CHAPTER 4


4. TRIPS PROVISIONS IN WTO AGREEMENT

Historically patents for invention, designs for industrial designs and Trademark for marketing the products were collectively known as industrial property. These three forms of Industrial property together with copyright in literary works forms intellectual property (IP).

However the agreement on Trade Related Aspects Intellectual property Rights popularly known as TRIPS, a multilateral agreement which is one of the main agreement which gave birth to World Trade Organization (WTO) an international legal institution, which encompass various other multilateral agreements in respect of trade, services, investments etc expand the definition of IPR and include the following three issues also under the TRIPS:

(5) Geographical indications including appellations of origin.

(6) The layout designs of topographies integrated circuits.

(7) The undisclosed information including trade secrets & test data.

However for the purpose of this research work it is restricted to the study and analysis of the provisions of TRIPS in respect of industrial property and its impact on industry, economy, welfare
measures that is unique to our nation India which is a developing country. The object of this work is to study the impact of TRIPS provisions in respect municipal Laws covering industries and the implication there under on India as a developing country.

Intellectual property is a class of property emanating from the creativity of the human mind that is of value to the society. By acquiring a legal right over the property, the creator of the IP seeks to ensure that he has exclusive right and possession over it and that the property can be put to use by others only with his consent. This exclusive legal right over his intellectual invention has to be granted by the State through its Municipal Laws. The responsibility of the State is confined to the enactment of the laws and the establishment of the judicial and administrative machinery for making available the IPR rights and for enforcement of those rights in the event of any infringement of those rights. It needs to be remembered that IP is a private property and therefore it is the creator of the IP who is to first establish and obtain the legal rights, and secondly to seek enforcement of those rights in case he finds that his rights are being violated by others.

The rights conferred under the Municipal laws in respect of IP are national in jurisdiction. Therefore the rights conferred under the Municipal laws extend over only to the territory of the country in which they are granted. Therefore creator of IP must seek and obtain
IPRs in each and every country in which he wants to enforce his rights.

The basic rationale for a State granting legal rights for the protection and enforcement of IPRs is that the recognition and rewarding of IPRs will stimulate creative and innovative activities, encourage investments in research and development and thereby promote the technological development of the country.

Blackstone explained the development of IPRs as under:
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 right¹.

The basic difference between this form of property and other traditional forms property is that, in IP the focus is on the produce of the mind, and not on the product itself. For example in industrial IP, it is not the material or goods which termed as property, but the intellectual creations, which comprise the method of manufacture, novel design and new trade mark are the creation of mind which should be protected.

¹Blackstone, commentaries on the Law of England Book 11
In the legal sense, IPRs means a bundle of rights recognised by the legal system. The owner is given the exclusive right to enjoy this bundle of rights as a form of property. The rights usually available to an owner as corporeal/ intangible property and can also be enjoyed by the owner of IP. Therefore the owner of IP has the right to transfer, assign or bequeath this form of property. But the perpetual right available to the owner of corporeal form of property is not available to the IP. Law limits the period during which the right in IP can be enjoyed. So it is always treated as a limited monopoly or statutory monopoly conferred on the owner by the statute on fulfilling certain terms. Such limitation is based on public interest. The individual right of IPR would vanish after the expiry of the specified period. Thereafter it forms part of common property falls on the public domain.

It is this important feature that, the ultimate benefit of IPRs and the intention of granting IPR is only for the betterment of the society at large distinguish IPRs from other property right. Because of this peculiar features, this form of property is recognized and protected by separate legislation. Some countries included in their constitution itself provisions for its protection: United States Constitution. Art 1 Sec 8 read as follows:
"To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries".

