Id.* §§ 66, 100.
[10] A.V. Latyntsev, *Prinuditel'noe litsenzirovanie i inye formy ispol'zovaniya izobretenii bez soglasiya*

2.2 The Justification for Patent Exclusivity

The dominant justification for patents is economic. Inventions are costly to develop and low cost to copy; without exclusivity, competitors could benefit from the inventor's investment and under-investment in research would follow.[11] This problem is resolved with the help of the patent which permits the price to exceed the marginal cost for a short span of time. The unnecessary cost that arises in this situation is static inefficiency: some individuals who would have purchased the good at a competitive price are unable to buy it at monopoly price.[12] The patent system agrees to take this loss as an acceptable price for future innovations. According to the theory of disclosure, there is another rationale behind the system: a patent helps acquire public knowledge of the creation which otherwise would remain a secret. Indian law additionally presents an obligatory requirement that relates to the operational duty of the patent. According to the High Court of Bombay, the working obligation is implicit in the grant of the patent, and the invention should not.[13] On this view the patentee's privilege is conditional from the outset; it is not a natural right that compulsory licensing subtracts from.

2.3 Public Interest, Access to Medicines and the Right to Health

Where the patented product is a medicine, the static loss is measured in untreated illness. The Supreme Court has interpreted Article 21 of the Indian Constitution as encompassing the right to health and medical treatment while 47 places a responsibility on the state to ensure access to essential medicines as part of its public health obligation.[14] At the international level, the Committee on Economic, Social and Cultural Rights has identified access to essential drugs as a core obligation of the right to health.[15] Section 83(d) and (e)

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patentoobladatelei v zakonodatel'stve Indii, Brazilii i Kitaya [*Compulsory Licensing and Other Forms of Use of Inventions Without the Consent of Patent Holder in the Legislation of India, Brazil and China*], 16 Vestnik St. Petersburg U. L. 767, 767–68 (2025) (Russ.).

[11] Kenneth J. Arrow, *Economic Welfare and the Allocation of Resources for Invention, in* The Rate and Direction of Inventive Activity: Economic and Social Factors 609, 609–26 (Richard R. Nelson ed., Princeton Univ. Press 1962).

[12] William M. Landes & Richard A. Posner, *The Economic Structure of Intellectual Property Law* 20 (2003).

[13] *Bayer Corp. v. Union of India*, Writ Petition No. 1323 of 2013, ¶ 8(a) (Bombay High Ct. July 15, 2014) (India).

[14] *Paschim Banga Khet Mazdoor Samity v. State of W.B.*, (1996) 4 SCC 37 (India); *Vincent Panikurlangara v. Union of India*, (1987) 2 SCC 165 (India).

[15] U.N. Comm. on Econ., Soc. & Cultural Rts., General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), ¶ 43(d), U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000).

of the Patents Act incorporate this concern directly, directing that patents should not impede public health and should not prevent the government from taking measures to protect it.[16]

These constitutional commitments do not, however, create a right to a compulsory license. They operate as interpretive weight. The Bombay High Court gave them that weight when it held that, for medicines, the "adequate extent" of supply means supplies to every patient who needs the drug.[17]

2.4 Innovation Incentives, Competition and Consumer Welfare

Compulsory licensing also serves competition policy. A patent confers a lawful monopoly, but conduct beyond its scope, such as refusals to license, tying, grant-back clauses or restraints on validity challenges, can harm competition without serving innovation. Section 84(7) lists several of these practices as deemed failures to meet the reasonable requirements of the public, and TRIPS Article 31(k) relaxes the usual conditions where a license remedies anti-competitive conduct.[18] The objection against incentives works in reverse, if licenses are given too easily, expected returns from research will diminish and resources reallocated elsewhere. There is an ongoing debate among researchers on the validity of this claim, and there is good reason to believe that the risk increases for products designed for markets such as India rather than for those products which act as global blockbusters and for which the recovery of research costs occurs in wealthy markets.[19] A mechanism that is predictable and well calibrated addresses the incentive concern better than one that is either dormant or unpredictable.

2.5 Theoretical Tension between Private Patent Rights and Public Welfare

The theoretical tension is often presented as a binary choice between innovation and access. A better way to frame it is as a problem of calibration under uncertainty. The legislature cannot know in advance which patents will be priced beyond reach or left unworked, so it

[16] Patents Act § 83(d)–(e).
[17] *Bayer*, W.P. No. 1323 of 2013, ¶ 13(f).
[18] Patents Act § 84(7)(b)–(c); TRIPS Agreement art. 31(k).
[19] *See* Jerome H. Reichman & Catherine Hasenzahl, *Non-Voluntary Licensing of Patented Inventions: Historical Perspective, Legal Framework under TRIPS, and an Overview of the Practice in Canada and the USA* (UNCTAD-ICTSD Project on IPRs & Sustainable Dev., Issue Paper No. 5, 2003).

grants rights broadly and corrects them case by case. Compulsory licensing is that corrective mechanism. Its value depends on more than whether it is used. It depends on whether patentees believe it *could* be used. Like Chekhov's gun, a remedy displayed on the wall of the statute must be capable of being fired; if it never can be, it shapes no one's conduct. The deterrent value of the mechanism therefore depends on its credibility, and credibility depends on procedure, evidence and institutional capacity rather than on the breadth of the statutory grounds. The rest of this article tests Indian law against that standard.

3. Evolution of Compulsory Licensing in India

3.1 Historical Development of Indian Patent Law

Compulsory licensing came to India with the colonial patent statutes. The Indian Patents and Designs Act, 1911 contained provisions for compulsory licenses and revocation to prevent abuse, modelled on contemporary British law.[20] After independence, two committees reviewed the system. A committee under Justice Bakshi Tek Chand was constituted in 1949, and Justice N. Rajagopala Ayyangar's Report of 1959 became the intellectual foundation of the 1970 Act.[21] Ayyangar found that foreigners held roughly ninety per cent of Indian patents, that many were not worked in India, and that the system was raising the price of medicines without building domestic industry.[22]

3.2 The Patents Act, 1970 and Its Original Objectives

The 1970 Act accepted Ayyangar's diagnosis. It allowed only process patents for food, medicines and chemicals, shortened the term for those processes, and retained compulsory licensing alongside revocation for non-working.[23] The original Chapter XVI also deemed the reasonable requirements of the public unmet where the patentee failed "to manufacture

[20] Indian Patents and Designs Act, 1911, No. 2 of 1911 (India); *see* Muhammad Z. Abbas, *Patent Laws and the Public Health Puzzle: Comparing India's Patent Opposition Model with the US and EU Model*, 13 Indian J. Intell. Prop. L. 1, 7 (2023).
[21] *Bayer*, W.P. No. 1323 of 2013, ¶ 8(b); N. Rajagopala Ayyangar, Report on the Revision of the Patents Law (1959).
[22] Abbas, *supra* note 22, at 12.
[23] Abbas, *supra* note 22, at 14–16.

in India to an adequate extent".[24] The Act's working philosophy was clear: a patent was a license to industrialize in India, not a privilege to import.

3.3 The TRIPS Agreement and the 1999, 2002 and 2002 and 2005 Amendments

TRIPS obliged India to grant product patents in all fields of technology and to apply the rule that patent rights are enjoyable "without discrimination as to whether products are imported or locally produced".[25] India used the transitional periods available to developing countries and amended the Act in three stages. The 1999 amendment created the "mailbox" for pharmaceutical product applications and exclusive marketing rights. The 2002 amendment, in force from 20 May 2003, substituted Chapter XVI almost entirely and introduced the present structure of Sections 82 to 94.[26] The 2005 amendment introduced product patents for pharmaceuticals from 1 January 2005 and, in the same breath, added Section 92A, the six-month explanation to Section 84(6)(iv), and the export-related terms in Section 90(1)(vii)–(ix).[27]

3.4 The Development of India's Public-Interest-Oriented Patent Framework

The 2005 settlement was not merely compliance. Parliament paired product patents with a set of safeguards designed to keep generics in the market: the restriction on patenting new forms of known substances in Section 3(d), pre-grant and post-grant opposition, and the strengthened compulsory licensing chapter.[28] The Supreme Court's decision in *Novartis* confirmed that Section 3(d) would be read as a substantive public-interest filter.[29] Scholarship comparing India's opposition model with those of the United States and European Union credits these upstream filters with doing much of the access work that compulsory licensing was once expected to do.[30] This observation is relevant for this paper

[24] *Bayer*, W.P. No. 1323 of 2013, ¶ 15(b) (quoting former Patents Act § 90(a)).
[25] TRIPS Agreement art. 27(1).
[26] The Patents (Amendment) Act, 1999, No. 17 of 1999 (India); The Patents (Amendment) Act, 2002, No. 38 of 2002 (India); *Bayer*, W.P. No. 1323 of 2013, ¶ 9.
[27] The Patents (Amendment) Act, 2005, No. 15 of 2005, §§ 52–55 (India).
[28] Patents Act §§ 3(d), 25; *see* Shamnad Basheer, *India's Tryst with TRIPS: The Patents (Amendment) Act, 2005*, 1 Indian J.L. & Tech. 15 (2005).
[29] Novartis AG v. Union of India, (2013) 6 SCC 1 (India).
[30] Abbas, *supra* note 22, at 1–3.

since in India compulsory licensing has now assumed the role of a corrective mechanism in a system that aims at preventing the issuance of weak patents altogether.

3.5 Contemporary Legal and Policy Developments

"Three recent developments shape the current framework. First, the Tribunals Reforms Act, 2021 abolished the Intellectual Property Appellate Board, and appeals against compulsory licensing orders now lie to the High Court."[31] "Second, the Jan Vishwas (Amendment of Provisions) Act, 2023 replaced criminal sanctions for failing to file working information with monetary penalties of up to one lakh rupees, plus a daily amount for continuing default."[32] Third, the Patents (Amendment) Rules, 2024 changed the working statement in Form 27 from an annual filing to one filed once for every period of three financial years, and simplified its contents.[33] The pandemic years also tested the system, with no compulsory license emerging despite a judicial prompt. That record is examined in Part 6.

4. Statutory Framework Governing Compulsory Licensing in India

4.1 Section 83: General Principles Applicable to Working of Patented Inventions

Section 83 is not itself a ground for relief. It sets out the "general considerations" to which regard must be had whenever powers under Chapter XVI are exercised.[34] Patents are granted to encourage invention and to secure working in India "on a commercial scale and to the fullest extent that is reasonably practicable without undue delay"; they are not granted merely to enable a monopoly over importation; they should promote technology transfer, should not impede public health, and should make the benefit of the invention available "at reasonably affordable prices".[35] The Bombay High Court used Section 83 as

[31] The Tribunals Reforms Act, 2021, No. 33 of 2021, § 13 (India); Patents Act § 117A(2).
[32] The Jan Vishwas (Amendment of Provisions) Act, 2023, No. 18 of 2023, sch. (India); Patents Act § 122(1).
[33] Patents (Amendment) Rules, 2024, r. 131 (India); U.S. Pat. & Trademark Off., India IPR Toolkit: A Guide to Protecting and Enforcing Intellectual Property Rights in India 24 (2026).
[34] Patents Act § 83.
[35] *Id.* § 83(a)–(c), (g).

the lens through which "worked in the territory of India" must be read which gives this hortatory provision real interpretive force.[36]

4.2 Section 84: Grounds and Conditions for Grant of Compulsory Licenses

Under section 84(1), any interested may seek a compulsory license after three years from the grant of a patent if the public's reasonable requirement remains unmet, the patented invention is not available at a reasonable affordable price, or the invention is not worked in India.[37] The grounds are disjunctive; one suffices. An existing licensee may apply, and no admission in a license estops the applicant.[38]

"Two features deserve emphasis. First, the deeming provision in Section 84(7) gives content to the first ground. The reasonable requirements of the public are deemed unmet where, by reason of the patentee's refusal to license on reasonable terms, demand "has not been met to an adequate extent or on reasonable terms", where an Indian industry or export market is prejudiced, where restrictive license conditions are imposed, or where the invention is not worked on a commercial scale to an adequate extent."[39] Second, "Section 84(6) lists four matters the Controller "shall take into account": the nature of the invention, the time elapsed and the patentee's measures to use it; the applicant's ability to work the invention to the public advantage; the applicant's capacity to bear the risk of capital and working; and whether the applicant made efforts to obtain a voluntary license that failed within a reasonable period, ordinarily not exceeding six months."[40] The last requirement does not apply in cases of national emergency, extreme urgency, public non-commercial use or established anti-competitive practice.[41] The Controller need not consider any developments occurring after the application's filing date, thereby establishing the filing date as the cutoff for assessing evidence.[42]

The unique aspect about affordability is that it is the distinguishing element that makes India stand out in world. The TRIPS agreement does not either demand it or forbid it and

[36] *Bayer*, W.P. No. 1323 of 2013, ¶ 15(b).
[37] Patents Act § 84(1).
[38] *Id.* § 84(2).
[39] *Id.* § 84(7)(a)–(e).
[40] *Id.* § 84(6)(i)–(iv) & expl.
[41] *Id.* § 84(6)(iv) proviso.
[42] *Id.* § 84(6).

hardly any patent law provides affordability as a separate basis for granting license. It embodies the commitment made in Section 83(g) and makes way for the granting of licenses directly to ensure affordability instead of relying on local production.

