CHAPTER 10
CONCLUSION

The aim of this research work was to understand the various provisions of TRIPS in WTO in respect of IPRs dealing with industrial property and their binding nature in individual nations who are members of WTO esp India. The reason being the provisions of TRIPS are part of a multilateral treaty but in effect is a set of new international rules on IPRs and provides the minimum standard/ requirement to be adopted in enacting municipal laws for its compliance so as obtain worldwide protection. It is this compulsory requirement that gave raise to lot of apprehension among the public, accusation against the government which gave raise to lack of consent among the States in giving effect to the provisions of TRIPS in establishing changes and procedures in Municipal Law. In this research work it has been attempted to explain the various provisions of IPRs in respect of industrial property in TRIPS and analysis the impact on municipal law and the impact on domestic industries, internal economy, people who are used to practice different situation complying the existing law of the country. This study will reveal the complexities of problems faced by the government in agreeing to the terms of TRIPS as a minimum standard to be followed in their municipal law of the country a pattern of life, which is alien to us.

This being a new area, in the initial chapters the meaning and historical developments of IPRs and the legal position in various
international treaties were discussed. This study demonstrate that the IPRs that was incorporated in the 8th Round at Uruguay which establish the WTO was neither new nor gaining the status of international treaty recently. These IPRs are already in force under various treaties, which were mostly under the administration of World Intellectual Property Organisation popularly known as WIPO. The importance or the success in bring these IPRs in respect of Trade under WTO a new world institution was explained as it contains various provisions for monitoring the members compliance, Dispute Settlement understanding which take action against members for non compliance, a Board to Review the progress at regular inter well above all an establishment which function to administrate and to expand further and further to strengthen the organisation.

To study the importance and implication of the law on IPRs on developing countries municipal law, the provisions of IPRs were discussed and the change required in our law was studied with necessary consequences.

The laws on IPRs were municipal in nature. The parliament of our nation is supreme and final authority in concluding the terms of individual provisions taking into account the government policies, constitutional governance and the requirement our people. But now the TRIPS provisions as agreed among the member countries stipulates the minimum standard on the municipal law of each country should carry is a deviation from established practice of parliament is supreme in its municipal law making power to its nation. In this regard the sovereignty
of the nation, supremacy of the parliament, social objectives of the people were discussed. The fundamental rights guaranteed to the citizens under the constitution were discussed. Further the government's obligation under chapter IV A of the constitution, which is the basic concept in governing the nation, was discussed. While amending the municipal law in conformity to TRIPs provision whether the basic structure of the constitution was altered or changed was discussed.

India has been an important country in the negotiations of TRIPS and the establishment of WTO in the Eighth Round at Uruguay Round. The common understanding is that in this we have been able to evolve a balance package meaning thereby that gains and losses are finally turned. However the impact on India is very important. There are wide ranging apprehensions and accusation beginning with that our sovereignty was compromised, cost of medicine, agricultural, unemployment and industry as a whole would be greatly affected because the provisions are suitable to Transnational companies of developed nation like USA, who are grown well and duly protected by their nation under their domestic law while the TRIPS agreement was entered into. The analysis of the various provisions of Municipal Laws and the provisions of TRIPS agreement clearly demonstrate that the basic tenor of the agreement is the protection and enforcement of IPRs and no provisions provided as how it enable to attain the prime objectives of the treaty for transfer of technology and dissemination of technical knowledge to the advantage of the consumer like our country. In respect to the provisions of TRIPS and the manner of its conclusion as a treaty,
which sought to be ratified under our constitution is not valid unless and until due consideration was given by the parliament for enacting municipal laws in conformity to TRIPS.

