CHAPTER 9
9. HARMONISATION OF INDIAN LAWS

Under this Chapter I wish to place on record the main objectives of the treaty which declares that to reduce to international trade and taking into account the need to promote effective and adequate protection of IPRs and ensure measures and procedures to enforce IPR do not themselves become barriers to legitimate trade.

Therefore the practice of IPR should not become barriers to legitimate Trade, which should be our principle in enacting municipal law in conformity to TRIPs.

WTO Agreements are akin to standard forms of contract in as much as that they do not permit fragmentation and have to be adopted lock, stock and barrel. Concessions are rare and can be procured only through negotiations on a common multilateral platform. Developing Nations' apprehensions that their sovereignty will be eroded is not wholly unfounded as a multitude of issues has been shifted from national domain to international discipline.

They probably succumbed to pressure and assented because they realized that no individual nation could henceforth remain insular or function in an isolated manner especially in the light of market strongholds being formed like the European Common Market (now referred to as European Union).

The Patents Act, 1970:

The implications of the TRIPs Agreement in the area of new technologies may be substantial. In the area of biotechnology, the Agreement constitutes the first international instrument to require IPRs
protection for living forms. This obligation is limited, however, to microorganisms. The nation should develop municipal law to counter certain disputed issue amicably.

Member countries may consider (as the Brazilian patent law did in 1996) that only genetically modified microorganisms, excluding any part of plants or animals, are patentable.

Under the TRIPs Agreement, reverse engineering of computer programs is permitted. This is an important point of flexibility that may allow producers in developing countries to develop interoperable or competitive products.

The importation may be allowed on par with the local production for a limited period of three or four years, which could be extended, provided it is proved that the local production of such a product was economically unviable.

The provision relating to compulsory licensing and licensing of right under Patent Act 1970 is in conformity with the Act 7 & 8 of the TRIPS and Act 5(A)(2) & 5 (A(4) of the Paris convention regarding dissemination of technology conducive to social and economic welfare to the balancing of rights and obligations and also to promote public health and nutrition and to the prevention or abuse and provision of public interest in sectors of vital importance to their social economic and technological development and as such the compulsory licensing details can be dealt with accordingly.

Ex: Fixation of royalty as a percentage, waiver of permission from patent holder on emergency and other reasons mentioned.
When the Patents Act, 1970 was enacted. The United Nations Commission on Trade Development (UNCTAD) as a 'Progressive Act: which could serve as a model for other developing nations.

With the WTO treaty, multifarious conventions and the provisions of the Indian Constitution forming the backdrop, India has to adopt a pro-active stance while striking a balance between national and international commitment. Article 21 of the Constitution which guarantees right to life interpreted to include right to health and dignified existence, not merely animal existence; Consumer Protection Act, 1986 which ensures consumers access to a variety of products (inclusive of drugs) at competitive prices and which provides remedies against excessive charging of prices and unfair trade practices; Competition Act (which replaces MRTP legislation) which provides for control of monopoly, duopoly, oligopoly, concentration of economic power, monopolistic and restrictive trade practices; the various drug legislations like Drugs and Cosmetics Act, Drug Price Control legislation, Drugs and Magic Remedies Act; Contract Act, 1872 which prevents contracts in restraint of trade; can all be utilized to the maximum extent possible. While modifying domestic law. Articles 7,8,29.1,41 of the TRIPs which state that: there should" be a balance of rights & obligations; international transfer of technology should not be adversely affected; patent applicant should indicate best mode of execution of invention; fair and equitable but not costly or complicated remedial procedures should be provided; can be given effect to.
TAXATION OF INCOME GENERATED OUT OF INTELLECTUAL PROPERTY RIGHTS

Exploitation of Intellectual Property Rights (IPR) is fully attempted to garner as much revenue as possible to the owners of the IPR. The boundaries have been enlarged due to WTO regime and the market extended to the global level. This exploitation of IPRs generated enormous revenue to the owners in various sovereign states. The generation of revenue is out of competitive market located within such sovereign states. At present the income generated in different sovereign states are taxable depending on the mutual agreements between the sovereign states. The mutual agreements between various sovereign states were necessary in order to protect the hardship to the income earners from being taxed in both sovereign states.

At the present context of WTO, the exploitation of IPRs could result in direct revenue to the owners of IPRs either on account of royalty or licence or any other mode or methodology adopted by them. This revenue is generated in a particular market situated within a sovereign state, but such income realized could be taxed in the sovereign state to which the owner of IPR belongs. This would result in undue competition in the market indirectly benefiting advanced countries which have rights in respect of the various innovations and developments. The third world of under-developed countries which are the real markets for the advanced countries to exploit would still get exploited to the extent which is beyond the scope of WTO. Indirecdy the wealth of these markets
would get transferred to advanced countries through benefit to the owners of IPR as well as the sovereign state to which he belongs. The sovereign states which are permitting the IPR owners to operate in their market should be adequately compensated and the revenue generated, garnered out of the market in such sovereign state shall also go to the coffers of such sovereign state. In the context of these, the following formulations can be made to ensure appropriate revenue sharing by the sovereign state and the IPR owner.

a) In respect of IPR rights used and utilized by the IPR owner either directly or indirectly through any modes of transfer in a market situated within a sovereign state then, income generated by the IPR owner shall be taxed only in the sovereign state in which the market is situated to the extent of income generated out of the market situated in the sovereign state.

b) In respect of any rights conferred by the IPR owner for exploitation or utilization by a resident of any other sovereign state to be exploited by him in such state, then, the income derived by the IPR owner by grant of licence or any other modes of permission shall be taxed at 75% of the normal rates applicable in the respective sovereign state.

c) In respect of advertisement expenditure, specify legislation must be brought to levy tax on deemed income as a percentage on advertisement expenditure if the taxable income is below certain limit.

D) To provide legislation to preserve culture of our nation and restrain the effect of foreign culture through education etc.

E) Provide legislation for protecting persons investing their money in companies which run under limited liability theory-The Government reduced interest on savings on small people.