4.3 Sections 85–89: Revocation, Procedure, Powers and General Purposes

Section 85 allows a patent to be revoked for non-working only after two years have elapsed from the grant of the first compulsory license, with such applications ordinarily to be decided within one year.[43] Section 84 applications are exempt from any effective time limitations; hence this gap is very apparent. Evoking Section 86 entails the possibility of postponement for a maximum of a year provided the time elapsed since sealing was not sufficient for the commencement of work, only if the patentee acted with "promptitude adequate or reasonable measures."[44] According to Section 87, the procedure consists of a three-step process: 1st, it must be established by the Controller that there exists "a prima facie case"; 2nd, the application must be published and served; and 3rd, the oppositions must be filed.[45] Section 88 gives ancillary powers, including the power to license related patents held by the same patentee and to revise terms that prove onerous after twelve months of working.[46] Section 89 states the purposes the Controller must pursue: commercial working in India without undue delay and the avoidance of unfair prejudice to those already working the invention.[47]

4.4 Section 90: Terms and Conditions of Compulsory

"Section 90 directs the Controller to "endeavor to secure" a reasonable royalty that takes account of the nature of the invention and the patentee's expenditure in making, developing, patenting and maintaining it; working to the fullest extent with reasonable profit to the licensee; availability at reasonably affordable prices; non-exclusivity; non-assign ability; and duration for the balance of the term unless a shorter term suits the public interest."[48] While the license has to be mainly granted with the intention of making supplies

[43] *Id.* § 85(1), (4).
[44] *Id.* § 86(1)–(2).
[45] *Id.* § 87(1)–(4).
[46] *Id.* § 88(3)–(4).
[47] *Id.* § 89.
[48] *Id.* § 90(1)(i)–(vi).

to the Indian market, exports are also allowed in certain cases.[49] However, the license does not allow imports, except if the Central Government otherwise orders for it in the interest of the public.[50] In accordance with section 94 of the Act, cancellation is allowed in case of circumstances not being continued or being unlikely to recur, but the license holder can protest.[51]

4.5 Section 91: Licensing of Related Patents

"Section 91 deals with blocking patents, specifically allowing the holder of a subsequent patent to apply for a license under an earlier patent if he is unable to use that subsequent patent effectively on his own, as long as the applicant offers a license on reasonable terms and the later patent has significantly contributed to the commercial or industrial activity in the country."[52] The provision tracks TRIPS Article 31(l), although the Indian test of "substantial contribution" to Indian commerce differs in wording from the treaty's standard of "an important technical advance of considerable economic significance".[53] It has no reported use, but it is the provision most relevant to cumulative innovation outside pharmaceuticals, for example in telecommunications and biotechnology.

4.6 Section 92: Special Provisions in Circumstances of National Emergency , Extreme Urgency or Public Non- Commercial

Section 92 creates a two-stage procedure. The Central Government must first declare, by notification, that compulsory licenses are necessary in a national emergency, extreme urgency or public non-commercial use. Thereafter the Controller "shall" grant a license to any interested applicant on terms that make the articles available "at the lowest prices consistent with the patentees deriving a reasonable advantage".[54] The three-year waiting period does not apply, and in public health crises "relating to Acquired Immune Deficiency Syndrome, human immunodeficiency virus, tuberculosis, malaria or other epidemics" the Controller must dispense with the Section 87 procedure, informing the patentee as soon as

[49] *Id.* § 90(1)(vii), (ix).
[50] *Id.* § 90(2)–(3).
[51] *Id.* § 94.
[52] *Id.* § 91(1)–(2).
[53] TRIPS Agreement art. 31(l)(i).
[54] Patents Act § 92(1)(i)–(ii).

practicable.[55] Section 92 resembles the *brahmastra* of the epics: a weapon of decisive force, held in reserve, and in practice never used. No notification has been issued under it. In 2014, the Health Ministry reportedly supported a request by Cipla for a Section 92 license over indacaterol, but the Department of Industrial Policy and Promotion did not act on it.[56]

4.7 Section 92A: Export of Pharmaceutical Products to Countries with Insufficient or No Manufacturing Capacity

"Section 92A implements the 2003 WTO waiver. It makes a license available for manufacture and export of patented pharmaceutical products to a country with insufficient or no manufacturing capacity, provided that country has granted a compulsory license or has, "by notification or otherwise", allowed importation from India."[57] The license is "solely for manufacture and export", and "pharmaceutical products" include ingredients and diagnostic kits.[58] The provision was tested in 2008, when Natco applied for licenses to export erlotinib and sunitinib to Nepal. The Controller held, on an interlocutory question, that although Section 92A was silent on hearing the patentee, nothing prevented him from doing so.[59] Contemporary reports indicate that the Patent Office also questioned whether Nepal's letter satisfied the statutory requirement of permission to import.[60] No Section 92A license appears to have been granted.

4.8 Relevant Procedural Rules and Regulatory Requirements

Chapter XIII of the Patents Rules, 2003 governs procedure. Applications are made in the prescribed form with a statement of the applicant's interest and the facts relied on.[61] Under Rule 97, if the Controller considers that no prima facie case is made out, the applicant is notified and the application is refused unless a hearing is requested within one month.[62] This prima facie stage became the decisive filter in practice. The sources of information

[55] *Id.* § 92(3).
[56] Jishnu, *supra* note 6.
[57] Patents Act § 92A(1).
[58] *Id.* § 92A(2) & expl.
[59] Swarup Kumar, *Compulsory Licensing Provision under TRIPS: A Study of Roche vs Natco Case in India vis-à-vis the Applicability of the Principle of Audi Alteram Partem*, 7 SCRIPTed 135, 141–43 (2010).
[60] *Natco vs Pfizer: Joe Mathew Reports on Compulsory Licensing Decision*, SpicyIP (July 2008), https://spicyip.com/2008/07/natco-vs-pfizer-joe-mathew-reports-on.html.
[61] Patents Act § 84(3); Patents Rules, 2003, rr. 96–102 (India).
[62] Patents Rules, 2003, r. 97(1)–(2).

utilized by applicants and the Controller can be summarized as Section 146, which permits the Controller to acquire information about commercial usage, making it necessary for patentees and licensees to make periodic filings, and Rule 131 and Form 27.[63] As of 2024, Form 27 shall be submitted for every period of three financial years and not later than six months after the last day of the period, with the possibility of extension by not more than nine months in total.[64] The new version of the form asks only such questions as whether the invention has been implemented, what are the reasons for non-working, and if it is licensed for use.[65]

4.9 Critical Assessment of Statutory Ambiguities and Implementation Challenges

The issues in the passage can be listed as follows: In the first place, the act does not state who is supposed to bear the burden of proof concerning every reason and when that burden is supposed to be shifted. Section 87 only speaks of a "prima facie case" and does not elaborate how the burden of proof is going to be settled. Secondly, the term "reasonably affordable" is not defined in the act, and the Controller is not given any power to investigate prices and costs. The Bombay High Court states exactly that.[66] Third, the relationship between Section 84(1)(c) and importation is left to case-by-case judgment, which gives patentees no clear standard of compliance. Fourth, the export license under Section 92A is procedurally incomplete. It is silent on hearing the patentee, it provides no time limit, and it is absent from the list of appealable orders in Section 117A (2), which leaves a refused applicant with writ review alone.[67] Beyond these textual gaps lies the structural point developed below. Section 84 is drafted as an inter partes proceeding initiated by "any person interested". Public-interest concerns enter the analysis only through a private applicant's commercial decision to file, its capacity to gather evidence, and its appetite for

[63] Patents Act § 146(1)–(3).
[64] U.S. Pat. & Trademark Off., *supra* note 35, at 24; Off. of the Controller Gen. of Pats., Designs & Trade Marks, Frequently Asked Questions (FAQs) on Form 27, FAQs 3–4 (Aug. 26, 2024).
[65] *Navigating India's Form 27 Triennial Regime: A Comprehensive Compliance Guide for Patent Holders*, Conventus Law (2026), https://conventuslaw.com/report/navigating-indias-form-27-triennial-regime-a-comprehensive-compliance-guide-for-patent-holders-for-working-statement-requirements-in-2026/ (the precise fields should be confirmed against the gazetted form).
[66] *Bayer*, W.P. No. 1323 of 2013, ¶ 14(a).
[67] Patents Act § 117A(2); Kumar, *supra* note 61, at 144–45.

litigation against a patentee who may also be a supplier, partner or plaintiff in infringement proceedings.

5. Compulsory Licensing Under International Intellectual Property Law

5.1 Article 31 of the TRIPS Agreement

"TRIPS does not list permitted grounds for compulsory licenses. Article 31 instead regulates "other use" without authorization through procedural and substantive conditions. Authorization must be considered on individual merits; the proposed user must first seek a voluntary license on reasonable commercial terms, except in national emergency, extreme urgency or public non-commercial use; scope and duration are limited to the authorized purpose; use is non-exclusive and non-assignable; supply must be "predominantly" for the domestic market; the right holder must receive "adequate remuneration ... taking into account the economic value of the authorization"; and decisions on authorization and remuneration must be subject to independent review."[68] Article 31(k) relaxes the prior-negotiation and domestic-market conditions where the license remedies anti-competitive conduct.[69] "The Paris Convention, incorporated through TRIPS Article 2, continues to permit licenses "to prevent the abuses which might result from the exercise of the exclusive rights", such as failure to work, but bars applications for non-working before four years from filing or three years from grant, whichever expires last."[70] Section 84(1)'s three-year bar mirrors this limit.

5.2 Article 31bis and the Export Mechanism for Pharmaceutical Products

"Article 31(f) created a problem the Doha Declaration acknowledged in paragraph 6: countries without manufacturing capacity could not use compulsory licenses effectively, because producing countries could license only predominantly for domestic supply."[71] The General Council's 2003 decision waived Article 31(f) for exports to eligible importing members, and the waiver became Article 31*bis* when the Protocol Amending the TRIPS

[68] TRIPS Agreement art. 31(a)–(j).
[69] *Id.* art. 31(k).
[70] Paris Convention for the Protection of Industrial Property art. 5A(2), (4), Mar. 20, 1883, as revised July 14, 1967, 21 U.S.T. 1583, 828 U.N.T.S. 305; TRIPS Agreement art. 2(1).
[71] Doha Declaration ¶ 6.

Agreement entered into force on 23 January 2017.[72] Remuneration is paid in the exporting country, taking into account the economic value of the use to the importing member, so that the right holder is not paid twice.[73] The system has been used only once, for Canada's export of an antiretroviral combination to Rwanda, a record discussed in Part 8.

5.3 The Doha Declaration on the TRIPS Agreement and Public Health

"The Doha Declaration states that TRIPS "does not and should not prevent members from taking measures to protect public health" and should be interpreted "in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all"."[74] "It confirms that each member "has the right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted", and the right to determine what constitutes a national emergency, including public health crises relating to HIV/AIDS, tuberculosis, malaria and other epidemics."[75] Its legal status is debated. Many commentators treat it as a subsequent agreement relevant to interpretation under Article 31(3)(a) of the Vienna Convention on the Law of Treaties, though others treat it as political guidance only. The Bombay High Court relied on it as an interpretive guide to municipal law.[76] Section 92(3) repeats the Declaration's list of epidemics almost word for word, a sign of how closely Parliament followed it.

5.4 Policy Space Available to WTO Members

In summary, the combination of TRIPS and Doha affords members extensive freedom concerning the reasons but strict control over the process. The reason for the license may vary from affordability to failure of exploitation or generally public interest and to eliminating anti-competitive actions. It must, however, observe individual consideration, prior negotiation outside emergencies, adequate remuneration and independent review.

[72] Decision of the General Council of 30 August 2003, Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, WTO Doc. WT/L/540 (Sept. 2, 2003); General Council, Amendment of the TRIPS Agreement, WTO Doc. WT/L/641 (Dec. 8, 2005); World Trade Organization, WTO Analytical Index: TRIPS Agreement – Article 31 (Practice) ¶ 5 & n.5.
[73] TRIPS Agreement art. 31*bis*(2); WTO Analytical Index, *supra* note 74, ¶ 7.
[74] Doha Declaration ¶ 4.
[75] *Id.* ¶ 5(b)–(c).
[76] *Bayer*, W.P. No. 1323 of 2013, ¶ 8(e); Vienna Convention on the Law of Treaties art. 31(3)(a), May 23, 1969, 1155 U.N.T.S. 331.

The 2022 Ministerial Decision on COVID-19 vaccines went further for eligible members, clarifying that the "law of a Member" includes executive orders, emergency decrees and administrative orders, and dispensing with prior negotiation for the vaccines covered.[77] The decision was narrower than the waiver India and South Africa had proposed in 2020, which would have suspended several sections of TRIPS for COVID-19 health products.[78]

5.5 India's Obligations and Discretion under International Law

India's compliance with Article 31 has been questioned on two fronts. First, the accusation regarding the affordability basis and emphasis on local production discriminating against imported products is against Article 27(1).[79] To this concern, the Bombay High Court stated that the Articles 30 and 31 restrict the applicability of Article 27 and that importation can be considered as working if there is justification for it.[80] The better view is that Doha paragraph 5(b) authorizes the grounds, while the case-by-case approach to working avoids a per se rule against imports. The unresolved Brazil–United States dispute over Brazil's local working rule ended in a mutually agreed solution in 2001, leaving the question without a panel ruling.[81] Second, the absence of a statutory remuneration methodology makes it harder to demonstrate "adequate remuneration" in a given case, though the reasoned royalty in *Natco* suggests the requirement can be met in practice.

5.6 Critical Assessment of the Relationship between International Standards and Indian Law

Indian law uses most of the policy space TRIPS allows on grounds, but surprisingly little of the space it allows on procedure. TRIPS do not require that a compulsory license be adjudicated as a private dispute, that the applicant bear the burden of proving the public's need, or that the authority lack investigatory power. Since 2022, the WTO has also

[77] Ministerial Decision on the TRIPS Agreement of 17 June 2022, ¶¶ 2, 3(a), WTO Doc. WT/MIN(22)/30, WT/L/1141 (June 22, 2022).
[78] Communication from India and South Africa, Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19, WTO Doc. IP/C/W/669 (Oct. 2, 2020).
[79] *See* Sunil Kumar Yadav & Saurabh Verma, *Whether Indian Patent Act Is TRIPS Compliant for Pharmaceutical Businesses: A Case-Based Approach*, 28 J. Intell. Prop. Rts. 224, 224–25 (2023).
[80] *Bayer*, W.P. No. 1323 of 2013, ¶ 15(b).
[81] Brazil – Measures Affecting Patent Protection, WTO Doc. WT/DS199/4 (July 19, 2001) (notification of mutually agreed solution).

expressly recognized administrative and executive instruments as legitimate vehicles for authorization in the vaccine context. The binding constraints on Indian reform are therefore domestic and institutional rather than international. This finding shapes the reform proposals in Part 9.

6. Judicial Interpretation and Practical Application in India

6.1 Bayer Corporation v. Union of India: Background and Legal Issues

Bayer's patent over sorafenib tosylate, used in advanced kidney cancer (renal cell carcinoma) and liver cancer (hepatocellular carcinoma), was granted in India on 3 March 2008.[82] Bayer sold the drug at about ₹2,80,428 for a month's therapy. On 6 December 2010 Natco requested a voluntary license, proposing a price below ₹10,000 per month. Bayer refused on 27 December 2010, inviting Natco to revert within fourteen days if it had anything further to add.[83] Natco applied under Section 84(1) on 29 July 2011, after the three-year window had opened, relying on all three grounds and offering to sell at ₹8,800 per month.[84] The litigation raised five questions: whether Natco had made adequate efforts at voluntary licensing, how the reasonable requirements of the public should be measured, what "reasonably affordable" means and who must prove it, whether importation counts as working, and how the royalty should be fixed.