On going through the various provisions of TRIPS and the requirement of amendment to our Municipal Law clearly demonstrate that our importance and orientation to the protection and enforcement of IPRs is social in nature whereas in developed countries it is not so. It is an admitted fact that the Developed countries like USA, UK and Canada etc who are economically advanced and industrialized developed nations who look into the developing nations to expand their market. However the Municipal Laws of the developing nations did not protect and enforce IPRs as it was done in their Municipal Law and because of this the developed countries could not expand their market for their produce in developing nations, which provide ample and wide opportunity for their economic development and further industrialisation of their industry. Further they found that nation like India where only process patent is permitted and the period of protection is 7 years for medicine and food and for others 14 years are not advantages to them. Therefore the developed countries inventions are imitated or counterfeited as they alleged and thereby the cost of produce is less and reach the global market to the disadvantage of the developed countries market potential.

In order restrict this advantage to the developing nations TRIPS extended or fixed patent protection to 20 years and permit only product patent in all irrespective of the area on invention involved. This in turn will restrain the countries that produce the imitation by adoption of existing
technology and reach the market earlier. This put the IPRs holder to claim and exploit maximum advantage to their invention. Therefore the claim of IPRs holder to claim extended period of protection to enable and provide more technological invention and transfer of dissemination of knowledge is to be ascertained.

On the other hand the developing countries like India where the process patent is granted and also the period of protection is lesser years since these countries treat IPRs as the property of the nation and the limited period or lesser period of protection is granted based on the nature of goods concerned only to enable the right holder to exploit the IPRs within that period so that after the period it will be in public domain.

When a Man by the exertion of his rational powers has produced an original work, he seems to have clearly a right to dispose of that identical work as he pleases, and any attempt to vary the disposition he has made of it appears to be an invasion of that right. (F.N. Blackstone - Commentaries on the Law of England Book 11).

The main reason or the origin of Protecting IPRs lies not as a shield to protect author's right but as a sword to prevent unauthorised publication of books. Lord Camden who moved the judgment of the House placed justification for limiting Copyright not on the theory of property but on public interest only.

Till the Patent Act, 1972 passed the Indian Patent Law was formulated based on English Law. The Tekchand Report of 1949 demonstrated that
the patent position in India is favorable only to the British and not to Indians. The Committee observed:

"The Indian patent system has failed in its main purpose, viz., to stimulate invention among Indians and to encourage the development and exploitation of new invention for industrial purposes in the country, so as to secure benefits thereof to the largest sector of the people"\(^1\)

Thereafter the Government had appointed one more committee under the chairmanship of Justice N.Rajagopala Iyengar to look into Indian Patent Law and designs Act, 1911. His observation as to the efficacy of patent system is worth noting:

... that monopoly created by the patent and the reward to the inventor by the grant of such monopoly offer advantage which have been claimed for the system, only in the highly industrialized countries which have a large capital available for investment in industries and a high degree of scientific and technological education.\(^2\)

Even though Justice Ayyangar realised the limitations of the patent system, he recommended it for India with substantial modifications to suit the Indian environment, public interest and our existing model of economic development. The observation of Justice Ayyangar in this regard is quite pertinent:

With all the drawbacks the system involves in its application to under-developed countries, there are no alternative methods for

\(^1\) Dr. Bakshi Tekchand - Report of the Patent Enquiry Committee 1948-50
\(^2\) Report of the Patent inquiry committee 1950 Justice N.Rajagopala Ayyangar
achieving better results. I consider that the patent system is the most desirable method of encouraging inventors and rewarding them and though at present Indian inventors take a small share in the benefit of that system, with the increasing emphasis on technical education, and the number and quality of the research institute that have been established in the country, together with the rapid industrialization that is proceeding, one may look forward to a time when the Indian research worker and inventor will take advantage of the Patent law. Further, the patent system has been working in India for over a century. There is therefore sufficient, justification for the retention of the patent system.


However in the context of TRIPS agreement, these provisions required amendment so as to be in conformity with the former. Failing which our country, as member in WTO answerable before the dispute settlement body, which is the highest enforcement body in the world constituted under the multilateral agreement.

As may be seen from the treaty provisions, if the Municipal law is not changed in conformity with TRIPS, after the transition period provided under the treaty then any member can file a case against another member before the dispute settlement body which only uphold
TRIPS provisions in preference to Municipal Law. It is a serious and mandatory compulsion which needs to be looked into.

