Having this vision one should not forget and neglect rights and previligous enjoyed by the minority groups, on the pretexts of making Uniform Civil Code for National Integration.

The main concern of majority is that personal laws relating to marriage, inheritance, gardenship, divorce, maintenance and property relations in all communities are unjust especially unjust to women. Uniformity of law is no doubt desirable but one has to think that by enactment of such law produces counter results for the unity and integrity of the nation. And it should not create communal fume in religious groups, further demand for uniformity of law should not made for the cause of political achievements and using it as a political weapon to dominate the minorities and making pressure on the minorities to yield for Common Civil Code without a national debt on the core issue is really threatening the secular values enshrined in our Indian Constitution. For progressive civilized nation views of all legal luminaries, National leaders and religious leaders should be respected and same have to be considered in drafting the common civil code by avoiding injury or insult to any religion. Creating healthy atmosphere for paving the way for communal harmony is at most important. Mobilization of Hindus, Muslims, Christians, Sikks, Parsis is at most necessary in getting salutary results in creation of socialist secular democratic integrated state thereby achieving the goal of *Sarve Jana Sukino Bhavanthu i.e.,* welfare of all the people.

---

## INTELLECTUAL PROPERTY RIGHTS - A QUEST FOR IDENTITY

*By*

**—Dr. T. VIDYA KUMARI,**
Principal, Post Graduate College of Law,
Osmania University

Intellectual Property Rights are legal and institutional devices to protect creations of the mind in all fields of technology. It can be said that intellectual property rights are indispensable for human development and that they promote sustainable development of Nations and mankind. Yet these rights are suspected to hamper progress and encourage monopoly. Therefore, there is a need for a objective evaluation of these rights and examine whether they cater to the needs of all - the developed, the developing and the least developed countries. These rights are now in the quest for an identity - that they have attuned to the new technologies without harming the old ideologies and practices. Intellectual property rights are multi-dimensional and are all pervading. These rights not only project the corporate rights but also the private rights of an individual. This paper seeks to examine the various dimensions of the intellectual property rights that are in the agenda of this international conference.

The intellectual property rights regime has been significantly expanded in recent times. The IP regime has increased and has incorporated protective measures to promote new forms of technology. The application of patent protection covers all forms of bio-technology, life forms, cell lines and DNA sequences. All inventions that contain a "technical contribution" and "the method of solving a technical problem" are also given a legitimate right under the patent system as they fulfill the basic elements of a patent -

being new, non-obvious and have an inventive step. The substantive rights have also been expanded in other areas of intellectual property rights and the law relating to copyrights in the digital era has been strengthened with the various internet treaties established by the WIPO. Similarly in the area of trademarks, the protection to famous marks, services, franchising, domain names have gained prominence. New rights have been introduced in the trademark regime that includes sounds and smells. One area that has provided paradoxical interest is the right relating to celebrities - seeking privacy rights in the regime of copyrights famous personalities seek exclusive publicity rights and prevent others from misappropriating their name and fame under the competition laws also. Not only individuals, territories and cottage industries have also been provided with rights under the geographical indications IP regime to claim an separate identity. The twentieth century has provided the farmers with the plant breeders rights and the engineers with the rights to lay out designs of integrated circuits. In the entertainment sector performers are given individual rights that include singers, actors, musicians, acrobats, snake charmers, dancers, jugglers, conjurers and persons delivering a lecture. New forms of unfair practices and market strategies have been handled in the area of competition laws and thus the IP regime has entered the 21st Century with new vigor and is striving to enfold all the countries under a uniform regime. It is in this context that the efficacy of this system is under fire as in the venture to standardize the laws, the individual needs and capacities of diverse nations is suppressed or eroded. This paper highlights the draw backs and the reforms needed to suit India.