6.2 Analysis of the Controller's Decision in the Natco–Bayer Compulsory Licensing Dispute

The Controller granted the license on 9 March 2012, finding all three grounds established.[85] The license was non-exclusive, non-assignable and for the balance of the patent term, with royalty at six per cent of net sales and the price capped at ₹8,800 for 120 tablets.[86] Natco also undertook to supply the drug free of charge to a number of needy patients each year.[87] Two parts of the Controller's reasoning were later modified. He read "worked in the

[82] *Bayer*, W.P. No. 1323 of 2013, ¶ 3(a)–(c).
[83] *Id.* ¶ 3(e).
[84] *Id.* ¶ 3(f).
[85] *Natco Pharma*, Compulsory License Application No. 1 of 2011, *supra* note 4.
[86] *Bayer*, W.P. No. 1323 of 2013, ¶ 3(g).
[87] *Apex Court Dismisses Bayer's SLP Against Compulsory License for Anti-Cancer Drug*, LiveLaw (Dec. 12, 2014), https://www.livelaw.in/apex-court-dismisses-bayers-slp-compulsory-license-anti-cancer-drug.

territory of India" as requiring manufacture in India, and he fixed the royalty by starting from the four per cent benchmark in guidelines published under UNDP and WHO auspices and adjusting it upward.[88]

6.3 Subsequent Appellate Proceedings and Their Legal Significance

The appeal followed three stages. The IPAB refused a stay on 14 September 2012 and dismissed the appeal on 4 March 2013. It raised the royalty to seven per cent and rejected the Controller's view that working always required local manufacture, holding instead that working must be judged case by case.[89] Bayer then petitioned the Bombay High Court under Article 226. The Division Bench (Shah C.J. and Sanklecha J.) noted that its review was supervisory rather than appellate. On 15 July 2014 it dismissed the petition while giving its own reasons on each issue.[90] The Supreme Court dismissed Bayer's special leave petition on 12 December 2014.[91] A dismissal *in limine* does not amount to an affirmation of the High Court's reasoning under Article 141. The authoritative statement of law is therefore the Bombay High Court's judgment, binding within its jurisdiction and highly persuasive elsewhere, together with the IPAB order that merged into it.

The Court's first holding concerned voluntary licensing. It held that Natco had satisfied Section 84(6)(iv). Bayer's letter had refused outright, and the offer to consider anything "further" was "illusory".[92] The Court treated Section 84(6)(iv) as a condition precedent to considering the application. That reading is stricter than the text, which lists it among matters the Controller "shall take into account". Later Controllers followed the stricter reading.

6.4 Judicial Interpretation of Reasonable Requirement of the Public

The High Court's treatment of Section 84(1)(a) contains three important holdings. First, on burden, the applicant must make out a prima facie case under Section 87, after which the

[88] *Bayer*, W.P. No. 1323 of 2013, ¶¶ 3(i), 17; *see* James Love, Remuneration Guidelines for Non-Voluntary Use of a Patent on Medical Technologies (WHO & UNDP, Health Econ. & Drugs TCM Series No. 18, 2005).
[89] Bayer Corp. v. Natco Pharma Ltd., OA/35/2012/PT/MUM (Intell. Prop. App. Bd. Mar. 4, 2013) (India); *Bayer*, W.P. No. 1323 of 2013, ¶ 3(h)–(i).
[90] *Bayer*, W.P. No. 1323 of 2013, ¶¶ 6(a), 20–21.
[91] *Apex Court Dismisses Bayer's SLP*, *supra* note 89.
[92] *Bayer*, W.P. No. 1323 of 2013, ¶ 12.

patentee must "aver and thereafter lead evidence" that the public's requirements are met, because "the best evidence" of supply "is within the knowledge of the patent holder".[93] Second, on measurement, the Court said the exercise "can never be carried out on a mathematical basis". On Bayer's own figures, about 8,842 patients needed the drug, while Bayer supplied about 200 patients in 2011, and even adding Cipla's infringing supplies did not close the gap.[94] Thirdly, according to the patent statute, the supply of products by the illegal supplier cannot be covered under public requirement as they can be stopped at any point of time. It is the duty of the patentee and his licensee to ensure supply.[95] The Court then added that for medicines "the adequate extent test has to be 100%", because medicine must be made available to every patient.[96] Read in context, this observation explains why a two per cent supply rate could not be adequate. It is better treated as a strong interpretive principle than as a rule that any shortfall triggers a license.

6.5 Assessment of Reasonably Affordable Price and Patent Working

On affordability, the Court made a choice that shaped later practice. It held that the Act gives the Controller no power to investigate prices and that the proceeding is "a lis" in which "it is not open to an adjudicator to become a participant". The reasonably affordable price must therefore be found from the competing prices placed in evidence. On those facts, Natco's offer "by itself establishes" that Bayer's price was not reasonably affordable.[97] Bayer's refusal to produce its accounts and its research costs, including the reimbursement it received under United States orphan-drug rules, attracted an adverse inference.[98] Its patient assistance programme did not set a public price, because the discounted price was conditional, discretionary and, on Bayer's own description, charity. The Court reasoned that differential pricing bears on whether requirements are met "on reasonable terms" under Section 84(7)(a)(ii), not on affordability under Section 84(1)(b).[99]

[93] *Id.* ¶ 13(a).
[94] *Id.* ¶ 13(b)–(c).
[95] *Id.* ¶ 13(d)–(e).
[96] *Id.* ¶ 13(f).
[97] *Id.* ¶ 14(a).
[98] *Id.* ¶ 14(b)–(c).
[99] *Id.* ¶ 14(d)–(e).

On working, the Court rejected both extremes. It refused the Union's argument that working always means local manufacture, but it also refused Bayer's argument that any importation is enough. Read through Section 83, working by import is acceptable only where the patentee shows why manufacture in India is impossible or prohibitive. The burden of that explanation rests on the patentee, all the more so where, as here, it already had Indian manufacturing facilities.[100] Adjournment under Section 86 was rightly refused, because Bayer led no evidence of prompt steps to work the patent locally.[101] The seven per cent royalty stood, Bayer having offered no evidence of its development costs.[102]

6.6 The Evidentiary and Procedural Burdens on Applicants

The two applications that followed show how the *Bayer* framework operates when the facts are less stark. BDR Pharmaceuticals sought a license for Bristol-Myers Squibb's dasatinib, a leukaemia drug, and applied in March 2013. BDR had requested a voluntary license in February 2012. BMS replied with queries about BDR's manufacturing capacity, quality systems and regulatory compliance, and BDR did not respond for about a year. On 29 October 2013 the Controller refused the application at the prima facie stage. BDR's silence was treated as a failure to make efforts on reasonable terms, and its lack of regulatory approval to manufacture the drug was held to show that it had not acquired the ability to work the invention.[103]

Lee Pharma's application concerned AstraZeneca's saxagliptin, an anti-diabetic. The Controller rejected it prima facie under Rule 97(1) in August 2015 and, after a hearing, confirmed the rejection on 19 January 2016.[104] The Controller accepted that Lee was a person interested and that it had negotiated. The application failed on evidence. Lee had to

[100] *Id.* ¶ 15(b).
[101] *Id.* ¶ 16.
[102] *Id.* ¶ 17.
[103] Compulsory License Application by BDR Pharm. Int'l Pvt. Ltd. in Respect of Indian Patent No. 203937 (Controller of Patents, Oct. 29, 2013) (India), *as reported in Indian Patent Office Rejects Compulsory Licensing Application: BDR Pharmaceuticals Pvt. Ltd. vs Bristol Myers Squibb*, Khurana & Khurana (Nov. 13, 2013), https://www.khuranaandkhurana.com/2013/11/13/indian-patent-office-rejects-compulsory-licensing-application.
[104] Compulsory License Application by Lee Pharma Ltd. in Respect of Indian Patent No. 206543 (Controller of Patents, Jan. 19, 2016) (India), *as reported in* Balaji Subramanian, *Examining the Rejection of Lee's Saxagliptin CL Application*, SpicyIP (Jan. 22, 2016), https://spicyip.com/2016/01/examining-the-rejection-of-lees-saxagliptin-cl-application.html.

quantify demand for saxagliptin specifically, not for anti-diabetics or for the drug class as a whole. It relied on assumptions rather than "authentic data", and other drugs of the same class were available. With regard to the price, saxagliptin is priced similarly to its therapeutic equivalents, thus in effect making it so that Lee would need to demonstrate that the entire class was not affordable. With regard to the concept of the working, the duty to produce locally was taken to depend on local demand from India, which was not proven.[105]

The pattern is the same in each instance. In every case, the issue is factual, and in each case, the burden has been assigned during the beginning phase under Section 87 and Rule 97.

6.7 The Significance and Limitations of India's Compulsory Licensing Jurisprudence

The Natco-Bayer case has been pivotal for several reasons. The case showed how price itself could provide justification for the issuance of a license, that charitable access schemes are insufficient to mitigate the problem of affordability that the provision of infringing supplies does not extinguish the responsibilities of the patentee, and that justification comes with the requirement of working by import. Its limitations are less often noticed. The burden-shifting in paragraph 13(a) is conditional on the applicant first clearing the prima facie threshold. The "lis" characterization in paragraph 14(a) confines the Controller to whatever evidence the parties choose to produce. *Bayer* succeeded because the gap between ₹2.8 lakh and ₹8,800, and between roughly two hundred patients served and nearly nine thousand in need, was so large that rough evidence sufficed. *Lee* shows what happens in harder cases: when substitutes exist and the price gap is narrower, the applicant must produce product-specific epidemiological and market data that it is poorly placed to obtain. Jurisprudence built on a single, exceptionally clear case is unlikely to provide guidance for harder ones. The ambiguity this leaves behind discourages future applications.

6.8 Other Relevant Indian Decisions and Regulatory Developments

Three further episodes complete the picture. First, in *Shamnad Basheer v. Union of India*, a public interest petition about the poor quality of and non-compliance with Form 27 filings, the Delhi High Court recorded the government's commitment to review Section

[105] *Id.*

146, Rule 131, Form 27 and the enforcement of Section 122. On April 23, 2018, the Supreme Court ruled the petition after approving time for the process of modifying the regulations.[106] The changes made in 2020 and 2024 simplified the working statement. However, since these changes were not meant to make the working statement more efficient, and after 2024 the working statement seems to have been filed less. In the second wave of COVID-19, the SC also asked the Union to consider sections 92 and 100 for remdesivir etc.[107] In its response, the Union stated in an affidavit that use of the Patents Act could be "counter-productive," and that supply was limited by raw-material constraints and not by patents.[108] In 2014, the government did not approve Cipla's application for a Section 92 license for the drug indacaterol and thus the conflict shifted to the courts.[109] These events confirm that the executive route is seen as a last resort.

7. Critical Challenges in the Existing Framework

7.1 Affordability and Access to Essential Medicines

Price is the most immediate access barrier, and Section 84(1)(b) addresses it directly. Yet the statutory text gives no benchmark, the Controller has no power to compute one, and the Drugs (Prices Control) Order, 2013 now exempts a new drug patented under the Patents Act from price control for five years from commercial marketing.[110] The result is a regulatory gap. Ordinary price regulation does not reach a new patented medicine during its early years on the market, and compulsory licensing reaches it only if a private applicant chooses to litigate. Scholarship in law and economics has rightly treated price control and compulsory licensing as interdependent instruments that India has failed to coordinate.[111]

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[106] Shamnad Basheer v. Union of India, W.P.(C) 5590/2015, ¶¶ 1–8 (Del. H.C. Apr. 23, 2018) (India).
[107] *In re* Distribution of Essential Supplies & Services During Pandemic, *supra* note 5.
[108] *Invoking Patents Act for Production of Covid Vaccines, Drugs Can Have 'Consequences': Govt to SC*, ThePrint (May 10, 2021), https://theprint.in/judiciary/invoking-patents-act-for-production-of-covid-vaccines-drugs-can-have-consequences-govt-to-sc/655863.
[109] Jishnu, *supra* note 6.
[110] Drugs (Prices Control) Order, 2013, ¶ 32 (India) (as amended 2019); K.M. Gopakumar, *India: No Price Control on New Patented Drugs for Five Years*, Third World Network Info. Serv. on Health Issues (Feb. 18, 2019), https://twn.my/title2/health.info/2019/hi190202.htm.
[111] Shyamal M. Dave & Aditi Dave, *An Analysis of the Government Policies Related to Access to Essential Medicines in India: A Law and Economics Analysis of Drug Pricing Controls, Patent Policy, and the DPCO Framework*, 16 Int'l J. Drug Delivery Tech. 1906, 1906 (2026).

7.2 The Meaning and Assessment of Reasonable Requirements of the Public

Bayer and *Lee* together reveal a definitional uncertainty. If demand is measured product by product, the patentee of one member of a crowded therapeutic class will rarely fail the test, even if the whole class is priced beyond the means of most patients. When demand is defined as therapeutic need, the patentee in first-in-class cases has responsibilities from which those entering later can escape. The language in the Act and the decisions does not solve this problem. The requirement of authentic data shown in Lee has a good basis in theory, but in practice India does not have public registries of treatments and prescriptions, so it may be impossible for the applicant to satisfy the requirement.

7.3 Patent Working Requirements and the Role of Local Manufacturing

The Bayer compromise stands on legitimate grounds. Importation is an acceptable practice if the owner of the patent proves it is appropriate to do so. However, this compromise relies on correct data on how much is imported, what price is paid and how many patients are involved. The purpose of Section 146 is to deliver the required data, and the High Court based its decision on Bayer's Form 27 to dismiss its arguments about unlawful supply.[112] A working statement filed every three years, with simplified contents, offers far less to an applicant trying to build a prima facie case or to a Controller trying to assess it.[113] The legal standard for working has become more demanding, while the information needed to apply it has thinned.

7.4 Procedural Delays, Administrative Capacity and Regulatory Uncertainty

Natco's application took a little over seven months to decide, and the litigation then ran for a further thirty-three months through three forums.[114] That was swift by Indian standards, but there is no statutory deadline for Section 84 applications, unlike the one-year norm for revocation applications under Section 85(4).[115] After 2021, appeals lie to High Courts, many of which have created dedicated intellectual property divisions. That improves

[112] *Bayer*, W.P. No. 1323 of 2013, ¶ 13(e).
[113] U.S. Pat. & Trademark Off., *supra* note 35, at 24.
[114] *Bayer*, W.P. No. 1323 of 2013, ¶ 3(f)–(i); *Apex Court Dismisses Bayer's SLP*, *supra* note 89.
[115] Patents Act § 85(4).

expertise but scatters precedent across courts.[116] For an applicant planning an investment in manufacturing, the uncertainty about timing itself is a cost.