Having seen the impact of TRIPS on Indian Municipal Law, it is to find ways and means to harmonise the provisions of TRIPS and Municipal Law so as to achieve the principle and objectives enumerated in Part I Article - 7 and 8 of the provisions, which annex the multilateral agreement to WTO.

The basic tenor of WTO, IMF and World Bank is to facilitate free trade without barrier and tariff protection and to encourage competition in private sector and improve direct investment etc. However Article XVII of the GATT deals with State Trading Corporation, stipulates that any state enterprises of any contracting party in its purchase or sales involving either imports or export shall not discriminate in the imports or export by private traders.

It shall make purchase or sales in accordance with commercial consideration including, price, quality, availability, marketability transportation and other conditions and shall afford the enterprises of other contracting parties adequate opportunity to compete for participation in such purchases or sale.

This is just opposite to our present industrial structure where the service sector and important sectors like Defence sector is under the exclusive domain of the Government and no private participation is allowed. Before any steps taken in this regard the Parliament and the Executive must look into the need and the complexities involved
conforming to TRIPS and it is advisable to consider this issue under the umbrella of Art 7 and 8 of TRIPS.

In 1991 when India encountered balance of payment crisis she had to approach IMF to tide over the crisis. India availed the structural adjustment loans, which entailed India to comply with certain conditionality for correcting its fiscal situation. As part of the process the Indian Government embarked on the course of economic reforms as persuaded by the IMF. This resulted in Government scaling down/ withdrawing assistance to Government enterprises. In recent years it even encourages State Governments to withdraw agriculture subsidies to actual cultivator in compliance with TRIPS to which it promised to provide additional funds.

As far as its annual budget is concerned, in compliance with WTO provisions it has stopped giving subsidies to agriculture. This act of stopping of providing subsidies to agriculture in compliance to TRIPS provision till now the nation was not expressly informed about the reason about it. The Agriculture sector in India, which is already suffering due to increase in cost of input such as fertilizers etc, drought and other marketing drawbacks suffer further and agitation throughout India is in vain and in certain area the agriculturist commit suicide due to drought and poverty.

However the Government as an executive body should have created awareness among the public and State Government that it being a member to WTO, the Municipal Laws in respect of IPRs have to be in conformity with TRIPs provisions and therefore the Government is
constrained to take various measures - which cannot be opposed and has to be complied in the larger interest of the nation.

In the case of disinvestments of Government share in Government undertaking the policy of the Government is sandwiched among the various international organisation policy viz., IMF, World Bank and WTO. As we have seen earlier IMF who is lending funds for providing structural adjustment imposes conditions that the Government should withdraw its assistance to Government Enterprise and now the WTO provides that the Government enterprises shall not have preference in purchase and sale etc which result in total disorder and collapse of public sector which is not warranted nor permitted to be done as per our policy of mixed economy in various sectors.

However the Government for the reasons best known to themselves are scaling down its shareholdings in profit -making public sector enterprises and allow private sector/basically Transnational corporation in the essential sector without proper stipulation about the running of the organisation in the interest of the nation. In this regard the Government shall and should invoke Article 7 & 8 of Part I of the WTO so to retain its policy of mixed economy and continue its public sector enterprises or impose certain condition that is required for managing these enterprises as per the Government norms. Even though the Government has brought regulations in compliance to TRIPS, it has not brought any regulatory measures in case if they commit default in Municipal Law. It is a fact that we allow and treat foreigners equal to Indian national in law but in reality they reside abroad and operate in
India. There is no express commitment from them for any violations of Indian Law or the act contains any penal provisions to be enforced the occurrence.

Ex. Bhopal tragedy is a glaring example where the proceedings against the culprit has taken so long and so far that it was settled out of court. I am not blaming for a moment that the settlement reached out of court is not correct, but the Municipal Law does not have any machinery to do anything even though such a big genocide happened in our land. Compare this with the US Government action when twin tower was exploded.

Ex. In the case of disinvestments in the case of Maruti Udyog Ltd, the MD appointed by Indian Government, Indian national on his retirement continue as MD to represent the foreign collaborator declared that right the Govt holds on these company is only a shareholder and therefore her right is to receive annual Reports and dividend if any declared and cannot advise the company to follow certain policy of the Govt.