To begin with it is very essential to build the IP regime on a basic premise that all technologies have to serve mankind and protect the basic human rights of an individual. It is necessary to incorporate the principles laid down in the international agreements relating to human rights. Special mention may be made in relation to Article 27.2 of the "Universal Declaration of Human Rights" of 1948, which firmly establishes that every one has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Every one has the right of protection of moral and material interest resulting from any scientific, literary or artistic production of which he is the author. Similarly Article 15.1(c) of the "International Covenant on Economic, Social and Cultural Rights" of 1966 states that the parties to the present covenant under take to respect the freedom indispensable for scientific research and creative activity. These international agreements have also to be read in harmony with other agreements that seek "sustainable development" of mankind.

The technologies that seek protection should also succeed in the litmus test that they are not contravening morality, public order and are products of utility not merely that they are advancements in the area of science and technologies but also prove to benefit mankind. It is in this context that it is found that the principles of TRIPS Agreement are not in consonance with the agreements relating to environment and protection of bio-diversity. The basic similarity between these agreements with the TRIPS Agreement is that both relate to transfer of technologies between member States, yet there are several concepts in the Bio-Diversity Agreements that need to be incorporated in the IP regime.

### *Identity of Resources:*

While the TRIPS Agreement has provided a basic standard of protection to "all forms of technology", there is a necessity to incorporate conditions relating to patents involving natural resources to specially indicate the sources of the material involved in the patent claims. It is in this context that natural

resources can be protected in the following ways—

(a) The States have to identify components of biological diversity important for its conservation, and sustainable use, monitor through samplings and other techniques, the components of biological diversity and thus maintain and organize by any mechanism the data derived from the identification and monitoring activities (Article 7 of Convention on Biological Diversity (CBD)).

(b) The States have to establish a system to identify protected areas where special measures need to be taken to conserve biological diversity and the States should introduce guidelines for the selection, establishment and management of protected areas for conserving bio-diversity.

### *Identity of Indigenous Knowledge and Traditional Knowledge, Innovations and Practices of Local and Indigenous Communities:*

Every Indian is aware of the value of traditional knowledge and it is estimated that there are more than 6,00, 000 licensed medical practitioners of classical traditional health systems and more than one million traditional community based health workers in India. In fact it is estimated that 2/3rd of the world's people depend on the food provided through indigenous knowledge of plants animals, insects, microbes and farming systems. The traditional knowledge relates not only to medicines, medical plants, traditional agricultural products but also includes essential oils, forest nuts, gums, sandal wood and other wood and forest products. The intricate designs woven on natural, semi-natural and artificial articles are traced from bygone eras and are still looked upon with great reverence and an unflinching interests.

Traditional technologies and innovations have to be protected by providing a sui generous system of protection as these forms of knowledge cannot be fit into the existing forms of Intellectual Property Rights (IPRS). There is a need to link the TRIPS Agreement with the human rights agreements and with the bio-diversity treaties and provide the much needed protection to local talents so that the identity of the artisans are protected which in turn would enhance the cultural identity of the nation as a whole. It is in this context special reference may be made to Article 29 of the CBD Agreement which states that a sui generous system has to be adopted

(i) To preserve and conserve TK.

(ii) Increase awareness of the value of TK, among the both TK holders and others

(iii) Prevent the unauthorized use of TK

(iv) Encourage TK based innovations

(v) Commercialize certain types of TK

(vi) Equitably share the benefits arising from the commercial use of TK.

(vii) Facilitate access to TK for various purposes including research commercial applications or use by the other traditional communities.

(viii) Encourage the conservation and sustainable use of bio-diversity, promote social justice and equity.

(ix) Recognize traditional customs and practices.

(x) Guarantee the participation of local and indigenous communities in the policy decision making process relating to TK.

(xi) Recognize the important role of the women as holder of TK and ensuring their participation in the decision and policy making process.