7.5 Balancing Public Health Needs against Patent Holders' Legitimate Interests

Patentees have legitimate grievances too. The statute gives no structured method for setting the royalty, and the "adequate remuneration" required by TRIPS Article 31(h) is left to judgment that varies with the evidence produced.[117] The *Bayer* royalty was reasoned, but it rested largely on an adverse inference from Bayer's refusal to produce its costs.[118] A patentee that does disclose may find its confidential cost data exposed in a public proceeding. A fair system must protect such data and give patentees a predictable remuneration framework, if only to make it reasonable to expect disclosure from them.

7.6 Commercial Viability, Technology Transfer and Manufacturing Capacity

A licence is useful only if the licensee can make the product. Section 84(6)(ii) and (iii) require the applicant to show ability and capacity, and *BDR* shows that regulatory approval may be treated as part of that ability.[119] Complex medicines, especially biologics, depend on know-how, cell lines and regulatory data that a patent license does not transfer. A compulsory license can remove the legal barrier to manufacture without removing the technical one. This limits the mechanism's reach precisely where future access concerns are likely to concentrate.

7.7 The Limited Use of Compulsory Licensing and Its Policy Implications

India's record is not unusual internationally, but its causes deserve precise statement. Political caution plays a part, as shown by the Union's 2021 affidavit and the 2014 inaction on indacaterol. Structural causes play a larger part. The applicant must be a commercial competitor willing to litigate against a patentee who may control its future licensing and partnership opportunities. It must assemble evidence that lies largely with the patentee. It must clear a threshold before disclosure is compelled and then wait an uncertain time for

[116] *Id.* § 117A(2); U.S. Pat. & Trademark Off., *supra* note 35, at 51–52.
[117] TRIPS Agreement art. 31(h); Patents Act § 90(1)(i).
[118] *Bayer*, W.P. No. 1323 of 2013, ¶ 17.
[119] Patents Act § 84(6)(ii)–(iii); *see BDR*, *supra* note 105.

an outcome. A private applicant rationally files only when the case is as clear as *Bayer*. Disuse is therefore a predictable consequence of the regime's design, not evidence that access problems have been solved.[120]

7.8 Risks of Overreliance on Compulsory Licensing as a Public Health Instrument

The opposite risk also deserves attention. Compulsory licensing is slow, product-specific and adversarial. This method is not a replacement for public procurement, collective buying, price negotiations or voluntary licensing. Relying solely on this method as the access mechanism would lead to perpetual conflict without making progress. In addition, it would divert attention from upstream strategies like Section 3(d) and opposition, which have done much for access in India.[121] The purpose of reform should be to create a credible background threat, rather than a large number of licenses. An effective mechanism can work precisely when it is used rarely, which is because it promotes negotiated prices and voluntary licenses.

8. Comparative Analysis of Selected Jurisdictions

8.1 Selection of Jurisdictions and Comparative Methodology

Three jurisdictions are analyzed, each selected to highlight distinct institutional differences rather than to serve as a universal model.

The United States represents a high-protection system that has no general compulsory licensing statute but retains powers of state use. Brazil, like India a large developing country with a domestic generic industry, uses an executive, *ex officio* public-interest model. Canada offers two lessons: a long history of compulsory licensing of pharmaceuticals before 1993, and the only completed use of the WTO export mechanism, which bears directly on India's Section 92A. The comparison asks three questions of each system: who may trigger the mechanism, who carries the evidentiary burden, and who holds the information.

[120] *Cf.* Thaorey & Mukte, *supra* note 4, at 11 (questioning whether the rarity of licences reflects adequate access).
[121] Abbas, *supra* note 22, at 1–3.

8.2 Compulsory Licensing in the United States

United States law has no provision equivalent to Section 84. It nonetheless contains three functional substitutes. First, the federal government may use any patented invention, or authorize a contractor to use it, subject only to the patentee's claim for "reasonable and entire compensation" in the Court of Federal Claims.[122] Second, under the Bayh-Dole Act a funding agency may "march in" and require licensing of a federally funded invention where, among other grounds, action is necessary to alleviate health or safety needs not reasonably satisfied by the contractor.[123] Third, after *eBay*, courts may deny injunctions and award ongoing royalties, which in effect creates judicially imposed licenses.[124]

The march-in experience is instructive for India. In December 2023 the National Institute of Standards and Technology proposed a framework that would have allowed price to be considered in march-in decisions.[125] As of December 2025 that framework had not been finalized, and the Government Accountability Office reported in 2026 that agencies "have never exercised march-in rights" despite about a dozen petitions.[126] The lesson is that a power in executive hands, without criteria, deadlines or an obligation to give reasons, can lie as dormant as a private remedy hedged with evidentiary burdens. By contrast, Section 1498 works routinely because it requires no prior permission. Government use is lawful, and only compensation is litigated.

8.3 Compulsory Licensing In Brazil

Brazil's Industrial Property Law provides for licenses on grounds of abuse, insufficient local working and dependency between patents. Its Article 71 allows the executive to grant temporary, non-exclusive licenses *ex officio* in national emergencies or in the public interest.[127] In 2007 Brazil used Article 71 for Merck's antiretroviral efavirenz after

[122] 28 U.S.C. § 1498(a).
[123] 35 U.S.C. § 203(a).
[124] eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391–94 (2006).
[125] Request for Information Regarding the Draft Interagency Guidance Framework for Considering the Exercise of March-In Rights, 88 Fed. Reg. 85,593 (Dec. 8, 2023).
[126] U.S. Gov't Accountability Off., GAO-26-107885, Intellectual Property: Information on Draft Guidance to Assert Government Rights Based on Price (2026).
[127] Lei No. 9.279, de 14 de maio de 1996, arts. 68–71, Diário Oficial da União [D.O.U.] de 15.05.1996 (Braz.).

negotiations over price failed, initially importing generic versions from India.[128] In 2021, during the pandemic, Law 14.200 amended Article 71. It recognized international health emergencies and national calamities as triggers, extended the mechanism to patent applications, and required the government to publish within thirty days a list of patents potentially relevant to the emergency, after consultation, together with remuneration parameters.[129]

The Brazilian approach has its trigger and evidentiary probe conducted by the executive, normally the Ministry of Health, rather than by a competitor in the private sector. Its drawbacks are also apparent. Brazil's previous local content requirement attracted a complaint from the US in the WTO, which was eventually resolved.[130] In 2026, bills in the Brazilian Congress sought to declare tirzepatide, a medicine used for obesity, to be of public interest, even though the government opposed a license and there was no demonstrated shortage. That episode shows how an executive-led mechanism can become a vehicle for legislative signaling rather than reasoned decision.[131]

8.4 Compulsory Licensing in Canada

Canada is the jurisdiction most often cited for the economic effects of pharmaceutical compulsory licensing. From 1969 until 1993, the Patent Act allowed compulsory licences to import, as well as to manufacture, patented medicines on payment of a royalty, a regime credited with building a Canadian generic industry. It was dismantled in 1993 under trade and industry pressure.[132] Canada's Access to Medicines Regime later implemented the WTO export system. Apotex used it once, to supply an antiretroviral combination to Rwanda. Apotex committed to the project in December 2004, but the license was granted only in September 2007, and shipments followed in 2008 and 2009. Its chief executive afterwards described the requirements as "impossible to navigate".[133] The procedural steps

[128] Decreto No. 6.108, de 4 de maio de 2007, D.O.U. de 07.05.2007 (Braz.); Eduardo Hallak, Juliana Neves & Juliana Libman, *Compulsory Licensing in Brazil (2026): The Mounjaro Case*, Chambers & Partners (Apr. 2, 2026), https://chambers.com/articles/compulsory-licensing-in-brazil-2026-the-mounjaro-case.
[129] Lei No. 14.200, de 2 de setembro de 2021, D.O.U. de 03.09.2021 (Braz.); Hallak et al., *supra* note 130.
[130] Brazil – Measures Affecting Patent Protection, *supra* note 83.
[131] Hallak et al., *supra* note 130.
[132] Harry C. Eastman, Report of the Commission of Inquiry on the Pharmaceutical Industry (1985); Patent Act Amendment Act, 1992, S.C. 1993, c. 2 (Can.); *see* Reichman & Hasenzahl, *supra* note 21.
[133] Patent Act, R.S.C. 1985, c. P-4, §§ 21.01–21.2 (Can.); Arianna Schouten, *Canadian Experience with*

that made the regime so difficult to use included product-specific schedules, separate notifications by the importing and exporting countries, and repeated voluntary-license requests.

8.5 Comparative Judicial, Legislative and Administrative Approaches

Three contrasts emerge. On the trigger, India relies mainly on private applicants. Brazil relies on the executive, and the United States relies on the government acting as user or funder. On burden, India places the initial burden on the applicant and shifts it only after a prima facie showing. Brazil's executive builds its own record, and under Section 1498 the government acts first and litigates compensation later. On information, Brazil's 2021 reform makes the State responsible for identifying relevant patents and publishing them, while India's 2024 reform reduced the information patentees must supply. The comparison also shows a shared failure. Executive powers without published criteria, deadlines or duties to give reasons, such as American march-in and Indian Section 92, tend to remain unused. Regimes with too many procedural steps, such as Canada's export mechanism, defeat their own purpose.

8.6 Lessons for India and Limits of Legal Transplantation

It is not advisable for India to adopt Section 1498 in its entirety. It operates in the USA's Court of Federal Claims system under the government as a very important purchaser of patented goods. Furthermore, India lacks a counterpart for either of the two supposed features. Brazil's ex officio model is more suitable for Indian public health institutions but weakens the possibility for legislative signal recognition. Public authorities should have the right to bring cases. The government should be accountable for facts. The executive should operate with certain criteria and deadlines. Section 92A export licenses should eliminate unnecessary procedures. These lessons provide the foundations for the proposals outlined below.

Compulsory Licensing under the Canadian Access to Medicines Regime 3–6 (Knowledge Ecology Int'l, Briefing Note 2021:2, Mar. 31, 2021).

9. Reform Proposals and Policy Recommendations

9.1 Clarifying Statutory Standards and Evidentiary Requirements

The approach on burden of proof devised in Bayer should be enacted into law. Section 87 could be amended to provide for the situation whereby once a complainant demonstrates a prima facie case based on information available publicly on price, delivery or manufacturing, the patent-holder must provide data on volumes sold, prices and any schemes allowing patients to get the treatment, as well as reason for any non-manufacturing. Section 84(6)(iv) should be amended to clarify that the issue is to be considered in weighing rather than as a jurisdictional bar. The rules should clear up the content of a reasonable request for a compulsory license so as to ensure that disputes like that in the BDR are based on substantive grounds rather than correspondence.

9.2 Improving Procedural Efficiency and Institutional Transparency

We need to apply the same one-year norm to section 84 applications as applies to revocation under section 85(4), but with a timeline that is shorter in the prima facie stage.[134] The Patent Office has to publish all compulsory licensing applications, prima facie decisions, and final orders in a searchable register. Section 117A(2) should be amended to include Section 92A, and Section 92A should specify a limited hearing on terms, which resolves the uncertainty identified in the Natco–Roche proceedings.[135]

9.3 Developing Clearer Affordability and Public-Interest Assessment Criteria

The Patent Office, in consultation with the Ministry of Health and Family Welfare and the National Pharmaceutical Pricing Authority, should issue guidelines identifying indicators of unaffordability. Such indicators might include monthly treatment cost relative to household consumption or income, the existence of public procurement at the patented price, and price differentials against comparable markets. These guidelines would serve as refutable indicators, rather than price restrictions. They would respond to the Bayer court's concern about the fact that the Controller is not a price regulator and help applicants avoid

[134] Patents Act § 85(4).
[135] Kumar, *supra* note 61, at 144–45.

the need to substantiate affordability from scratch. The guidelines should address the therapeutic classes issue raised in the Lee case by allowing evidence of classes being provided for parallel-priced substitutes.

9.4 Strengthening Patent-Working Assessment and Access to Relevant Information

The reduction of the frequency of working statements in 2024 should be reconsidered when it comes to the pharmaceutical patents and other patents in the sectors that are of importance for public health. For those patents, the annual working statements with the quantity and value of the products supplied, whether made or imported, should be reinstated. Sensitive commercial information may be provided to the Controller and the applicants under the confidentiality regulations, rather than published in full. Section 146(1) already allows the Controller to call for information "at any time". Practice should treat that power as available at the prima facie stage of a Section 84 application, so that the threshold inquiry is not conducted without the patentee's data.[136]

9.5 Improving Coordination between Patent Authorities and Public Heath Institution

A standing inter-ministerial mechanism, comprising the Department for Promotion of Industry and Internal Trade, the Ministry of Health and Family Welfare, the Department of Pharmaceuticals and the Patent Office, should be empowered to refer patients to the Controller for inquiry and to recommend notifications under Section 92 by reference to published criteria and within fixed time limits. Its recommendations, and the government's reasons for accepting or rejecting them, should be made public. Mandatory reasoned decisions would make it harder to leave Section 92 unused without explanation, as happened with indacaterol in 2014 and with the pandemic medicines in 2021.

9.6 Integrating Compulsory Licensing With Other Access-to-Medicine Measures

Compulsory licensing should be integrated with the Drugs (Prices Control) Order, public procurement and voluntary licensing rather than operated in isolation. The five-year price-control exemption for new patented drugs should be reconsidered for drugs on the National

[136] Patents Act § 146(1).

List of Essential Medicines.[137] Voluntary licences that meet published access criteria could be treated as evidence that the public's requirements are met. This would give patentees a reason to license voluntarily, which is the outcome the mechanism exists to encourage.

9.7 Protecting Legitimate Patent Incentives While Advancing Public Welfare

Reform must preserve the safeguards that make compulsory licensing defensible. These include the three-year bar, non-exclusive, a domestic-market focus outside the export provisions, termination under Section 94, and independent review. An approach for royalty calculation which involves going through the various tiers of the royalty system under the WHO–UNDP policy as applied by Natco while adapting it according to the therapeutic value and the research costs and public subsidies can be as beneficial for patent holders as it could be for the applicants.[138] Cost data confidentiality provisions will permit patent holders to use their real expenditure on research without disclosing it. Predicable remuneration mitigates the possibility that India's action will be contested as violating Article 31(h).