In India this right is always a statutory right whereas in certain countries like England it was approved under common Law also in public interest. Beyond the basic rationale of granting IPRs to creator in the public interest and welfare of a nation, there are a few major reasons as to why the industrialized countries like United States of America and England are now so keen to ensure adequate and effective protection of their IPRs not only in their country but in all parts of the world, including in particular major developing counties like India for the following reasons among other things:

(a) The industrialised countries in the world esp USA are losing their competitive strength in traditional manufactured goods to developing countries their comparative advantage in raising rapidly in the area of knowledge based industries or in the area of intellectual goods.

(b) The period between the two world wars was one of general surplus capacity, the great depression as it become known which brought about great insulation policy? However after the Second World War which changed the status of US which emerged from its

Intellectual property and criminal Law by N.S.Gopalakrishnan
isolation of the interwar period as the world dominant power with definite plans to make the world safe for capitalism for it had lot of interest at stake.

(c) The fundamental idea that determined a large part of the American government planning was that the country needed overseas exports for its surplus production that was estimated to be at least ten billion dollars. To achieve this and to save the country from closure of industries and face unemployment the world trade is to be liberalized and all obstacles to be removed for exports and competition of equal terms be allowed.

(d) Technology especially newer technologies is fast becoming the driving force behind international competitiveness and technology increasingly becoming an invaluable commercial and tradable asset: Protection and enforcement of one's IPRs is becoming a synonym for protection and dominance of one's market in the world.

(e) There is a virtual explosion in Information, communication, new materials and biotechnologies generally speaking in the frontier areas of technology, where the industrialized countries are enjoying a huge lead over developing countries. Past experiences has shown that unless this lead is protected through exclusive IPR ownership and protection, the developing countries quickly acquire them and erode their comparative advantage.
(f) The cost of Research and Development to develop and commercialize new products and processes is rising sharply, especially due to growing and rigorous standards pertaining to health, safety and environment.

(g) The large transnational corporations (TNC) are now the generators and if not the generators, the actual users of Research and development, intensive technologies. Even where the technologies are generated by individual inventors, small firms or universities and government owned research institutions the TNCs tend to acquire rights in those technologies with a view to commercially exploiting them around the world. Such exploitation rests upon the protection of their ownership and license rights around the world.

(h) The TNCs in industrialized countries especially in USA, were clamoring that in the absence of adequate and effective protection of their trade marks, patent, design etc., they were losing heavily to piracy in various markets notably in respect of pharmaceuticals, chemicals, agro chemicals, computer software, books, films, music etc.

The inclusion of TRIPS in the Uruguay Round Negotiation was at the instance of developed countries spearheaded by the United States. The overall American goal was to obtain a set of International
rules similar to free trade under GATT 1947 to ensure that American innovators in IPRs are as extensive and as effectively enforced around the world as in the US itself. Further according to other and US developed countries the existing international obligations in respect of IPRs in various conventions are not enforced adequately.

However developing countries like India sought to confine any agreement strictly to the trade related aspects of intellectual property, leaving the substance of IPRs to be resolved in their traditional domain of the World Intellectual property organization (WIPO). Further it based on the implicit rationales that it requires a balance between the interest of producers and consumers i.e., between those who develop the scientific knowledge or innovation and those who use the goods or services derived from it. But US in its imitable way subdued all the countries (invoking Sec.301 provision of US Trade Act 1974) opposition to TRIPS under WTO and it becomes a part of the multilateral agreement that established WTO.

The TRIPS agreement consists of seven parts ranging from Patents to Undisclosed information as mentioned earlier and contain 73 articles. It stipulates that various articles and provisions in other conventions were expressly treated as form of part of this treaty thereby in effect it covers all requirement for effective implementation of IPRs in full effect.
(1) A set of general provisions and basic principles that define the scope of the obligation, the relationship between the agreement and existing intellectual property rights convention as well as the concepts of national treatment and most favored nation (MFN) treatment as applied to IPRs.

(2) It provides specific standards concerning several instruments of IPRs protection and guidelines for the control of anti competitive practices in licensing IPRs.

(3) Guidelines for the enforcement of IPRs in Municipal laws.