### *Sovereign Rights*

The CBD makes a special mention of the sovereign rights to States over their natural resources and gives authority to the national Governments to determine the access to genetic resources. The member states decided in this convention to endeavour in creating conditions for facilitating access to genetic resources for "Environmentally Sound Uses". Access to resources was granted on mutually agreed terms subject to "prior informed consent of the State" that is the origin of the genetic resources thereby seeking prior permission for permitting activities which develop and carry out scientific research based on genetic resources. Thus there is a need to incorporate measures that strike a balance between the exclusive control of the state and the owners of biological diversity to utilize resources for developmental activities and research for the benefit of mankind subject to the condition that the activities do not cause any erosion to the biological diversity and do not significant damage to the environment. This indeed an onerous task to be undertaken by the States as any imbalance would affect the sustainable development of mankind

### *Animal Rights*

In the field of inventions relating to bio-technology, the expansion of the subject-matter in the patent regime has been greatly criticized and created lot of controversy. The expansion in this area has occurred in two ways, the scope of this patentable subject-matter has been given an inclusive interpretation by incorporating all forms of "technical contributions" into the IP regime and secondly the restriction on patentability has been narrowly interpreted. While the expansion has sought a justification that the system has adapted to the changed and improved technologies, the crucial factor remains whether these patents can be justified on the grounds of morality, ethics and "order public". Animals are used as tools for scientific experiments. Various animal rights proponents have condemned the use of animals in scientific activities. The activists make a plaintive appeal that animals have "Telos". Telos means, animals have a set of needs, a set of interest, psychological and physical, genetically encoded in the animals nature. It would indeed be cruel to hurt the inherent nature of the animal. It is argued that the animals Telos have to be inviolable such as a borrowing animal should not be caged, a flying bird should not be trapped. The main moral challenge that is faced by genetic manipulation is that for the sake of experiments that may lead to combat diseases, it is highly immoral to work at the expense of the animals happiness or satisfaction of its nature. The legal jurisprudence provides a legal rights to animals and jurist have claimed that as animals have some form of consciousness. The legal status of the animals have to be maintained and the lives of the animals have to be equally respected. In the clash between human interest and animal interest it is not proper to give priority a human interest. This area of patent system needs a careful scrutiny as each administrated body has an important role to play - while the international agreements state that patents against morality should be avoided the national legislations are also equally ineffective. The Courts have not been uniform in their decisions as seen in the latest judgment of the Supreme Court of Canada in the case of *Commissioner of Patents v. President and Fellows of Harvard College and others*, 2002 SCC 76. The Supreme Court of Canada has not accepted the decisions of other nations and has rejected patents on the Oncomouse. The Oncomouse is however patented in Austria, Netherlands, Portugal, Spain, Sweden, UK, Japan and New Zealand, while the European Patent Office (EPO) initially rejected the Oncomouse patent application, it eventually accepted the Oncomouse patent in 1992. This decision of the Supreme Court has appeased the religious communities which have highly condemned

patents on natural forms of life. Research "tinkering with nature" was highly objected and have not accepted that the scientists have "created a new form of life". It is therefore a need to set at rest the controversy relating to patents for higher life forms. The justification of the patent system is routed in a contradiction, there can be no such thing as an ideally beneficial patent system. It is bound to produce controversial results and therefore all patents have to be examined based on the utility that it serves as rightly pointed out by Thomas Jefferson in 1793 that "patent monopoly" is a necessary evil which should be tolerated in order to ensure that "ingenuity should receive a liberal encouragement".

### *Personhood Theory:*

Various jurists have based IPRS on the theory of Personhood. This theory states that an individual can claim Intellectual Property Rights protection to nurture and exploit his talents. In this papers special emphasis is made to the new rights that have emerged not only to the performers but also in the form of Celebrity Rights. While in India the breach of right of privacy was alleged by *Poolan Devi* the famous bandid queen, when a film based on her life history was released - *Poolan Devi v. Kapoor and others* (Suit No.2000 of 1994) decided on 20-12-1994 Delhi High Court. Various rights are granted to the celebrities under two broad categories—

(1) Economic rights that include (a) Trading or licensing rights (b) Other intangible recognition values

(2) Dignitary Rights - (a) The right to protect reputation (b) The right to protect personal privacy (c) The right of freedom from mental distress.