9.8 A Proposed Framework for More Predictable and Effective Compulsory Licensing

These proposals can be combined into what this article calls a *graduated public-interest inquiry*. It has three tiers. The first is the private-applicant track under Section 84, retained but rebalanced through a codified burden shift, information powers usable at the threshold stage, affordability guidelines and a one-year decision norm. The second is a public-referral track, under which the inter-ministerial mechanism may refer to a patent for inquiry. The Controller would then conduct an inquiry under Section 84 on the record built by public agencies, so that the process no longer depends on a commercial competitor's willingness to sue. The third is the emergency track under Sections 92 and 100, governed by published criteria, reasoned decisions within fixed deadlines and pre-agreed remuneration parameters. Brazil's 2021 duty to publish a list of relevant patents offers a model here.[139] Each tier preserves notice to the patentee, remuneration and review, and so remains within

[137] Drugs (Prices Control) Order, 2013, ¶ 32; Dave & Dave, *supra* note 113, at 1906.
[138] Love, *supra* note 90.
[139] Hallak et al., *supra* note 130.

Article 31. Each also corrects the defect identified in this article: a public-interest determination should not depend on private initiative and on information controlled by the patentee.

10. Conclusion

Compulsory licensing in India is rich in law and poor in use. This article argued that the gap is not explained by the breadth of the statutory grounds, which are generous, or by international constraints, which leave considerable room for procedural reform. It is explained by the architecture of Chapter XVI. The statute treats a public-interest inquiry as a private dispute. It utilizes a business rival to start the investigation and provide almost all proof, and it eliminates the Controller's power to conduct the inquiry. The judgment of the Bombay High Court in Bayer acknowledged that the patent holder possesses the most accurate proof and thus decided who needs to bear the responsibility but only on the condition that the applicant has passed the preliminary stage. It was seen in the refusal of the applications in BDR and Lee that without the patent holder's information, the threshold causes most applications to be rejected now. The dilution of working statements in 2024 has only increased the gap.

The solution does not lie in the frequent issuance of mandatory licenses. A system that freely grants licenses will hurt motivation, cause trade tensions, and lead to the distraction from other useful upstream mechanisms of action. The solution is to create credibility for this mechanism. Credibility entails the need to establish burden-shifting mechanisms, restate the relevant good data on patenting in the area of public health, and allow public institutions to initiate inquiries, find appropriate thresholds for activation of emergency powers, and come up with a method for the calculation of remuneration. The remedy, which is effective in real-life practice, needs not be applied often since its existence gives grounds for proper pricing and licensing. For over ten years, the remedy introduced in India has been devoid of such credibility. The proposals presented here aim to restore it while keeping the rights of patent holders secure.

E-JAIRIPA
Vol. VII (Issue I), pp.- 122-151

GENESIS OF PERSONALITY RIGHTS IN INDIA : A CRITICAL STUDY OF JUDICIAL DEVELOPMENTS

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Abstract

This paper traces the genesis and evolution of personality rights in Indian law, from an author's moral interest in a literary or artistic work to an individual's present-day control over name, image, voice and digitally reproduced likeness. India has no dedicated statute on the subject, and the paper argues that this absence has produced a jurisprudence that is doctrinally workable but conceptually fragmented, drawn selectively from copyright, trademark, privacy and the common law of passing off. Beginning with Mannu Bhandari and Amar Nath Sehgal, where courts protected an author's dignity and integrity under Section 57 of the Copyright Act, 1957, the paper follows the shift towards a distinct commercial right of publicity in ICC Development, D.M. Entertainment, Titan Industries and Shivaji Rao Gaikwad, before turning to Justice K.S. Puttaswamy's constitutional recognition of privacy and the recent wave of interim orders, in Amitabh Bachchan, Anil Kapoor, Jackie Shroff and Arijit Singh among others, that have extended the doctrine to deepfakes, voice cloning and AI-generated impersonation, even as a recent order in Janhvi Kapoor's case shows at least one bench pulling back from blanket relief. The paper concludes that Indian courts have built a functional but uneven framework largely through interim relief and analogy, and that the discipline's next stage should aim at statutory clarity rather than further doctrinal expansion.

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Keywords: *Personality rights; right of publicity; passing off; Section 57, Copyright Act 1957; identifiability; Article 21; deepfakes; artificial intelligence; voice cloning; John Doe orders.*

1. Introduction

Personality rights are the legal rights which serve to protect an individual's identity and personal character. These rights include a person's name, image, voice, likeness, signature, nickname, reputation, distinctive ways of expressing oneself and any other feature by which the person can be recognised. Such rights are most important when these attributes are used without permission for commercial purposes or in a manner that falsely implies the person is associated with or endorses something. Personality rights are closely linked to privacy rights, moral rights and publicity rights, but they are not the same. Privacy relates to a person's ability to control personal information and their personal autonomy, while moral rights protect the author's personal relationship with a creative work. Publicity rights concern the commercial value of a person's identity and the ability to control how it is exploited.

India has no single statute on personality rights. Protection is provided by copyright law, trademark law, the law relating to passing off, privacy, constitutional rights, contractual principles and judicially recognised publicity rights. The outcome is flexible but fragmented and often uncertain.

1.1. The American Origin of Personality and Publicity Rights

The present debate about personality rights is connected with the development of privacy law in the United States. In 1890 Samuel Warren and Louis Brandeis stated that the law should acknowledge a person's right to have control over the dissemination of personal information and should provide protection against intrusion upon someone's private life.[2] The article is generally regarded as the origin of subsequent personality rights. An early example concerning commercial appropriation was Pavesich v. New England Life Insurance Co., in which the Georgia Supreme Court granted a claim in relation to the

[2] Samuel D. Warren & Louis D. Brandeis, The Right to Privacy, 4 Harv. L. Rev. 193, 195–96 (1890).

unauthorized use of a man's image in an advertisement.[3] The court held that a person should not be shown as endorsing a product without their consent.

The term "right of publicity" originated in Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc. and the Second Circuit ruled that a person may have a separate commercial interest in the exclusive use of their identity, apart from the normal right to privacy.[4] The right was no longer only about emotional or dignitary injury. It now protected the economic value of identity. Later American courts applied the principle beyond names and photographs. In Midler v. Ford Motor Co., a voice imitation in an advertisement was treated as appropriation of the singer's distinctive identity.[5] In White v. Samsung Electronics America, Inc., a robot resembling Vanna White was held capable of appropriating her identity even though her name and exact image were not used.[6] In both cases, what mattered was whether the person could be recognised. The American position is not governed by a federal statute. The right of publicity is regulated mainly by state statutes and common law, and states differ on its scope, its assignability, how long it lasts after death and the remedies available. It also has to be balanced against First Amendment protection of speech and artistic expression.

1.2. Development of Personality Rights in India

India took a different route. Indian courts did not begin with an independent commercial right. They first dealt with the connection between a creator and their work, through moral rights. In Mannu Bhandari v. Kala Vikas Pictures Pvt. Ltd., the Delhi High Court heard an author's objection to the distortion of her novel in a film adaptation. The court applied Section 57 of the Copyright Act, 1957, and recognised that an author's interest in the integrity of a work can survive separately from the economic rights in it. Amar Nath Sehgal v. Union of India extended this to the destruction and removal of an artist's mural. The Delhi High Court linked moral rights to the author's artistic identity, dignity and reputation. Neither case created a general right of publicity. They did establish that a person's personality can remain legally relevant after economic rights have been transferred.

[3] Pavesich v. New England Life Insurance Co., 50 S.E. 68, 69–80 (Ga. 1905).
[4] Haelan Laboratories, Inc. v. Topps Chewing Gum, Inc., 202 F.2d 866, 868 (2d Cir. 1953).
[5] Midler v. Ford Motor Co., 849 F.2d 460, 463–64 (9th Cir. 1988).
[6] White v. Samsung Electronics America, Inc., 971 F.2d 1395, 1399–1400 (9th Cir. 1992).

Indian law then moved towards protecting commercial identity. In D.M. Entertainment Pvt. Ltd. v. Baby Gift House, the Delhi High Court recognised the commercial value of Daler Mehndi's persona and restrained the sale of dolls resembling him. The court also separated the right of publicity from false endorsement and passing off.[7] Titan Industries Ltd. v. Ramkumar Jewellers involved a jewellery advertisement that used representations resembling Amitabh Bachchan and Jaya Bachchan. The Delhi High Court held that use of a person's identity can be actionable even if the defendant does not reproduce the exact photograph, so long as the overall presentation makes the person recognisable and suggests commercial endorsement.[8]

Justice K.S. Puttaswamy v. Union of India recognised privacy under Article 21 as part of dignity, autonomy and personal liberty. It was not a case about publicity rights, but its emphasis on personal control gives the protection of identity a constitutional footing.[9]

More recent cases deal with online merchandise, digital collectibles, voice, likeness, NFTs, deepfakes and AI-generated content. These disputes go beyond traditional advertising. They concern the reproduction, manipulation and commercial circulation of identity on digital platforms.

AI tools can generate a person's image, imitate their voice, reproduce their mannerisms, or produce fictional content that appears to involve them. The harm may be commercial, reputational or dignitary. Recent Indian litigation involving celebrities has raised many questions, Digital Collectibles Pte Ltd. v. Galactus Funware Technology Pvt. Ltd., Anil Kapoor v. Simply Life India and Jaikishan Kakubhai Saraf v. The Peppy Store took personality-rights litigation into digital commerce and the technological reproduction of persona.[10] The AI-related cases show courts applying existing principles to new forms of identity manipulation, without dedicated legislation.

2. Concepts Involved And Legal Foundations

[7] D.M. Entertainment Pvt. Ltd. v. Baby Gift House, 2010 SCC OnLine Del 4790 (India).
[8] Titan Industries Ltd. v. Ramkumar Jewellers, 2012 SCC OnLine Del 2382 (India).
[9] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 (India).
[10] Digital Collectibles Pte. Ltd. v. Galactus Funware Technology Pvt. Ltd., 2023 SCC OnLine Del 2796 (India); Anil Kapoor v. Simply Life India, 2023 SCC OnLine Del 6914 (India); Jaikishan Kakubhai Saraf v. The Peppy Store, 2024 SCC OnLine Del 3664 (India).

Moral rights are the personal rights an author keeps in a creative work. They are separate from the economic rights that let the copyright owner reproduce, distribute, adapt or commercially exploit the work. Moral rights concern the relationship between the author and the work, and protect the author's reputation, identity and creative integrity. There are two main moral rights: the right of attribution (or paternity), which is the right to claim authorship of a work, and the right of integrity, which is the right to restrain distortion, mutilation or other modification that prejudices the author's honour or reputation. In India both are recognised by Section 57 of the Copyright Act, 1957. The section gives an author the right to claim authorship, and the right to restrain or claim damages for distortion, mutilation or modification of the work where it is prejudicial to the author's honour or reputation.[11]

Moral rights protect more than the economic value of a work, since a creative work can carry the personality, labour and reputation of its author. Even after the economic copyright has been assigned, the author may keep certain personal interests in it. Mannu Bhandari v. Kala Vikas Pictures Pvt. Ltd. shows this. The author objected to the distortion of her novel in a film adaptation, and the Delhi High Court treated her rights under Section 57 as independent of ordinary economic copyright. An author's personal connection with a work can therefore continue after someone else has acquired the right to exploit it commercially.[12] Amar Nath Sehgal v. Union of India developed the point. The Delhi High Court held that the destruction and removal of the artist's mural affected more than a physical object. It affected his reputation, his artistic identity and his relationship with the work. The case tied moral rights to dignity and artistic personality and treated the right of integrity as a continuing interest of the author.[13] Moral rights are still not the same as personality rights. Moral rights concern the author's relationship with a particular creative work. Personality rights can protect an individual's identity even where no creative work is involved.

[11] Copyright Act, No. 14 of 1957, § 57 (India).
[12] Mannu Bhandari v. Kala Vikas Pictures Pvt. Ltd., AIR 1987 Delhi 13 (India).
[13] Amar Nath Sehgal v. Union of India, 2005 (30) PTC 253 (Del.) (India).

2.1. Personality Rights and Publicity Rights

Personality rights are broader than moral rights. They protect a person's identity and personal attributes: name, image, voice, likeness, signature, nickname, reputation, distinctive mannerisms and any other feature by which the person can be recognised. The commercial aspect of personality rights is usually called the right of publicity. It lets an individual control the commercial exploitation of their identity and stop others from using their persona without authorisation. It matters most for celebrities, whose identity can carry substantial commercial value through endorsements, merchandising and licensing. No statutory provision in India recognises the right of publicity in full. Courts have built it from passing off, false endorsement, trademark protection, copyright law, privacy and dignity, contractual licensing and common-law principles against commercial misappropriation.

In D.M. Entertainment Pvt. Ltd. v. Baby Gift House, the Delhi High Court dealt with the unauthorised sale of dolls resembling Daler Mehndi. It accepted that an individual has a protectable interest in preventing commercial exploitation of their likeness and personality attributes. It also distinguished the right of publicity from passing off, although both claims can arise from the same conduct.[14] The distinction matters. A passing-off claim asks whether the defendant's conduct misleads consumers into thinking the claimant endorsed or authorised a product. A publicity claim asks more directly whether the claimant's identity was appropriated for commercial benefit. Titan Industries Ltd. v. Ramkumar Jewellers concerned an advertisement using representations resembling Amitabh Bachchan and Jaya Bachchan. The Delhi High Court held that the overall presentation could suggest endorsement and commercial association even if the defendants did not use the celebrities' exact photographs. A personality-rights claim can therefore rest on recognisable attributes and context and does not require literal copying.[15]

Personality rights thus have two dimensions. The dignitary dimension concerns autonomy, privacy, reputation and control over personal identity. The commercial dimension concerns the financial value of a person's identity and their endorsement potential.

[14] D.M. Entertainment, supra note 6.
[15] Titan Industries, supra note 7.

2.2. Distinction between Privacy, Personality and Publicity Rights

These concepts overlap but protect different interests. Privacy rights protect a person against unwanted intrusion into private life and against unauthorised collection, disclosure or use of personal information. Their concern is autonomy and control over the private parts of a person's life. Personality rights protect the wider identity of an individual, including the features that make the person publicly recognisable, and they can apply even where the attribute is already publicly known. Publicity rights protect the commercial value of identity, and the central question is whether someone's identity has been used to promote or sell a product, service or platform. Moral rights protect the author's personal relationship with a creative work. They concern authorship and integrity, and do not reach commercial use of the author's identity in general. Passing off protects goodwill against misrepresentation and is most relevant where the defendant's use suggests that a person has endorsed, sponsored or authorised a product or service.