(4) Obligations with respect to the facilitation in domestic legal systems of the acquisitions and maintenance of intellectual property rights.

(5) Criteria for transparency and provisions for the dispute prevention and settlement.

(6) Transitional arrangements for its implementation with specific reference to the needs of the least developed countries and to technical co operation and

(7) Institutional arrangement and final provisions for its executions.

The preamble to this multilateral agreement clearly declare and demonstrates that the object of members of WTO enter into this treaty is to reduce distortion and impediments to international trade, taking into account the need to promote effective and adequate protection of
IPRs and to ensure that measures and procedure to enforce IPRs do not themselves become barriers to legitimate trade.

It further desires to establish a mutually supportive relationship between the WTO and the WIPO as well as other relevant international organization.

It further recognizes to this end the need for new rules and discipline as follows:

1. The need for a multilateral framework of principles, rules and discipline dealing with international trade in counterfeit goods.
2. The underlying public policy objectives of national systems for the protection of IP including developmental and technological objectives.
3. Intellectual property rights are private rights.
4. Emphasizing the importance of reducing tensions by reaching strengthened commitments to resolve disputes on TRIPs issues through multilateral procedures.

The main features of this Agreement are that it set out the minimum standard of protection to be provided by each member. In each area of IPRs covered herein it defines the subject matter to be protected, rights to be conferred and the exception if any. It also
provide the set of rules that are to be incorporated while framing the domestic IPR laws and the procedures and remedies to achieve the TRIPS compliance. These rules contain civil, criminal and administrative procedures of remedies that must be made available to the right holders so as to effectively enforce their rights. The other important fact that differentiates this Treaty from all other treaties including UN Chapter is the dispute settlement procedures in which the members can raise their grievances against other member in respect of the implementation of compliance of TRIPS.

Though the provisions of TRIPS were discussed from 1986 it was concluded only in 1994 after lot of resistance by the developing nations like India. It is a treaty by itself and a self-codifying treaty, which contains everything for its successful compliance. It further requires the member countries that substantive obligations of the main conventions of the WIPO, the Paris convention for the protection of industrial property, Berne convention for the protection of literary and Artistic works are to be adhered to in their law. Therefore it is submitted that this Treaty is new but its enforcement is retrospective and goes beyond the period of its very formation i.e. to date Paris Convention and Berne Convention. It also adds new obligation, which are not in vogue in the earlier conventions.
In Part I Art 1 of this agreement defines the nature and scope of the obligation agreed by the members country. It stipulates that members are bound to implement the minimum standard of protection provided in the agreement within their own legal systems and practice. It however allows the members who are free to implement more extensive protection than is required under the agreement, but such protection does not contravene the provisions of this agreement.

The agreement covers various treaties that were entered into earlier i.e. Paris convention for industrial patents, Berne convention for copyright, Rome Convention for the protection of performers, producers of phonogram and Broadcasting organisations and IPIC treaty a treaty on IP in respect of Integrated Circuits.

The agreement sets these standards by requiring, first that the substantive obligations of the main conventions of WIPO, the Paris Convention for the protection of Industrial property and the Berne Convention for the protection of Literary and Artistic works in the most recent version with the exception of moral rights in Part 1 Art 2.1 and 9.1 of the TRIPS Agreement. It further adds a substantial number of additional obligations on matters where the pre-existing conventions are silent or were being inadequate. That is why it is popularly known as treaty of all treaty. As per this even if a member is
not a member of any of those treaties he is roped in without his express assent.

India is not a member of PCT. The parliament discussed many times the pros and consequences of joining the same and conclusively decided till the conclusion of this treaty, which gave raise to the establishment of WTO. But the executive has signed this treaty that contain clauses to the effect that the members of WTO are bound by various clauses in PCT and many other treaties that are in force even now.