Ex. In the case of Telephone Industry, the TRIPS did not stipulate Government to permit its infrastructure for private use even for rent. If the Government did not allow its Infrastructure then it is possible that the person who wants to enter the industry will have their own which will create more employment and investment, which is beneficial to our nation.

On the other hand the Multinationals brings only technology and use our Telephone industry and make money for which the
government and the head of the Telephone company is a silent spectator or act as a mere landlord and to receive rent from the tenant /multinational.

The TRIPS never stipulates that the Government should not own enterprises but only stipulates that there is no discrimination in purchase or sale etc., but the Government in its disinvestments policy was so anxious to sell away oil and important service sector, which is important to the nations interest and yield revenue. The Govt can also hold vast immovable properties acquired and in ownership under public exigencies.

It is sad to see that some of the advertisement where the public sector going to private proudly announce that they are no more public and you can rely them for service, so also certain public sector unit still continues to advertise that we are national, for Integration of nation, support them. I am referring to this attitude not to find any fault in their advertisement but in a global world where profit /profit, money and money alone involved, the Government should raise to the occasion and make the people of Indian feel and concerned for nation and to safeguard the nation’s interest.

The Government should stipulate as a condition against foreign companies to identify the person who will be responsible for domestic law compliance. In formulating policies the Government should not allow foreign nationals to acquire property in India especially in the service sector by invoking Article 7 and 8 of the TRIPS and also in the interest of maintenance of peace and security of India.
In formulating policies the Government should impose the compensation clause also in case of acquisition during domestic emergency. In this regard it is my suggestion that Government need not sell any Government industry but should hand over the same to our own entrepreneurs to run it as a professional organization on some agreement of lease or other method may be evolved. This will be in conformity to TRIPS provisions and also that the Government property shall continue to be with the nation's control.

The Government should also verify goods coming into India ie fit for our culture and use failing which it can invoke appropriate provision and banned it.

Ex. pepsi and coca cola. it was alleged that it is not good for health. But continue to do business and to our dismay our entire soft drink industry was closed. On the hand India being a hot country bound to consume more water, which lead to dangerous situation consumption of more drink as substitute for water.. Whereas Kerala Government advertise to drink tender coconut water because it was abundant in supply for which no taker and to save the agriculture industry which is ruined.

The evolution of GATT 1947 to GATT 1997, it may be observed that it is the developed countries at whose instances these multilateral agreements were concluded. It always put pressure on developing countries under the guise of trade negotiation to benefit more and protect their trade interest. Further in the case of applying the rules and exceptions also the Developed nations promote their interest only. The
reason being the rules that is incorporated, and put as multi-lateral rules are not the law evolved by itself which is the main criteria for the development of international law but pushed up to its present status by these developed countries where these are in existence and proved beneficial in their municipal law. The developed countries fully aware of the consequences in implementation of these rules and therefore even before the tabling of these rules before the international forum, full discussion were undertaken by the industry, legal fraternity and government machinery and others of the developed nations. Further no further compliance or act need from their end as it is already in force in their nation.

It is pertinent to not that when the GATT 1947 was formed, the US refused to ratify the International Trading Organisation like the present WTO, because at that time its faced industrial depression and does not want an international organization like ITO to regulate trade as an international subject. In agricultural sector it receive concession in the treaty under Art XI.

During these tenure USA enter into various bilateral and multilateral treaty for its economic development. It always invoke special and super sanction against other countries to bring it to its terms. The World Bank and IMF the international bodies were available to enforce the views and polices of USA on those countries who sought its help under the guise of advise for development.

After the country's development, US found that its market surplus is more and it wants to expand its market in developing nations, which
provide good potential for its economic growth. Before taking steps they study the economic policy and rules and regulations of the developing countries and found that the law and policies on IPRs are not to their advantage and treat it as drawback for their entry and success. They found that the economic policy of the nation like INDIA is socialistic pattern of society where the public interest is more important than the individual right or benefit. Further they found that protection and enforcement of IPRs are minimal and ineffective according to their expectation and on different philosophy. In order to get over the deficiencies, while framing TRIPS, they provide market economy and priority to IPR holders than social welfare, which cannot be discussed nor opposed but was accepted by the Developing countries like India. This position cannot be accepted outwardly but the fact remains that it is a fait accompli, the country has to face the challenge.