The Celebrity seeks to be protected from "prying eyes" "intrusion into the private life". Paradoxically the Celebrities also seek publicity rights to exploit the name and fame that they have acquired. It is in this context that they seek the IP regime to protect their rights in the form of copyright protection as seen in various decisions across the world - *Haelen Laboratories v. Topps Chewing gum* US 1953, *Zacchini v. Cripps Harvard Broadcasting company Ohio* 1997. In a recent judgment *Hyde Park Residence Limited v. Yelland,* (2000) EMLR 363, the UK Appellate Court permitted the owner of the Villa to claim privacy rights and allowed him to claim damages for publishing photos of Princess Diana on her last visit before her death to the Villa Windsor in Paris. While on one hand public in general are curious to know the private details of public personalities, the Court was of the opinion that such curiosity should not be appeased by unauthorized publication of photos without the consent of the owners of the photographs. Similarly in the case of *Naomi Campbell v. Vanessa Frisbee* 2002 EWCA Cir.No.1374. The newspaper - news of the world had published certain confidential details of Ms. *Campbell* a famous model with the actor Mr. *Joseph Fennes*. These confidential details were gathered by the employee Ms. *Frisbee* when she was working with Ms. *Campbell*. Ms *Campbell* filed a suit against Ms. *Frisbee* on the grounds that she had invaded a right of privacy and for breach of confidential agreement made by Ms. *Frisbee* when she entered the service of Ms. *Campbell*. The Court did not favour Ms. *Campbell* and in the course of the judgment observed that "it seem that those who seek and welcome publicity of every kind bearing upon their private lives so long as it shows them in a favourable light are in no position to claim an invasion of their privacy when it shows them in an un favourable light". Similarly in the case of *Michael Douglas, Catherine Zeta Jones v. Hello Limited, Hola SA and others,* (2003) EWHC 786 CH, the chancery division of High Court of justice on 11 April, 2003 held that the publication of unauthorized photos do not infringe the rights of the Celebrities. In this famous case, the well known film stars

Michael Douglas and Zeta Jones had celebrated their wedding on 18th November, 2000 and had intended to keep their wedding confidential and had selected a limited gathering for the function. An exclusive contract was made with the magazine OK to publish the photographs taken at the wedding; the photos were to be published only on the approval of the wedding couple. The newspaper Hello had sent its photographer Mr. *Rupert Thorpe* to take photos surreptiously without the knowledge of the couple and without using a flash. Naturally the photos were devastating and when the Hello paper published these photos the couple filed a suit claiming that the Hello has violated their personal rights relating to personal information that was concealed and as such it was the unauthorized act amounting to breach of privacy and as an act of conspiracy causing deliberate interference with the rights of the Celebrities. The Court of appeal did not provide any injunctive relief to the plaintiffs and permitted the publication of photos. The above said cases clearly show that the Celebrities are not allowed privacy rights in general but as the subsequent cases show can claim personality rights and rights under fair competition. In the case of personality rights the tort of passing off is extended and when the personal identification of the Celebrity is exploited the Celebrity can file a suit by establishing that their special features have been wrongfully misappropriated by others, for example: In the case of *Waits v. Frito - Lay Inc.,* the singer Tom Wait's voice imitated in the commercial for tortilla chips, he succeeded in an action of misappropriation of his personality for imitating his voice without his consent 1992 978 2Fd. 103, *Henderson v. Radio Corporation Pvt. Ltd*., 1969 RPC 218, *Ervin Warnick v. Town End and Sons,* 1979 AC 731. The rights of the Celebrities have also gained prominence with the restatement (3rd) of unfair competition 1995 which clearly sets out that appropriation of publicity rights which effects the commercial value of a persons identity amounts to unfair competition. Thus in conclusion it is proper to recall the judgment given in the recent case *A v. B and C* 2002 EWCA Cir. 337, which relates to the threat of publication of details disclosing the private life of a Celebrity, the Court allowed the publication. Even though it relates to private matters, the Court considered that "it is in the interest of the public that private matters of public figures should be revealed as the information relates to persons who are considered as role models for many fans. The public at large has a "legitimate interest" in the information and as such the Courts permitted the publication of the information".