In effect TRIPS is the model law that should find a place in every member country municipal law as a condition precedent. The details of various provisions in IPR laws shall require substantial changes in our law of the country. The main issue that radically changes are the Patent Act 1970, which provide only process patents for Pharma, Chemical and Agricultural produce to that of product, Patents. Again in respect of period of patent it extends to 20 years as against the period of 7 years for drugs and 14 years others.

In respect of traditional knowledge and agriculture we undertake to maintain self-regulations of our own rather follow any modern law. However, the strength of this resistance is to be seen in future.
It also provides legal status to undisclosed information as a form of IPR, which is totally against Patent, which provided protection for disclosure of invention.

The agreement also provides for enforcement of various other treaties that were in force and under WIPO regime.

Clause 2 of this article further stipulates that this agreement in no way empowered any members to derogate from existing obligations that a member shall bound to under other conventions such as Paris Convention, the Berne Convention, the Rome Convention and the Treaty on IP in respect of Integrated circuits.

As per the articles under Paris Convention, industrial property to be protected is patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin and the repression of unfair competition.

This inclusive definition includes many rights and obligations secured in various treaties are made obligation under TRIPS thereby extend the enforcement machinery of DSB to other treaties where no enforcement machinery is provided.
In respect of trademarks the India law shall take note of well known marks or representation that are in force or use throughout the world whole granting registration or defend Indian Trade marks.

The Act requires the amendment to provide service marks as also entitled to protection.

Part 1 Art 3, which deals with national treatment, is the vital consideration in the international trade. It stipulates or enjoin upon, that each member shall accord to the nationals of other member treatment no less favorable than that it accords to its own nationals with regard to the protection of IP subject to the exception provided in other treaties entered into in this regard. Therefore there cannot be any discrimination based on or between nationals and foreigners.

This article provides exception to countries, which are members of other treaties under WIPO are not bound to provide certain status like national treatment, most forward nation treatment and others rights guaranteed under TRIPS. But where this clause will be useful is not clear as of now.

The exception to this rule is not provided under this treaty but incorporates those that were guaranteed under other treaties, which are in force. This is not a correct approach in concluding a treaty, which provides enforcement machinery for implementation. In this Art
protection includes matter affecting the availability, acquisition, scope, maintenance and enforcement of IPR as well as those matters affecting IPR.

Art 3(2) provides the area of exception which a member can invoke only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this agreement and where such practice are not applied in a manner which would constitute a disguised restriction on trade. Here again the exception is possible only if it does not amount to restriction on trade. Therefore members while claim exception should enact laws, which lead to restriction on trade.

Part I Art 4 that deals with most favoured nation treatment (MFN) is also a basic concept, which is already in force for the success of free trade in international arena. It stipulates or enjoin upon every member that, with regard to the protection of intellectual property any advantage, favour, privilege, immunity granted by a member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other members. The member is exempted from this obligation if it derives those benefits under some other treaty.

Where these exceptions allow material reciprocity a consequential exception to MFN treatment is also permitted— e.g.
Comparison of terms for copy right protection in excess of the minimum term required by the TRIPS Agreement as provided under Art 7(8) of the Berne Convention as incorporated into TRIPS Agreement

Art 1.3 and 4: - It refers to person which in turn refers to national both natural or legal who have a close attachment to other Members without necessarily being nationals.

Part I Art 5: - The obligations under 3 and 4 ie national treatment and most favored nation treatment do not apply to procedures provided under the multilateral agreements concluded under the auspices of WIPO relating to acquisition or maintenance of IPRs.

Part I Article 6 deals with exhaustion of remedy: - Under this clause the members are permitted to raise issue in respect of intellectual property protection only if any violation of national treatment and most favored nation treatment occurs and not otherwise.

The object of this exhaustion clause is that the holders of IPR are not allowed to use that right in a way that will constitute barriers to the free movement of goods into a territory, dividing market. This is to preserve competition and the free trade, open market, global as
One trade zone. The restriction is applied to only members of this treaty and no outsiders/non-members. Unlike other articles, which include various other agreements, this excludes except the art under TRIPS.