Even after the conclusion of TRIPS, US raise various issues to protect its own interest. It impose restriction on Indian shrimps on the ground that they are not turtle free. However it has been held against USA. Further in respect of grant of patents they followed certain norms which according to us is harmful to us. Ex Patenting of turmeric, neem, Basmati.

United States and European Union complaint against India for imposing condition regarding indigenization requirement in Automobile sector, i.e. 50% by the third year and 70% from 5th year and trade balancing requirement over import value. The panel found that India violated its GATT obligation. However for reasons best known, we have
tendered apology to the Appellate Body and withdrew the above appeal filed against the said judgment.

The media which runs 24 hours in our nation never address these issue for public knowledge and debate. In this regard the Government should persuade them to do it in public interest. Trebilcock and House states that from a trade theory prospective, it is far from clear that all countries should be required to maintain the same level of IPR protection. The protection of these rights constitutes monopoly rent to the innovator. This provides Incentive for innovations, but also may entail at least short-term consumer welfare losses and may discourage imitation and adaptation by competitors, which themselves constitute valuable economic benefit to the creators. Therefore the level of IPR protection each country decides to afford will thus be rationally related to whether its comparative advantage resides more in innovation or imitation and adaptation of innovation made elsewhere, and the relative weight it gives to the interests of consumers, imitators and innovators. Further protection cannot be at single level for all technologies or sectors. The trade off between the economic benefits of innovation and imitation would vary quite considerably from one field to another.

Eg., Computer technology, pharmaceutical. Further very strict protection will lead to unwanted racing and wasteful outlays on research development. This will also bar the Invention on adaptation of invention developed for patent for further development.

Apart from WTO, where the IPRs are protected under the multilateral agreement TRIPS, the agreement also include for
implementation the Paris convention for the protection of industrial property established in 1883. This convention provides for national treatment principle. The Berne convention for copyright sets minimum standards with respect to authors' rights and also contains a national treatment and a Most Favored Nation obligation. The World Intellectual Property Organization popularly known as WIPO was established, as a special agency of United Nation to administer various multilateral treaties on IPR. Even though developing countries like India and Brazil opposed the TRIPS under GATT in the light of WIPO, the developed countries under the guise of new treaty brought the powerful Dispute Settlement Mechanism (DSM) and brought all IP related to TRADE. Therefore now the necessity of the nation to develop, provide and protect IPRs in respect of Patent, Geographical Indication, trade mark to our traditional knowledge, use of Herbal knowledge so that claim like Neem and Basmati shall not be repeated.

Now under TRIPS and other agreement provides equal treatment to all persons irrespective their nation and their residence and most-favoured nation treatment to nations, the extra territorial application of the Municipal Laws and regulation in respect of person who may or may not reside in the domestic territory is to be implemented. It is further noted that in trade the activities of transnational corporation may materially affect the domestic trade of the country. Ex through Indian persons it may exploit cheap, unskilled labour without transferring skills and technologies required for dissemination and development of knowledge to the country. The
Municipal Law may impose covenants like Insurance, International Bond for default, minimum level of assets in India, put enough security clause while permitting high-tech, high-risk industry where domestic skill or domestic technology is not developed.

Ex. Atomic Power Plant or Chemical Plant for which there exist no technical person or knowledge available but the land and labour may be used by Transnational Corporation based on the less stringent municipal law of our country. It is here the developing countries like India should stipulate condition under Art 7 and 8 for starting hazardous industry where we don't know the technology nor skilled labour to disclose full technology and consequences for failure and provide deposit with Govt for contingencies.

This study will reveal that there is some degree of flexibility for developing countries like India in the implementation of the TRIPS agreement if the issue is approached cautiously using expertise in the field and political determination to implement in conformity with our conditions and needs.