Several of these rights can arise together, and they should still be kept apart. An unauthorised use of a celebrity's image in an advertisement may give rise to claims for personality-rights and publicity-rights infringement, passing off and trademark infringement, and may raise privacy or dignity concerns. If an endorsement or licence agreement already exists, it may also be a breach of contract.

2.3. Identifiability as the Connecting Principle

Identifiability links the different forms of personality-rights protection. The point is whether the representation in question enables the appropriate audience to recognise the claimant. Recognition can come from a name, a photograph, a likeness, a distinctive voice, a nickname, a signature, a characteristic pose or gesture, a well-known line of dialogue, a combination of visual and contextual elements, or an AI-generated or digitally manipulated representation. The claimant does not always have to show that their full name or exact image was used. A representation can be actionable where its overall presentation leads the public to associate it with the claimant. The question is therefore not simply whether the defendant copied the claimant's appearance. It is whether the defendant took attributes that identify the claimant to the relevant public.

In Titan Industries, the lookalike representations were assessed in the setting of a commercial advertisement and the likelihood that viewers would link them to the celebrities. In Digital Collectibles Pte. Ltd. v. Galactus Funware Technology Pvt. Ltd., the Delhi High Court asked whether the use of athletes' names, images and attributes made them identifiable in the context of digital collectibles.[16]

Identifiability has to be judged in context. The same image or expression can lead to different legal results depending on whether it appears in a news report, a documentary, a parody, a political cartoon, an artistic work, an advertisement, a commercial product, a digital collectible or an AI-generated promotional video. The fact that someone has used a work commercially strengthens the case since it shows that the work has been taken for the purpose of making a profit, but it should not be the sole factor on which the issue is decided. Courts must also take into account consent, the public interest, consumer confusion, artistic expression and the claimant's legitimate expectation of having control.

3. The Statutory And Constitutional Framework

3.1. Copyright Act, 1957

The Copyright Act, 1957 is the main statutory source of moral rights in India. Copyright ordinarily protects the economic interests of the owner, and Section 57 protects the author's personal relationship with the work. Section 57 recognises two interests: the right to claim authorship of the work, and the right to restrain or claim damages for distortion, mutilation or modification of the work where that treatment is prejudicial to the author's honour or reputation.[17] The provision treats the author's connection with a work as legally independent of the economic rights in it. As Mannu Bhandari and Amar Nath Sehgal show, an author can keep moral interests after assigning or transferring the economic copyright.

The Act does not expressly create a general right of publicity. It can still matter in personality-rights disputes, for instance where a person's image or voice is reproduced in a copyrighted work, where a photograph, advertisement or audiovisual recording is used without authorisation, where a person's performance is copied or manipulated, or where a defendant claims copyright in material that appropriates someone else's identity. Copyright

[16] Digital Collectibles, supra note 9.
[17] Copyright Act, supra note 10, § 57.

law is a useful foundation, but it cannot address every unauthorised use of a person's identity.

3.2. Trade Marks Act, 1999

The Trade Marks Act, 1999 applies where a person's name, signature, image or other identity-related feature works as a commercial mark. Section 27(2) preserves the common-law remedy of passing off, and Section 29 deals with infringement of registered trademarks.[18] A celebrity can protect a name, logo, signature or brand identity by registering it as a trademark. Trademark law does not, however, protect every aspect of personality automatically. The claimant generally has to show that the feature functions as a mark, or that the defendant's use creates a misleading commercial association.

Passing off is especially important in personality-rights disputes. The claimant has to establish goodwill or reputation, a misrepresentation by the defendant, and likely damage to the claimant's goodwill or commercial interests. A false advertisement suggesting that a celebrity endorses a product can therefore support both a personality-rights claim and a passing-off claim. The two differ in focus: passing off is concerned with consumer deception and commercial misrepresentation, while publicity rights are concerned more directly with the unauthorised appropriation of identity.

3.3. Common-law principles

As India does not have an all-encompassing statute on personal rights, the common law carries out a great deal of the necessary functions.

The practice of passing off serves to protect the goodwill and reputation associated with a person's identity or their commercial persona, and it is most applicable in cases where the defendant's use implies that the claimant had sponsored, approved or authorised the product. False endorsement is also closely related; it involves behaviour which gives the impression that a person has endorsed, sponsored or approved a product, service or activity, and it focuses on the implied commercial association with the claimant. In India, misappropriation, which is the unauthorized use of another person's identity or characteristics for commercial gain, is not always recognised as a separate tort, but the

[18] Trademarks Act, No. 47 of 1999, §§ 27(2), 29–30 (India).

concept does influence the way judges approach cases involving publicity rights. A breach of confidence may be applicable when private photographs, personal information, recordings or other confidential material are used commercially without consent.

Contracts also provide a source of protection; endorsement, management, licensing and merchandising agreements can specify the extent of the authorised use, how long it lasts, the territories and media involved, the ownership of the photographs or recordings, and the situation following termination. It is important in reality since courts can treat differently a use which was never authorised and a use which goes beyond the scope of an existing licence.

3.4. Constitutional Provisions

3.4.1. Article 21: privacy, dignity and autonomy

Article 21 forms the principal basis in the Constitution for safeguarding a person's identity. In the case of Justice K.S. Puttaswamy v. Union of India, the Supreme Court acknowledged privacy as a fundamental right closely linked to dignity, autonomy and personal liberty.[19] Although the judgment is not one concerned with personality rights, its reasoning is applicable since the protection of a person's identity relies on their ability to control how their attributes are presented and used. Article 21 can be used to provide protection against the unauthorized use of personal images, the commercial exploitation of one's identity, defamatory or humiliating manipulation, voice cloning, deepfakes, the unlawful disclosure of personal information and digital impersonation. However, it does not grant a complete monopoly over all public references to a person and its application must be weighed against freedom of expression, the public interest and the open dissemination of information.

3.4.2. Article 19(1)(a): Freedom of Speech and Expression

Article 19(1)(a) applies in any case where a dispute concerning personality rights involves news reporting, criticism, satire, parody, caricature, documentary films, biographies or political commentary and artistic expression. A public figure's personality cannot be placed wholly outside public discussion, and using a person's name or referring to their public activities should not by itself lead to liability. The usual question is whether the use

[19] Puttaswamy, supra note 8.

is genuinely expressive or is a disguised attempt to exploit the person's identity commercially. A news report about a celebrity and an advertisement using the same celebrity's image may refer to the same facts and still have very different legal consequences.

3.4.3. Article 19(2): Reasonable Restrictions

The interests behind personality rights can also engage the restrictions in Article 19(2), in particular those relating to defamation, decency or morality, public order and incitement to an offence. Courts need to avoid granting personality-rights injunctions so broadly that they suppress legitimate criticism, public debate or artistic expression.

3.4.4. Article 14

Article 14 bears on the need for clear and consistent standards. Personality rights in India are largely judge-made, so courts have to apply identifiability, commercial exploitation and free speech in a non-arbitrary way. The article may also matter where different kinds of claimants (celebrities, athletes, influencers and ordinary individuals) seek protection against similar unauthorised uses.

3.5. International Principles, Doctrines, Conventions and Treaties

3.5.1. Universal Declaration of Human Rights

Article 27(2) of the Universal Declaration of Human Rights recognises every person's right to protect the moral and material interests resulting from their scientific, literary or artistic production.[20] It supports the view that creative production has both economic and personal dimensions, and it informs the international understanding of moral rights.

3.5.2. Berne Convention

Article 6bis of the Berne Convention gives the author the right to claim authorship and to object to distortion, mutilation or other modification of a work that would prejudice the author's honour or reputation.[21] It is the central international source of moral rights, and it

[20] Universal Declaration of Human Rights art. 27(2), G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).
[21] Berne Convention for the Protection of Literary and Artistic Works art. 6bis, Sept. 9, 1886, as last revised July 24, 1971, 1161 U.N.T.S. 3.

supports the principle that an author's personal connection with a work can continue independently of any transfer of the economic copyright.

3.5.3. TRIPS Agreement

Article 9.1 of the TRIPS Agreement incorporates substantial parts of the Berne Convention but expressly excludes Article 6bis from the obligations it imposes.[22] Moral rights are therefore recognised internationally without having been fully harmonised through the trade-based intellectual-property system. TRIPS also creates no universal right of publicity, so the commercial protection of personal identity depends largely on domestic law.

3.5.4. Rome Convention

The Rome Convention protects performers, producers of phonograms and broadcasting organisations. Its relevance here is that it treats a performer's interests in a performance as distinct from ordinary copyright interests, which gives a basis for thinking about the relationship between a performer's identity, the performance and its commercial exploitation.

3.5.5. WIPO Performances and Phonograms Treaty

The WIPO Performances and Phonograms Treaty recognises certain moral and economic interests of performers. Article 5 protects a performer's right to claim identification and to object to distortion or modification of a performance that would prejudice the performer's reputation.[23] A performer's voice, appearance and style can be inseparable from the commercial value of the performance, which is why the treaty bears on personality-rights analysis.

3.5.6. Beijing Treaty on Audiovisual Performances

The Beijing Treaty extends related-rights protection to audiovisual performers and recognises their personal and economic interests in recorded audiovisual performances.[24] It is particularly relevant to modern disputes over film performances, digital reproduction,

[22]Agreement on Trade-Related Aspects of Intellectual Property Rights art. 9.1, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 401.
[23] WIPO Performances and Phonograms Treaty art. 5, Dec. 20, 1996, 2186 U.N.T.S. 203.
[24] Beijing Treaty on Audiovisual Performances art. 5, June 24, 2012, S. Treaty Doc. No. 112-6.

audiovisual manipulation, synthetic performers, digital avatars and AI-generated audiovisual content.

3.5.7. International Covenant on Civil and Political Rights

Article 17 of the International Covenant on Civil and Political Rights protects individuals against arbitrary or unlawful interference with privacy, family, home or correspondence, and against unlawful attacks on honour and reputation.[25] Article 19 protects freedom of expression. Read together, they show the same tension found in Indian personality-rights disputes: protecting personal identity has to be weighed against the freedom to receive and communicate information and ideas.

4. Chronological Evolution Of Personality Rights In Indian Case Law

4.1. Mannu Bhandari v. Kala Vikas Pictures Pvt. Ltd. (1986)

The first stage in the development of personality-related protection in India is Mannu Bhandari v. Kala Vikas Pictures Pvt. Ltd. The dispute arose from the adaptation of Mannu Bhandari's novel Aap Ka Bunty into a film. The author alleged that the film distorted and mutilated the literary work. The Delhi High Court examined the scope of Section 57 of the Copyright Act, 1957, and held that the author's special rights were independent of ordinary economic copyright. Transferring the economic rights did not take away her ability to object to treatment of the work that harmed her honour or reputation. The case recognises that a creative work can carry the author's personality. It is not only an economic commodity, since it can also reflect her reputation, creative identity and personal expression. This gave later personality-rights law an early foundation, although the case itself had nothing to do with publicity or celebrity identity.[26]

4.2. Amar Nath Sehgal v. Union of India (2005)

In Amar Nath Sehgal v. Union of India, the plaintiff, a well-known artist, had created a mural for Vigyan Bhavan. The Government later removed it and damaged it. The Delhi High Court held that the artist's moral rights had been violated. It treated the right of integrity as a continuing right tied to his honour, reputation and artistic personality, and

[25] International Covenant on Civil and Political Rights arts. 17, 19, Dec. 16, 1966, 999 U.N.T.S. 171.
[26] Mannu Bhandari, supra note 11.

said that Section 57 protects more than the material or economic value of a work. The judgment did two things. It recognised that moral rights can survive the transfer of economic rights, and it linked creative integrity to the dignity and identity of the author. That strengthened the idea that intellectual-property law can protect personal and dignitary interests as well as commercial ownership.[27] The case still concerned an author's relationship with one creative work. It did not establish a general right to control the commercial use of a person's name, image or identity.

4.3. ICC Development (International) Ltd. v. Arvee Enterprises (2003)

The commercial strand of the doctrine in fact opens earlier than D.M. Entertainment. In ICC Development (International) Ltd. v. Arvee Enterprises, the International Cricket Council objected to an advertisement that linked a consumer promotion to the Cricket World Cup without its authorisation. The Delhi High Court rejected the claim, holding that the right of publicity vests only in an individual or in the indicia of an individual's personality, such as a name, personality trait, signature or voice, and cannot be claimed by a corporate body or an event organiser that has no persona of its own. The judgment matters less for its outcome than for its reasoning: it treated the right of publicity as having evolved from the right of privacy, available only to a natural person who can be identified by the use complained of. This fixed, at an early stage, the proposition that would guide every later publicity-rights case in India, namely that the claimant must be a person capable of being recognised, and not merely an entity associated with an event, product or brand.[28]

4.4. D.M. Entertainment Pvt. Ltd. v. Baby Gift House (2010)

A distinct right of publicity began to emerge in D.M. Entertainment Pvt. Ltd. v. Baby Gift House, which concerned the unauthorised sale of dolls resembling the singer Daler Mehndi. The Delhi High Court held that the commercial value of a celebrity's identity can be legally protected. It explained that the right of publicity is the ability of an individual to permit or refuse the commercial exploitation of their likeness or other personality attributes. The court also separated the right of publicity from false endorsement and passing off. Passing off generally requires a misrepresentation that causes, or is likely to

[27] Amar Nath Sehgal, supra note 12.
[28] ICC Development (International) Ltd. v. Arvee Enterprises, 2003 (26) PTC 245 (Del) (India).

cause, consumer confusion. A publicity claim is concerned more directly with the unauthorised appropriation of the claimant's persona for commercial gain. The court also warned that publicity rights should not be expanded so far that they restrict legitimate freedom of speech. The decision thus set out both sides of the doctrine: protection against commercial appropriation, and the need to preserve public expression.[29]

4.5. Titan Industries Ltd. v. Ramkumar Jewellers (2012)

Titan Industries Ltd. v. Ramkumar Jewellers concerned representations resembling Amitabh Bachchan and Jaya Bachchan in a jewellery advertisement. The Delhi High Court found that the advertisement created an association with the celebrities and suggested that they endorsed the defendant's product. It is not necessary to reproduce the claimant's exact photograph. A lookalike representation placed in a recognisable commercial context can be enough to identify the celebrity. The judgment helped develop the concept of identifiability. The question is not only whether the defendant copied a particular image, but whether the overall representation would lead the public to associate the advertisement with the claimant. The case also shows how personality rights, passing off and false endorsement overlap. Commercial use of a celebrity's identity can confuse consumers, damage goodwill and deprive the celebrity of control over the economic value of their endorsement.[30]