### *Symbols of Identity:*

The trademark laws have been expanded and they affirmed the identity of the products and services. New forms of marketing strategies have intruded into the trademark regimes in the form of Ambush Marketing. Ambush Marketing is a device to misappropriate the goodwill of an enterprise or personality who is famous and who has a high standing in some field of activity. Ambush Marketing is a form of piracy and also includes subtle practices. No legislation has been made in this regard to counter these unethical practices. Ambush Marketing relates mostly to Sporting Events. Sporting Events have attracted millions of viewers and huge investments are involved in conducting these events, the organizers seek exclusive rights to control the revenues that are generated from these events so that they can recover the money invested. Subtle practices have been observed that confuse the public to believe that a particular manufacturer or trader is an official sponsor of the events. By misleading the public the manufacturers use the logo of the event to attract consumers. Naturally it will effect the official of the sponsors, these practices have been challenged in the Courts of law as a form of misappropriation within the purview

of passing off. Therefore IP rights also deal with various forms of "affiliation" and "allegiance" that also needs projection.

### *Conclusion:*

In conclusion it is stated that Intellectual Property Rights are basically dealing with human rights as it effects the basic rights of association, liberty, claims of protection to creative talents, right of health, right of expression, right of sustainable development from all angles thereby improving the socio-economic culture of the Nation and thus can be said as a quest for identity not only to the inventors but also to the nation thus permitting a unity in diversity. Standardization of IP regime is acceptable conditionally as the individual aspiration of each nation also needs to be catered to, so that each individual nation can prosper. Transfer of technology can be allowed provided; it does not erode the natural diversities and cultures of individual nations.

---

## AN OVERVIEW OF THE CONSUMER PROTECTION AMENDMENT ACT, 2002

*By*

**—GURRAM RAMACHANDRA RAO,**
B.A., B.L. (Hons.), NALSAR University of Law
Advocate, A.P. High Court

The dominating position of the public and private enterprises providing services like banking, financing, insurance, transport, processing board and lodging, entertainment, amusement, electricity and water and the blind race for earning money by fair or foul means by some of the well-organised producers and businessmen lacking trust and honesty against the illiterate, ignorant, unorganized consumers led to consumer exploitation in India not only illiterate but educated consumers knew well they were being exploited get they were tolerating it because of expensive and time consuming procedural delays in instituting cases for damages in the Civil Courts. The Indian Parliament recognizing the need of the hour, enacted the Consumer Protection Act, 1986, which is a landmark in the history of socio economic legislation and can be termed as 'Magna Carta' in the field of can protection for checking the unfair trade practices and deficiency in relation to goods and services. (Dr. *V.K. Agarwal*, Consumer Protection: Law and Practice, 5th ed., 2003, p.20.)

Consumer Protection Act, 1986 unlike other Acts is no more a farce in sealed files, but is fast emerging as the true saviour of the rights of the consumers. (*Majumdar, P.K.,* Law of Consumer Protection in India, 4th ed., Orient Publishing Company, 2002.) The importance of the Consumer Protection Act, which came into force with effect from 1st day of July, 1987 lies in promoting welfare of the society by enabling the consumers to participate directly in the market economy. As per the preamble, the Act is to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith. (Commentary on The Consumer Protection Act, 2nd ed., *J.N. Barowalia*, Universal Publishing Co. Pvt. Ltd. 2000.)

The Working Group and also those of the Expert Group set up in July, 1997,