The development of detailed provisions on enforcement is a major success for TRIPS then to the pre existing conventions on IPRs. The agreement in effect is an international trade law of WTO where the members are the person who is to follow the minimum standard in IPRs and specific obligation related to administrative and judicial procedures including on evidence, injunction, damages and penalties in case of infringement.
The Member Countries should develop opinion in Block to prevent unilateral action undertaken by the United States under special and Section 301 of its Trade & Tariff Act in the light of the enforcement mechanism of DSB in WTO.

One of the main concerns of developing countries with the adoption of the TRIPs Agreement has been the extent to which the new rules will help the transfer of technology, a vital element to foster economic development of their country. Though it is too early to provide conclusive evidence, the strengthening and expansion of IPRs are likely to adversely affect the conditions for access to and use of technology, and thereby the prospects for industrial and technological development in developing countries. Strengthened IPRs may increase royalty payments required by technology-holders, as well as the imposition of restrictive practices on licensees. Moreover technology-holders, unless an effective system of compulsory licenses is established, may simply refuse to transfer their technology and block industrial initiatives by persons in developing country.

Further reverse engineering and other methods of imitative innovation - that industrialized countries have extensively used during their own progress of industrialization and found on facts that developing countries are practicing - shall be increasingly restricted, thereby making technological catching-up more difficult than before.

Developing countries may, within the framework of the TRIPs Agreement, provide measures aiming at fostering technology transfer and dissemination of knowledge and avoiding abusive conditions in licensing
agreements. They can establish different types of compulsory licenses since the Agreement does not provide the grounds under which such licenses can be granted except certain grounds as the national emergency or extreme urgency, dependency of patents, licenses for governmental non-commercial use, and licenses to remedy anticompetitive practices are specifically mentioned.

In this regard I have discussed the opportunities and challenges that is available to INDIA and the action to be taken to maximize the benefits under the treaty. In this it is the developing country's strength if the put forth their grievances in Block because in WTO one member one Vote and no VETO.

National laws can also provide for the granting of such compulsory licences whenever the title-holder refuses to grant a voluntary license "on reasonable commercial terms" and for other reasons, such as public health or public interests at large. The text of the Agreement is also open with respect to the rights that can be exercised by the licensee in areas including production or importation.

Further under Section 8 (Part 1) of the Agreement establishes certain conditions for the control of anti-competitive practices in contractual licences relating to IPRs. Practices that may be prevented are those that "constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market" (article 40.1). In other words, the control of such practices should be subject to a "competition test", as requested by industrialized countries during the failed negotiations of a Code of Conduct on Transfer of Technology.
Section 8 sets forth the rules within which the transfer of technology by means of licensing agreements may be regulated at the national level. Many developing (and a few developed) countries have enacted in the past laws on technology transfer that limit the parties' contractual freedom in certain respects. The aim of the TRIPs Agreement is to put such laws under the framework of competition law, and thus avoid the use of other criteria (e.g. impact on development) to judge and condemn restrictive practices.

The impact of reinforced IPRs in such countries is likely to be felt not only in terms of market prices of protected products (in India, for instance, it was noted that product patents will push drug prices up by five to ten times; Karandikar, 1994), but also of the conditions for the access to foreign technology and the options available to advance in the industrialization process. In particular, the new rules are likely to affect the bargaining position of local firms to acquire technology, and make access to technology more problematic for them (Skolnikoff, 1993).

Though one of the arguments of industrialized countries during negotiations was that higher IPRs standards would promote foreign direct investment (FDI), available evidence on the nature of the FDI/IPRs relationship is very inconclusive. Data on FDI flows to countries with allegedly low levels of IPR protection show that the perceived inadequacies of intellectual property protection did not hinder FDI inflows in global terms. Thus, FDI increased substantially in Brazil since 1970 until the debt crisis exploded in 1985, while in Thailand FDI boomed during the eighties (United Nations, 1993). In contrast, many
developing countries that adopted long ago standards of protection, comparable to those in force in industrialized countries, have not received significant FDI flows.'