Part 1 Art 7 deals with the Objectives of the treaty:

The general goal of TRIPS as provided in the preamble to this agreement is that it declares the objectives of the entire agreement on TRIPS is the protection and enforcement of IPRs should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare and to a balance of rights and obligations.

The objectives incorporated in Art 7 above are nothing but the crystallized expression and ambition of the Uruguay Round negotiations established in TRIPS by the 1986 Punta del Est Declaration and the 1988-89 Mid term Review. These objectives include the reduction of distortion and impediments to international trade, promotion of effective and adequate protection of IPRs and ensuring that measures and procedures to enforce IPRs do not themselves become barriers to legitimate trade.
These are major areas of interest to developing countries. It is for these reasons the developing countries select protection of IPR as a public right (absolute if i say so to emphasis the claim of developed nations) better qualified for protection of public order is against the social and economic welfare of the nation and even the political wisdom.

Therefore the inclusion of their apprehension as objectives of the agreement to attain, clearly to enable the developing countries to invoke this clause whenever a balance between the private right and public right is to be reconciled. It is a paradox important to bear in mind, these objectives while framing the various provisions for implementation of the WTO agreement in the IPRs laws in India.

Part I Art 8 deals with the principles of this agreement: -

It deals with the principles that should be followed by members in formulating their Municipal laws in respect of Seven Categories of IPRs mentioned earlier. Members may in formulating or amending their national laws and regulations adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio economic and technological development, provided that such measure are consistent with the provisions of this agreement.
It further empowers the members to take appropriate measures to prevent the abuse of IPRs by right holders or the resort to practice, which unreasonably restrain trade or adversely affect the international transfer of technology provided they are consistent with the provisions of this agreement.

This first part of the IPRs agreement deals with the basic objectives and foundation which stipulates that the protection and enforcement of IPRs as per the international agreement should promote technological innovation and to the transfer and dissemination of technology in a manner conducive to social and economic welfare of the Municipal State which formulate its municipal laws consistent with the provisions of this multilateral agreement popularly known as TRIPS. The agreement further empowers the members to takes appropriate measures to prevent the abuse of IPRs by right holders or the resort to practice which unreasonably restrain trade or adversely affect the international transfer of technology.

The object of my work herein is not to analysis any of the provisions of any individual IPRs but on the other hand to analysis the principle and objective mentioned for the introduction of this agreement and to see whether any provision is made in the agreement itself for the achievement of those principle and objectives and to analysis the implication on India’s domestic policies, industry.
economy and national law, the objectives as provided in the constitution of the nation for its governance.

The Art 7 and 8 herein, which is the declared objectives of many developing countries like India to become a member of WTO. Therefore the member country who wants to use this objective/principle clause must satisfy the pre-condition built in that article to their municipal law/amendment so that it shall curtail the abuse of IPR and at the same it should not restrain free trade or restrain free movement of goods and transfer of technology and not inconsistent to the provisions of this agreement. Therefore the member countries while invoke this clause should have enough materials to sustain against this clause.

With this background about the aim and objectives of the Agreement, we see Part II, which deals with the standard concerning the availability, scope and use of Intellectual Properties in three categories mentioned above.

Trade Marks

The basic rule for the grant of trademark is any sign or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings shall be capable of constituting a trademark. Such signs, in particular words including
economy and national law, the objectives as provided in the constitution of the nation for its governance.

The Art 7 and 8 herein, which is the declared objectives of many developing countries like India to become/made, a member of WTO. Therefore the member country who wants to use this objective/principle clause must satisfy the pre-condition built in that article to their municipal law/amendment so that it shall curtail the abuse of IPR and at the same it should not restrain free trade or restrain free movement of goods and transfer of technology and not inconsistent to the provisions of this agreement. Therefore the member countries while invoke this clause should have enough materials to sustain against this clause.