4.6. Shivaji Rao Gaikwad v. Varsha Productions (2015)

In Shivaji Rao Gaikwad v. Varsha Productions, the actor Rajinikanth challenged the use of his name and persona in connection with the film Main Hoon Rajinikanth. The Madras High Court granted interim protection. It looked at the public association between the name "Rajinikanth" and the actor, and at the possibility that viewers would think the film was connected with him or authorised by him. The case shows that a celebrity can object to the unauthorised commercial use of a name that has become strongly identified with them. It also shows that at the interim stage, proof of literal copying or direct deception may not be necessary where the claimant is readily identifiable and the use is commercial. With this

[29] D.M. Entertainment, supra note 6.
[30] Titan Industries, supra note 7.

decision, Indian personality-rights law moved from advertisements and merchandise into film titles and entertainment content.[31]

4.7. Justice K.S. Puttaswamy v. Union of India (2017)

Justice K.S. Puttaswamy v. Union of India was not a personality-rights case, but it matters as a constitutional development. The Supreme Court recognised privacy as a fundamental right under Article 21, and understood it to include dignity, autonomy, decisional freedom and control over aspects of personal life and identity. The judgment helps explain why unauthorised use of a person's identity can cause more than economic harm. It can also interfere with autonomy, dignity and the ability to control how one is represented to the world. Puttaswamy still has to be read together with Article 19(1)(a). Recognising privacy does not give a public figure complete control over every public reference, criticism or artistic representation of them.[32]

4.8. Amitabh Bachchan v. Rajat Nagi (2022)

In Amitabh Bachchan v. Rajat Nagi, Amitabh Bachchan sought protection against the unauthorised use of his name, image, voice and other attributes by several defendants. The Delhi High Court granted an ad interim ex parte injunction. It restrained the defendants from using aspects of his personality for commercial or personal gain, including "Amitabh Bachchan," "Bachchan," "Big B," "AB," his voice, his image and other attributes exclusively identifiable with him. The conflict concerned online content, products and websites, and therefore brought the scope of protection beyond that of traditional advertising to include digital exploitation. The court also recognised that personality rights can protect a combination of characteristics, not merely a single image. A person's identity may be taken over by means of their name, voice, image or one or more of these together.[33]

4.9. Galactus Funware Technology Pvt. Ltd. v. Digital Collectibles Pte. Ltd. (2023)

The case of Digital Collectibles Pte. Ltd. v. Galactus Funware Technology Pvt. Ltd. was about the use of cricketers' names, images and attributes in digital collectibles and in other related products. The defendants maintained that publicity rights only applied in the context

[31] Shivaji Rao Gaikwad v. Varsha Productions, 2015 SCC OnLine Mad 158 (India).
[32] Puttaswamy, supra note 8.
[33] Amitabh Bachchan v. Rajat Nagi, 2022 SCC OnLine Del 4110 (India).

of traditional endorsement or advertising. At the prima facie stage the Delhi High Court dismissed that narrow interpretation and ruled that the right of publicity may include the unauthorised use of identifiable personality attributes for commercial purposes. The case applies personality-rights principles to digital assets and makes identifiability the key point in the analysis. The claimant must prove that the name, image or attribute refers to a specific individual and that it is being used commercially without permission. The fact that the exploitation takes the form of an advertisement, a physical product, an NFT or a digital collectible is not in itself sufficient to establish that personality rights have been infringed.[34]

4.10. Anil Kapoor v. Simply Life India (2023)

In Anil Kapoor v. Simply Life India, the Delhi High Court dealt with the unauthorised use of Anil Kapoor's name, image, voice, likeness and other distinctive attributes. The court recognised that a celebrity's endorsement rights can be an important source of livelihood. Unauthorised use of a celebrity's persona can therefore affect commercial interests and the right to earn a livelihood, in addition to reputation and privacy. The case bears particularly on technology-driven misuse. The court was willing to protect a combination of identity attributes, including voice, expressions and other recognisable aspects of the claimant's persona. It also accepted that legitimate news reporting, criticism, satire and parody should remain protected, so the judgment reflects the continuing need to balance personality rights against freedom of expression.[35]

4.11. Jaikishan Kakubhai Saraf v. The Peppy Store (2024)

In Jaikishan Kakubhai Saraf v. The Peppy Store, the actor Jackie Shroff sought protection against the unauthorised use of his name, nickname, image, voice and other aspects of his personality. The case involved online merchandise, videos, digital content and an unlicensed chatbot using aspects of his persona. The Delhi High Court treated a celebrity's name, image, voice and distinctive attributes as potentially protectable elements of personality. The case shows that personality-rights disputes now run across several digital formats, and that a claimant can seek protection against future technological forms of exploitation, including artificial intelligence and digital avatars. It also shows the need for

[34] Digital Collectibles, supra note 9.
[35] Anil Kapoor, supra note 9.

limits. Not every reference to a celebrity, humorous imitation or public discussion should amount to infringement, and the analysis has to distinguish commercial appropriation from legitimate expressive use.[36]

4.12. Arijit Singh v. Codible Ventures LLP (2024)

Arijit Singh v. Codible Ventures LLP carried the doctrine into generative artificial intelligence and, notably, into a different jurisdiction. The playback singer approached the Bombay High Court against several defendants who were using artificial intelligence tools to synthesise his voice, sell AI-generated tracks and merchandise bearing his name, and register domain names that traded on his identity. The court granted an ex parte ad interim injunction, holding that making available a tool capable of converting any voice recording into the plaintiff's voice, without his consent, violated his personality and publicity rights, and restrained the defendants from using his name, image, voice or other attributes through artificial intelligence or otherwise. The decision is the first Indian judgment to treat generative AI itself, rather than a single infringing image or recording, as the object of the injunction, and it shows the Bombay High Court reaching the same destination as the Delhi High Court, by a parallel route, in treating a cloned voice as an appropriation of identity rather than a mere technical novelty.[37]

4.13. Ranganthan Madhavan v. G Fimlz Studioz (2025)

Ranganthan Madhavan v. G Fimlz Studioz is the most recent AI-related dispute in this line of cases. It involved allegedly AI-generated content and other unauthorised material portraying the actor R. Madhavan. The Delhi High Court considered it possible to take legal action over the use of a person's name, image, voice and other characteristics when such content is used for commercial purposes. The case brings up issues which previous rulings had not directly dealt with, such as whether an AI-generated likeness can make a person identifiable and whether synthetic content can violate personality rights without making use of an original photograph. Is commercial AI-generated content protected by fair dealing or free speech? Can platforms be required to remove infringing material? How should courts tell parody from deceptive impersonation? The decision concerns an area

[36] Jaikishan Kakubhai Saraf, supra note 9.
[37] Arijit Singh v. Codible Ventures LLP, 2024 SCC OnLine Bom 2445 (India).

that is still developing and is not a comprehensive statutory ruling, so it is best treated as an important development and not as a final statement of the law.[38]

4.14. Akshay Kumar v. Ashok Kumar/John Doe (2025)

In Akshay Kumar's suit against a set of anonymous online defendants, the Bombay High Court granted interim protection against AI-generated deepfake images and videos circulating across social media platforms, e-commerce sites and AI content-creation tools. Justice Arif S. Doctor observed that the realism of the material was itself a concern, since a viewer could no longer easily tell a synthetic video from a genuine one, and held that the fabrications violated both personality rights and the moral rights attached to the actor's image. The order went further than earlier interim relief in one respect: it treated the risk as extending beyond commercial loss or reputational harm to the physical safety of the actor and his family, given how convincingly the deepfakes could be mistaken for him. The suit relied on Article 21 together with the moral-rights protection in the Copyright Act, 1957, so the reasoning sits closer to the dignitary strand of personality rights than to the purely commercial right of publicity.[39]

4.15. Ajay Devgn v. Ashok Kumar/John Doe (2025)

Ajay Devgn obtained similar interim relief from the Delhi High Court a month later, restraining a further set of unidentified defendants from using his name, image and voice across websites and social media, with directions for the takedown of material already in circulation. The order adds little doctrinally to Amitabh Bachchan or Anil Kapoor, both of which it follows closely in structure and reasoning, but it is worth noting for what it shows about volume rather than substance: by late 2025, a personality-rights suit against anonymous AI-content defendants had become close to a routine filing, decided on broadly settled principles rather than contested argument.[40]

4.16. Allu Arjun v. Frankly Retail Private Limited (2026)

Allu Arjun v. Frankly Retail Private Limited extended the doctrine to a performer's physical mannerism rather than his name, image or voice. The Delhi High Court restrained

[38] Ranganthan Madhavan v. G Fimlz Studioz, CS(COMM) 796/2025 (Delhi H.C. Dec. 22, 2025) (India).
[39] Akshay Kumar v. Ashok Kumar/John Doe, order dated Oct. 2025 (Bom HC) (India).
[40] Ajay Devgn v. Ashok Kumar/John Doe, order dated Nov. 2025 (Del HC) (India).

the defendants from using the actor's identity, including his recurring screen gesture from the film Pushpa, through AI tools, deepfakes and unauthorised merchandise. Justice Tushar Rao Gedela treated the gesture as identifiable in the same way a signature or a voice is identifiable: the question was not whether the exact movement had been copied, but whether its use would lead an ordinary viewer to associate it with the actor. The decision confirms that identifiability, as the concept has developed through Titan Industries and Digital Collectibles, is not limited to a fixed set of attributes and can extend to any feature distinctive enough to call the claimant to mind.[41]

4.17. Toprankers Edtech Solutions (P) Ltd. v. LPT Edtech (P) Ltd. (2026)

Toprankers Edtech Solutions (P) Ltd. v. LPT Edtech (P) Ltd. tests the doctrine at its outer edge. The dispute arose between two competing educational businesses over the commercial use of the identity of a candidate who had topped the CLAT 2026 examination, and it raised a question the earlier cases had not needed to confront directly: whether a person who becomes known for a single achievement, rather than through a sustained public career, acquires a commercially protectable persona at all. The Delhi High Court's handling of the dispute suggests that fame built on one result can still ground a personality-rights claim, but that courts will have to work out some threshold short of simply asking whether the claimant is, in fact, identifiable, since almost anyone who has appeared in the news is identifiable to someone. The point is taken up again in the critical evaluation below.[42]

4.18. Development reflected in the case law

The cases fall into three stages. In the first, Mannu Bhandari and Amar Nath Sehgal concerned the author's relationship with a creative work and protected attribution, integrity and artistic dignity. In the second, ICC Development, D.M. Entertainment, Titan Industries and Shivaji Rao Gaikwad moved towards protecting the commercial value of an identifiable celebrity persona. In the third, Amitabh Bachchan, Digital Collectibles, Anil Kapoor, Jackie Shroff, Arijit Singh and Ranganthan Madhavan extended the doctrine to online platforms, digital merchandise, voice, NFTs, chatbots and AI-generated content, and

[41] Allu Arjun v. Frankly Retail Private Limited, CS(COMM) 403/2026 (Del HC 2026) (India).
[42] Toprankers Edtech Solutions (P) Ltd. v. LPT Edtech (P) Ltd., 2026 SCC OnLine Del 1772 (India).

a further run of 2025–26 orders, Akshay Kumar, Ajay Devgn, Allu Arjun and Toprankers Edtech among them, carried the same reasoning into deepfake safety concerns, routine enforcement and the outer limits of who counts as identifiable. Overall, the law has moved from protecting creative personality to protecting commercially identifiable identity.

5. Limitations And Defences

Personality rights are not absolute; the interest in protecting one's identity must be weighed against freedom of speech, artistic expression, the public interest and the free flow of information. Although a wide doctrine can prevent commercial exploitation, it should not allow public figures to have control over every reference to their lives, their work or their public image.

5.1. Consent & Identifiability

Consent is the most effective defence, and it can be either express or implied as well as written or oral; it may be restricted in terms of time, place, medium, product or campaign and it can be granted by an agent or through a licensing agreement. The extent of the consent is important since approval to use a photograph in one advertisement does not mean that it can be used on merchandise, websites, NFTs or AI-generated content. A defendant might base their case on a contract, a licence, an endorsement agreement or a release, and the claimant could respond by saying that the defendant has gone beyond the authorisation or has continued to use the identity after the licence had expired.

Identifiability also places restrictions on the kinds of objections that can be made. A claimant cannot raise an objection just because a representation resembles them in a general or coincidental manner; they have to prove that the representation refers to them and that the appropriate audience would identify it with them on the basis of features which are distinctive enough to enable recognition. A generic figure, a common name or an ordinary voice would usually not be sufficient. This requirement prevents personality rights from becoming a monopoly over common characteristics, ideas or general styles.

5.2. News, Public Interest and Publicly Available Facts

Genuine news reporting should generally be protected. Public figures are legitimate subjects of news reports, investigative journalism, documentaries, biographies and political

commentary, and the law should separate the commercial exploitation of a person's identity from the reporting of information about them. A celebrity's photograph in a news article about a public event is different from the same photograph used to sell an unrelated product. The first can be justified by public interest, and the second suggests endorsement.

The same logic covers publicly available facts. The fact that a person attended an event, acted in a film, played a sport or held public office cannot ordinarily be privately owned. What the law protects is the manner of use. A news report can refer to a public event, but an advertiser cannot use the same event to imply that the person endorses its product. The line falls between reporting or discussing a fact and appropriating a person's identity for commercial benefit.

5.3. Criticism, Satire, Parody and Artistic Use

Satire and parody constitute protected forms of expression and typically involve exaggeration, imitation, or a reference to public figures. It is not the case that a person should be protected from criticism or mockery simply because such criticism or mockery makes use of recognizable aspects of their public image. When dealing with such cases, courts may consider whether the work is genuinely expressive, whether it is intended to comment on the individual, whether it is primarily for commercial purposes, whether it is misleadingly presented as being authorized, and whether it causes reputational or dignitary harm that goes beyond what might be expected from ordinary criticism. In the case of D.M. Entertainment, the Delhi High Court warned that placing too much emphasis on publicity rights could have the effect of restricting free speech.[43] Karan Johar v. Ashok Kumar/John Doe dealt with the unauthorised use of the plaintiff's name and persona in commercial content, and the court also took account of the importance of parody, caricature and satire.[44]

Artistic and transformative use raises a related point. Paintings, films, theatre, literary works, documentaries, digital art, political cartoons and fictionalised portrayals can use a person's identity without infringement where it is transformed into a new expressive work. That a work is sold should not make it unlawful, because many expressive works are published commercially. The better question is whether the person's identity forms part of

[43] D.M. Entertainment, supra note 6.