After the disintegration of the U.S.S.R. the slow adoption of liberalist policies in the disintegrated States of the Union, has led to a change in the economic thought and policy in China itself albeit slowly. These have had an impact the world over. In addition, on account of the tremendous strides in the development of Science and Technology, thanks to the recent advances in chips and digitals and the Internet and the Website, the world has shrunk to a Global Village. Information and knowledge are made available and interaction and communication made possible at fingertips. With the advent of these modern facilities for storing and sharing of knowledge and for trade and commerce, the policy of liberalisation in intercourse and trade has become inevitable in India as well. This concept of liberalisation has led to globalization and disinvestments of Public Sector Undertakings. Since the budget for 1993-94, there has been a major shift in the basic pattern introducing conceptual changes without substantial resistance or even strong notice. Subsequent budgets till date have taken the global trends into account leading to liberalisation and disinvestments. The recent shift in the liberalization policy is the imposition of anti-dumping duty to protect Indigenous goods.

In a progressive Society such shifts in the basic pattern of the economy and polity are inevitable to suit the needs and demands of
changing times. Aristotle spoke of cycle of Governments and Mayne's "Ancient Law" perceived changes in the social pattern and notions of Law.

A legal pedigree or sanction is required to justify such shifts in the state policy from the socialistic pattern to liberalisation and disinvestments. This raises a substantial question of law as to the interpretation of the Constitution, which merits an authoritative decision by the Supreme Court of India, particularly when it has been held that the preamble is part of the Constitution and the objectives prescribed therein constitute the basic structure of the Constitution.

With regard to the effects of the Agreement on innovation, little may be expected in terms of an effective promotion of R&D in developing countries. Innovation in developing countries with low R&D outlays is mostly limited to "minor", adaptive innovations that are not captured by the patent system. Other innovations and types of valuable knowledge - such as the local and indigenous communities' knowledge of the use of plants - are not protected by IPRs.

In particular, patents will be simply out of reach or irrelevant to the least developed and many other developing countries. The patent system as an incentive to local innovations is unlikely to work, except in those countries where a significant scientific and technological infrastructure already exists, and where there are firms big enough to engage in substantial R&D activities.

The adoption of the TRIPs Agreement represented a major victory for industrialized countries and for their most active industrial lobbies. It mirrors the standards of IPRs protection that are suitable for
industrialized countries at their current level of development.

Such an agreement, however, allows flexibility - under certain limits - in the development of domestic legislation consistent with social and economic needs.

In order to use the margin of maneuver left by the Agreement and to avoid or reduce eventual negative effects, developing countries need the time, expertise and the political determination to implement the Agreement in conformity with their own conditions and needs.

Their main guiding criterion for the reform of national laws for that purpose lies in striking a proper balance between the interests of titleholders and the public at large and, particularly, between the protection of technology, on the one hand, and the promotion of its transfer and dissemination, on the other.

SUGGESTION

The Philosophy of Indian People and its leaders are that the creation of intellectual work is for the welfare of the people and the intellectuals are the trustees to preserve the same and made available those intellectual creations for the welfare the public benefit treating as public property.

The concept of grant of IPR is not merely to enable patentees to enjoy a monopoly for their benefits but for public interest only. The grant of IPRs should neither become law for exploitation nor laws for monopolization. The municipal laws, which confer IPRs, should be
framed in such a way to sub serve social & economic welfare and to a
balance of rights and obligation.

Centre for Public Interest Litigation Vs U O I and Others\(^3\)
The decision of the Government to sell majority of shares in Hindustan
Petroleum Corporation Ltd. and Bharat Petroleum Corporation Ltd.to
private parties without Parliament approval or sanction is contrary to and
violative of the provisions of the ESSOC (Acquisition of undertakings in
India ) Act, 1974 and other relevant acts.
The Central Government restrained from proceeding with dis investment
resulting in HPCL and others ceasing to be Government companies
without appropriately amending the statutes concerned suitably for two
reasons both constitution and statutory.