With this background about the aim and objectives of the Agreement, we see Part II, which deals with the standard concerning the availability, scope and use of Intellectual Properties in three categories mentioned above.

**Trade Marks:**

The basic rule for the grant of trademark is any sign or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings shall be capable of constituting a trademark. Such signs, in particular words including
personal names, letter numerals, figurative elements and combinations of colours as well as any combination of such signs must be eligible for registration provided that it is visually perceptible. Members may in certain cases make registrability depend on distinctiveness acquired through use and as a condition of registration that signs be visually perceptible.

Registration of mark shall be subject to use. However actual use of a trademark shall not be a condition precedent for registration. The nature of the goods or services to which a trade mark is to be applied shall in no case be an obstacle to registration of trademark.

The owner of a registered trade mark shall have exclusive right to prevent all third parties not having the owners consent from using it in the course of trade identical or similar to those in respect of which the trade mark is registered and such use would result in likelihood of confusion. In case of the use of an identical signs for identical goods or services a likelihood of confusion shall be presumed.

The new agreement provides for the registration of trademark used or proposed to be used in relation to services for the purpose of indicating the person connected with the provision of those services.

1 Sec 2 Art 15 to 21
In his Art 6 bis of the Paris Convention 1967 shall apply mutatis mutandis, to services.

It further stipulates that in determining whether a trade mark is well known, or not account shall be taken of the knowledge of the trade mark in the relevant sector of the public, including knowledge in that member obtained as a result of the promotion of the trade mark be taken.

The trademark is a means of indicating the trade origin or the owner of the goods, which bears the trademark under TRPS this benefit, was extended to even to owners of provider of services. In view of the growing importance the trademark carries and the permission of the Article that it can be sold or used with or without business proves a point in opposite direction.

Members may provide limited exceptions to the rights conferred by a trademark such as fair use of descriptive terms, provided that such exceptions take into account the legitimate interest of the owner of the trademark.

Initial registration and each renewal of registration of a trademark shall be for a term of not less than seven years. It can be renewed indefinitely by paying the required fees and comply the requirement of the respective act.
The registration may be cancelled only after an uninterrupted period of at least 3 years of non-use subject to the opportunity given to the right holder. When the trademark is under the control of its owner, use of it by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

One of the important requirements for use of trademark is provided in Art 20. The use of a trade in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trade mark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services or in question of that undertaking.

Art 21 dealing with Licensing and assignment empowers that the members may determine conditions on the licensing and assignment of trademarks. This being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered mark shall have the right to assign the trade mark with or without the transfer of the business to which the trademark belongs.
Members shall provide for the protection of independently created industrial designs that are new or original and significantly differ from known designs or combination of known design features.

Members shall ensure that the provision of such protection shall not extend to design dictated essentially by technical or functional consideration.

Art 25(2) is a special/specific provision for grant of protection to textile design. Members are free to obtain this protection under Design law or Copyright law.

After India acceded to the Paris Convention, the law on this need to be amended.

The owner of a protected industrial design shall have the right to prevent third parties not having the owners consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy of the protected design for commercial purpose. Members State may provide limited exceptions which do not unreasonable prejudice the legitimate interest of the protected design.
The duration of the protection of design shall amount to at least 10 years.

Patents:

Art 27 of the Agreement defines the patent able subject matter of invention as follows:

(1) Subject to the provisions of Paragraph 2 & 3 in Art 27, patent shall be available for any invention, whether product or processes in all fields of technology provided they are new, involve an inventive step and are capable of industrial application.

Subject to para 4 of Art 65, para 8 of Art 70 and para 3 Art 27 patent shall be available and patent right enjoyable without discrimination as to the place of invention, the field of technology and whether the products are imported or locally produced.