[44] Karan Johar v. Ashok Kumar/John Doe, CS(COMM) 974/2025, order dated Sept. 17, 2025 (Delhi H.C.) (India).

the expressive content or serves only as a product feature or marketing device. American courts have approached this through Rogers v. Grimaldi, where the Second Circuit set out a test balancing artistic expression against the likelihood of consumer confusion.[45] Indian courts could develop a similar contextual approach under Article 19(1)(a).

The case of fan activity is more complicated. If fan pages, tribute videos, memes and non-commercial artwork which make use of a celebrity's name, image or voice are genuinely not intended for commercial gain and do not imply that the celebrity is endorsing them, then an injunction is not usually granted. Such activities can, however, be considered actionable if the fan page sells unauthorised merchandise, promotes other goods that have nothing to do with the celebrity, imitates an official website, collects money by falsely endorsing a product, or if it publishes defamatory or sexually explicit material. The key issues remain the commercial purpose and the likelihood of confusion.

5.4. Reputation and Defamation

A claim based on personality can overlap with a defamation claim when the use of a person's identity is false and has a degrading or damaging effect on their reputation. This situation is particularly common in the case of deepfakes, photos that have been morphed, false advertisements, sexually explicit synthetic material, fake interviews and statements that have been voice cloned. The person making the claim might ask for redress on the grounds that their identity was used without permission and also because the content falsely assigns words, actions or an endorsement to them. However, the courts still have to distinguish between defamation and criticism; a negative opinion or a severe review can be protected if it is clearly stated as such an opinion and does not falsely attribute facts.

5.5. Interim Relief, John Doe Orders and Intermediaries

A large number of decisions concerning personality rights are issued at the interim stage. When a claimant establishes a prima facie case, shows that a balance of convenience exists and proves that there is a likelihood of irreparable harm, courts will grant ad interim or ex parte injunctions. This kind of justification is common when the content is spreading rapidly online, when the claimant's reputation is in danger, or when an unauthorised

[45] Rogers v. Grimaldi, 875 F.2d 994, 999–1000 (2d Cir. 1989).

advertisement poses immediate commercial harm. However, interim orders do not determine at that stage whether the right in question actually exists in the form claimed, whether the defendant has a valid defence based on free expression, whether the claimant owns or controls the identity in issue, whether the use is transformative, or whether the content is defamatory. It is advisable for courts to refrain from making orders which have the effect of imposing permanent restrictions before the merits of the case have been properly examined.

Online disputes frequently concern anonymous websites, social media accounts, or unknown sellers, and as a result courts issue John Doe or Ashok Kumar orders directed at unnamed defendants. Such orders are useful in cases where the content is reproduced rapidly, the defendants are unidentified, there are multiple sellers involved, or it is necessary to carry out a takedown quickly. The orders should specify the prohibited conduct exactly and must not prevent legitimate criticism, parody, news reporting or independent content just because it refers to the claimant.

The online marketplaces, social-media services, search engines, video-sharing sites, domain registrars, hosting providers and AI-generation services are included in this category. A claimant has the option of requesting the removal of infringing content, the disclosure of the identity of the uploader, the blocking of URLs, the removal of listings, the suspension of accounts that are impersonating others, or action to be taken in the case of repeated uploads. However, such claims must be balanced against the safe-harbour principles and the issue of imposing an unrealistic duty to monitor all content.

5.6. Balancing

The court ought to consider whether the claimant can be identified, whether the use was authorised, whether it is commercial, whether it implies endorsement, and whether it results in reputational or dignitary harm; it should also examine whether the defendant’s use is expressive, newsworthy or transformative, whether the remedy is proportionate, and whether an injunction would place an undue restriction on freedom of expression. The central principle is that personality rights protect against unauthorised appropriation of identity. They do not protect against all public discussion, criticism or artistic reference.

6. Critical Evaluation

Indian personality-rights law has developed mainly through judicial decisions and not through a comprehensive legislative framework. That has let courts respond quickly to digital merchandise, synthetic voices, chatbots and AI-generated content. It has also left key terms undefined: personality rights, publicity rights, the relationship between privacy and publicity, the scope of identifiability, ownership and transferability, the duration of post-mortem protection, and the liability of online platforms. Copyright, trademark law, passing off and constitutional law each cover part of the problem, but none covers all of it.

6.1. Moral rights and personality rights

Indian case law has moved from moral rights to personality rights, but the two are not interchangeable. Moral rights protect an author's relationship with a creative work, through attribution and integrity under Section 57 of the Copyright Act, 1957.[46] Personality rights protect a person's identity whether or not it is expressed through a copyrighted work, so someone can claim protection for their name, voice, image or likeness even where no copyright is infringed.

They are still linked together. Mannu Bhandari and Amar Nath Sehgal demonstrated that a creator's personality and dignity can be important legally even beyond the issue of economic ownership, and in later cases involving publicity this principle was applied to commercial identity as well.[47] The danger, however, is that a wide conception of 'personality' enables claimants to regard every public association as property, and the courts should specify in each case exactly what interest they are safeguarding.

6.2. Identifiability

The key aspect in these claims is identifiability, and the Indian courts have not agreed on a single test. A claimant may be identified by their name, image, voice, nickname, signature, mannerism, costume, dialogue, context or a combination of these. The difficulty lies in determining when a combination of common features becomes sufficiently distinctive. A broad approach wrongly protects ordinary characteristics, while a narrow one allows

[46] Copyright Act, supra note 10, § 57.
[47] Mannu Bhandari, supra note 11; Amar Nath Sehgal, supra note 12.

defendants to escape by making small alterations to a recognizable representation. A test based on context would be useful since it would take into account how distinctive the attribute is, how closely the use resembles it, who the relevant audience is, the commercial context, the claimant's reputation, the likelihood of public association, and whether the use suggests endorsement. Thus, it would provide greater predictability without requiring exact copying.

6.3. Celebrity-Centred Development

It is reasonable that the majority of cases in India concern actors, singers and athletes since of the commercial value of their identities and the fact that they are frequently the target of such activities. Personality rights are not limited to celebrities; ordinary people can also be affected by deepfakes, identity theft, voice cloning, unauthorised sexual imagery, false online profiles and manipulated defamatory content. The main difference lies in the type of harm caused: celebrities usually seek protection against the commercial use of their identities, while ordinary people place greater reliance on their privacy, dignity and reputation, as Puttaswamy has stated.[48] Toprankers Edtech shows how unsettled the threshold still is: a single examination result was enough to generate litigation over commercial identity, without any of the sustained public career the earlier cases assumed.[49] A future framework should treat the commercial value of a celebrity's identity separately from the dignitary and privacy interests of all individuals.

6.4. Post-Mortem Rights and Assignability

It is uncertain under Indian law whether personality rights continue after a person's death or whether such rights can be assigned or inherited. A celebrity's identity can retain its commercial value via films, archival recordings, merchandise, biographies, digital recreations and posthumous endorsements. Since these rights have both a personal and a dignitary aspect, viewing them merely as transferable property is inconsistent with the connection to autonomy. Legislation should therefore decide whether the rights survive death, who is entitled to enforce them, for how long, whether they can be licensed, whether

[48] Puttaswamy, supra note 8.
[49] Toprankers Edtech Solutions (P) Ltd. v. LPT Edtech (P) Ltd., supra note 41.

assignment has to be explicit, whether heirs can make commercial use of the identity, and how post-mortem rights relate to public-interest expression.

6.5. Expression, Overprotection and Interim Orders

Personality rights should not be used as a means of suppressing criticism or controlling public debate. It is not automatic that the use of a celebrity's name or image constitutes commercial exploitation, and the courts ought to distinguish between using a person's identity to convey an idea and using it to promote a product. This is important since a great many expressive works are sold, and a documentary, a book or a film can generate income without thereby acting as an advertisement or making a false endorsement. The courts should therefore consider whether an injunction is necessary and whether a more limited remedy would suffice to protect the claimant without suppressing legitimate expression.[50] The same worries apply in the case of interim relief. Since online content can spread rapidly and delays might result in actual harm, there is a frequent need for urgent applications. However, a large number of the more recent decisions involve interim or ex parte orders, which set up a prima facie case without providing fully reasoned final findings. Such overbroad orders may suppress lawful speech, extend to third parties who are not identified, restrict parody or criticism, impose a burden on intermediaries and leave unclear what sort of activity is prohibited. It is necessary for the orders to specify the exact identity attributes, commercial behaviour and forms of misuse that they are intended to restrain.

6.6. Judicial Restraint: The Janhvi Kapoor Course-Correction

Janhvi Kapoor's suit against a large set of websites and accounts hosting unauthorised content is a useful corrective to the pattern described above. The plaintiff sought a blanket injunction covering 6,884 URLs. The Delhi High Court declined to grant it in that form, holding that a claim pitched at that level of generality was overbroad, and directed the plaintiff to sort the URLs into distinct categories, pornographic and sexually explicit material, content that directly monetised her persona, and content that merely referenced her name or image in connection with unrelated goods, before the court would consider relief for each category on its own footing. Interim protection was granted only for the first

[50] D.M. Entertainment, supra note 6.

category, where the content was ex facie pornographic, and the remainder was left for further scrutiny.[51]

The order does not reverse the expansive run of personality-rights injunctions traced through this paper. It does show, however, that at least one bench is prepared to treat an injunction request as something that must be justified category by category, rather than granted wholesale because the claimant is well known and the defendants are numerous. If the volume of interim orders continues at its current pace, this kind of sorting is probably where the real discipline in the doctrine will end up living, since no legislature has stepped in to supply it.

6.7. Artificial Intelligence and Platform Liability

It is possible to reproduce a person's identity without having to copy an existing photograph, recording, or performance. AI can mimic a person's face, voice, accent, mannerisms, and professional image. Although current law addresses some of these issues through the use of personality rights, passing off, copyright, privacy, defamation and remedies available to intermediaries, it does not clearly state whether a synthetic representation counts as a direct reproduction.[52] Among the unresolved issues are AI-generated endorsements, voice cloning, digital duplicates, deepfake pornography, political impersonation, synthetic interviews, the use of identity-related material to train AI systems, and compensation for unauthorized commercial use. The problem is to stop deceptive impersonation without banning legitimate parody, experiment, criticism or artistic transformation.

It is important to consider platforms since a single unauthorized image, recording or video can be copied onto a large number of websites in a short space of time. The framework should specify when a platform has received adequate notice, whether it is necessary to have actual knowledge, how swiftly the content must be taken down, whether it should prevent repeated uploads, when user information can be disclosed, how safe harbour applies, and whether AI-generated platforms must guard against deceptive impersonation. If monitoring duties were completely unrestricted, this could lead to excessive removals

[51] Janhvi Kapoor v. Ashok Kumar/John Doe, order dated 2026 (Del HC) (India).
[52] Anil Kapoor, supra note 9; Jaikishan Kakubhai Saraf, supra note 9; Arijit Singh, supra note 36.

and have a negative impact on lawful expression, so the obligations must remain proportional.

6.8. Reform and Overall Assessment

India should have a specific statute which establishes personality and publicity rights, acknowledges both dignitary and commercial interests, introduces an identifiability test, clarifies how these rights relate to copyright and trademark law, includes exceptions for news, criticism, parody and the public interest, regulates licensing and assignment, deals with rights that apply after death, offers remedies in cases of misuse of an AI-generated identity, clarifies the duties of intermediaries, and provides remedies that are proportionate in both the civil and administrative spheres. It should not merely copy the American model; instead, it should combine commercial protection with India's constitutional focus on dignity, privacy and autonomy.

The courts of India have established a practical and flexible framework, though the law is still in an intermediate phase. While it has gone beyond the mere protection of copyrighted works to acknowledge the commercial value of a person's identity, uncertainty remains since it relies so much on interim orders, detailed case-by-case reasoning, and overlapping grounds of action. The next stage should be to achieve clarity rather than to carry out further expansion, the objective being to stop unauthorized commercial use of a person's identity without impeding lawful expression and public discussion, and not to grant ownership over every aspect of a person's public identity.

7. Conclusion

In India, personality rights have gradually shifted from covering creative works to focusing on personal identity. The initial moral-rights cases, Mannu Bhandari and Amar Nath Sehgal, proved that an author's connection with their work includes aspects of dignity, reputation and integrity, and that these concerns are separate from economic copyright. The judicial approach then turned to the commercial area. ICC Development first held that the right of publicity vests in an individual rather than in a corporate sponsor, a principle D.M. Entertainment then applied directly to protect a celebrity's right to control the commercial use of their likeness. The cases of Titan Industries and Shivaji Rao Gaikwad demonstrated that a person can be identified by means of context, resemblance, name or

other distinctive features even if their exact photograph is not employed. Justice K.S. Puttaswamy provided a constitutional foundation based on dignity, autonomy and personal control. Subsequent cases concerning Amitabh Bachchan, digital collectibles, Anil Kapoor, Jackie Shroff and Arijit Singh widened the protection to include voices, nicknames, digital merchandise, online content, cloned voices and chatbots.[53]

The open questions are now more urgent because of AI. A person's identity can now be reproduced through synthetic images, cloned voices, deepfakes and digital avatars. Existing principles reach some of these harms, but they do not clearly answer who owns personality rights, whether they can be transferred, how long they last or how they are enforced. Indian law has developed a good deal through the courts and is still fragmented, because it protects personality through several overlapping doctrines and has no unified statute. The main gaps are the lack of a statutory definition, an inconsistent identifiability test, the line between commercial appropriation and legitimate expression, the position of ordinary individuals compared with celebrities, post-mortem protection, assignability and licensing, platform liability and AI-generated impersonation.

The comparison with the United States shows that India could use clearer rules on publicity rights, commercial licensing and post-mortem protection. India should not adopt a purely property-based model, though, since its framework also has to protect privacy, dignity, autonomy and freedom of expression. The next step should be clarification and not unlimited expansion. A suitable framework would prevent unauthorised commercial appropriation and harmful impersonation while leaving room for news reporting, criticism, satire, parody, biography, artistic expression and public-interest discussion.

This concludes that Indian personality-rights law has evolved from protecting the creative personality of the author to protecting the commercially identifiable identity of the individual. What remains to be decided is how that identity should be protected when the boundary between the real and the artificial is harder to draw.

[53] Amitabh Bachchan, supra note 32; Digital Collectibles, supra note 9; Anil Kapoor, supra note 9; Jaikishan Kakubhai Saraf, supra note 9; Arijit Singh, supra note 36.