The representatives should be proactive with their proposal to push
through before the forum than reactive and to do their homework on
such issues that affect our nation. In this connection I can proudly
mention that our Commerce Minister Mr. Murasoli Maran who
represented our nation at Doha such an approach that even the
developed countries appreciated.

The aim of my thesis is two fold. One is to demonstrate the
implication of TRIPS on our nation in all respects both at the legal and
social level. The relevant portion is made as Annexure 1

In respect of legal level the recent decision of the Supreme Court
clearly held and took judicial notice for what is required in the present
circumstances. With regard to the social aspect I am very happy to say

\(^1\) 2003 AIR SCW 4671.
that our Commerce Minister, s Declaration at Doha is self-explanatory and it should be an eye opener. My opinion was further strengthened when the present Commerce Minister Mr. Arun Jaitley who is a Senior Advocate followed the same analogy of his predecessor and made a point to the developing nations as a guide in WTO.

Therefore our country should form a road map with the destination to self-sufficiency in technological development and dissemination knowledge to all for further development of our nation against exploitation by Developed nation/Transnational Corporation which may be called the Intellectual Property Policy.

**INTELLECTUAL PROPERTY POLICY.**

Reduce distortion and impediments to international trade, the motive for grant of IPRs is to encourage invention and transfer and dissemination of knowledge and nurturing the economic development of the country who grant right, protection and enforcement.

**AIMS & OBJECTIVES OF THE POLICY:**

The aim of the I P Policy is to sustain and grow creativity in an ethical environment that recognizes the importance of innovations and assists in translating them into products, process & services for commercial exploitation and to achieve the widest public good. Economic growth of a country is technology driven. The motive force of technology is innovation and creativity. For meeting the challenges arising out of the new IP regime and to derive maximum benefits the innovative and creative activities have to be stimulated, encouraged, protected and
exploited commercially and assist in dissemination of scientific information thereby increasing the general public good.

**Procedure for implementation of the IPR policy**

1. Establishing a network of institutions and committees consisting of govt nominees in IPR department, industrialist, businessmen, Academicians, NGOs to create awareness amongst the various sections of the people about the IPR that is in force and for future development.

2. Stimulating and encouraging the innovative and creative activities in the country by nurturing recognizing, rewarding and providing effective protection for such activities under appropriate IP legislation.

3. Ensuring designing and implementing such IP legislation which will balance safeguarding the interests of the country and the commitments made to international treaties and conventions.

4. Take effective steps in framing group both like minded member countries to analysis the impact of various articles in TRIPS and represent as a group before the Review Mechanism/Board.

5. Devising mechanisms to expeditiously disseminate the information contained in the IP documents that are filed in various IPR Office for registration to the scientists, engineers, undergraduates of R & D, Personnel and other interested persons to keep them informed with the latest technological developments taking place in their respective fields as well as to grame strategic policies to safeguard their interest.

6. Establish offices to provide service of IPR knowledge for commercial use so that such use imparts the benefits of the IP to the public while safeguarding the interest of the creators or licensees of such of PA in the process awareness/action needed is generated.

7. Establish separate legal cell in every state capital so as to defend and protect the interest of IPR holders against unauthorized use or exploitation on false case. Create separate institutes with peoples from various fields to install confidence in the mind of the people to disclose traditional knowledge in Plant, medical and others on reward and form information data for reference and to assist in future invention.
8. The official organ of IP office must be upgraded to meet the challenge posed by the new IPR Regime and ensure that in the discharge of their duties they owe duty to the nation.

9. The govt shall provide various committees with enough funds to provide assistance for carrying out research work.

10. Ensuring, designing and implementing such IP legislation, which will balance of safeguarding the interests of the country and the commitments, made to international treaties and conventions.

11. Provide infrastructure and facilities to evaluate and exploit the IPRs granted and disclose them to persons in the field to improve their skill and knowledge for the use of inventions based on the available traditional knowledge and sources in India.

12. Establish separate committee to observe the implementation of these provisions and the consequential impact on social welfare of the people/industrial development etc. These committees should interact with govt reparative for making representation before TRIPS review board for appropriate relief.