(2) Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect public order or morality including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that, such exclusion is not made merely because the exploitation is prohibited by their law.

See 5 Art 27 to 34
3. **Members** may also exclude from patentability (a) diagnostic, therapeutic and surgical methods for the treatment of human or animals

(b) **Plants and animals** other than microorganism and essentially biological process for the production of plants or animals other than non-biological and microbiological process.

However, members shall provide for the protection of plant varieties either by patents or by an effective Sui Generis system or by any combination thereof. The provisions of this sub paragraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

Members shall ensure that the provision of such protection shall not extend to design dictated essentially by technical or functional consideration.

Art 25(2) is a special/specific provision for grant of protection to textile design. Members are free to obtain this protection under Design law or Copyright law.

After India acceded to the Paris Convention, the law on this need to be amended.
Under Art 27, subject to Clause 2 and 3 patents shall be granted for any invention whether they are products or processes in all fields of technology if they satisfy the other criteria. Our country on signing the treaty i.e. Final Act at Uruguay, which establishes the World Trade Organization to which TRIPS, is an annexure gave birth to product patent in the field of process patent in Pharmaceutical and agricultural products.

As per Art 5 of Paris Convention when a product is imported into a country of the Union where there exists a patent protecting a process of manufacture of the said product, the patentee shall have all the rights, with regard to the imported product, that are accorded to him by the legislation of the country of importation, on the basis of the process patent with respect to products manufactured in that country. This is opposite to Patent Act 1970 and TRIPS provisions.

Further as per the Indian Act 1970, which does not permit working a patent for a process granted in India through import of a product by the patent holder. Further it does not confer any right outside India for manufacture or process etc.

Many developing countries like India, which changed their law to process patents in medicine and agricultural after detailed discussions at various stages compelled to revert their laws to suit product patent as envisages under TRIPS. This is one of the...
successful development by few developed countries on the rest of the world country under the guise of globalization and liberalization of Trade.

TRIPS came into force on 1.1.1995. However as per Art 65, which allows Transitional arrangements for developing countries to extend product, patent protection 5 years in addition to the initial period of 5 years for transformation. In effect the product patent is the law of the globe whether your intellectual thinks otherwise.

As per Part VII Art 70, which deals with the protection of existing subject matter under TRIPS, existing at the date of application of this agreement for the Member in question. It further emphasis that no obligation for happening before the date of this agreement or to restore protection if it gone to public domain after the date of this agreement.

The enforceability of TRIPS provision can be further visualized under clause 6 to 9 of Art 70 which mandates that every member shall abide by TRIPS whether transition period is available or not. Therefore Member country like India which has got time up to 2005 to amend the Patent law are bound to uphold the law of product Patent on medicine and agricultural and to provide exclusive marketing right till then or for a period of 5 years whichever is earlier.
The concept of product patent, duration of the patent, restriction on use of patent, monopoly right of IPR holder which centered the TRIPS and the mode of its conclusion are all the cause for the apprehension in India. The Government has compelling reasons to accept the Treaty but however should use the Art 7 & 8 of TRIPS to nullify any damages if it causes to public at large.

It also permits or equates the invention with the products locally produced or imported. This provision requires follow up to see whether it affects nation in any way or hit the objectives of the treaty.

Under Art 27(2) member may deny the patentability of invention to protect public order or morality or health etc only if those invention are established to be prejudicial and not mere fact that those dangers may occur or prohibited by any other Municipal law. Possibility is not allowed as a defence.

Under Art 27(3) requires that legislation be initiated for granting protection of Plant varieties either by Patents ran independent system under domestic law. The grant of Patent rights for plant varieties was not accepted here as a manufacturing process in the development of plant.
The right conferred under the agreement is explained in Art 28 as follows:

1. A patent shall confer on its owner the exclusive rights:
   a) Whether the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of making, using, offering for sale, selling or importing for these purposes of that product.
   b) Where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of using, offering for sale, selling or importing for the purposes at least the products obtained directly by that process:

(2) Patent owners shall also have the right to assign, or transfer by succession the patent and to conclude licensing contracts.

This Art explains the exclusive right of a Patent holder in not only dealing with his right but also the exploitation of the rights in terms of goods. It also explains how IPR holder exercises his right on others by prevention.

This right is subject to the provisions of Art 6 above, which deals with exhaustion of IPR, which must be considered while amending the municipal law.
The other important deviation from the existing Patent Act 1970 is the equalization import with manufacture locally as a right of Patent holder. This again is to be tested with Art 7 and 8 to demonstrate that it is to encourage invention and to dissemination of knowledge to the benefit of the nation.

Art 30 which empowers the members to provide limited exceptions to the exclusive rights conferred by a patent provided such exception do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interest of third parties.

This Art empowers the Government to impose condition for use of patent products to the nation's advantage. Even though the treaty restricts the power of Govt. yet the Government by invoking Art 7 and 8 with this can justify its action on a wider national interest.

Art 31, which deals with, the circumstances under which the law of a member allows for other use of the subject matter of a patent without the authorization of the right holder including the use by the government or third parties authorized by the govt.

(a) In the case of a national emergency or other circumstances of extreme urgency or in case of public non commercial use subject
however the right holder shall be notified as soon as practicable and promptly.

(b) The scope and duration of such use shall be limited to the purpose and shall be non exclusive and not assignable.

c) Such use shall be predominantly for the supply of domestic market and shall be terminated as and when the circumstances, which led to it, cease to exist and are unlikely to recur.

d) The right holder shall be entitled to adequate compensation taking into account the economic value of authorisation subject to judicial or other independent review.

The Art deals with various instances where use of Patent is without the Patentees consent and directly in a manner inconsistent with the exclusive right granted under the law of land. This Government Act arose against its own grant of exclusive right to Patentee, as may be permitted under law or authority vested in it and not by consent of other patentee. This is again a sovereign right as against the right of compulsory licence granted under certain circumstances.
According to Art 32 revocation or forfeiture of patent shall be done after an opportunity for judicial review of any decision shall be made available.

According to Art 33 the terms of the protection shall not end before the expiration of a period of 20 years counted from the filing date.

According to Art 34 which deals with the burden of proof in the case of process patents the burden is shifted on the defendant as follows:

The period of 20 years as agreed and provided under TRIPS requires serious consideration and review by the developing nations especially India. The reason being under Patent Law 1970 method or process of manufacture of a substance whether food or medicine or drugs is 5 years from the date of sealing of the patent or 7 years from the date of filing of patent whichever is earlier. In respect of all other cases it is 14 years from the date of Patent.

The terms of protection and the object of conferring monopoly rights on Patentee for the disclosure of their invention to the general public, the health competition contemplated for the public is all debatable issue. The Govt. must ready and willing to invoke Art 7 and 8 for the nation’s welfare.
There cannot be a uniform term for all product/process patents regardless of the nature and importance of the product or process involved. Again it is to be ascertained whether these product patent granted will provide any technological progress or will be effective after 20 years. However as of now this is the law of the global Trade under TRIPS. It can be reviewed only at appropriate time before the WTO Forum.

(1) For the purpose civil proceedings in respect of the infringement of the right of the owner referred to in paragraph 1 (b) of Art 28, if the subject matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process.

Therefore, Members shall provide, in at least one of the following circumstances, any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process.

(a) If the product obtained by the patented process is new;

(b) If there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.
(2) Any member shall be free to provide that the burden of proof indicated in para 1 shall be on the alleged infringer only if the condition referred to in sub paragraph (a) is fulfilled or only if the condition referred to in sub paragraph (b) is fulfilled.

(3) In the production of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account.

It is the normal procedure of law that the person who claims certain right should prove his right and also claim the violation the other man has committed to him but under this Art it not only require the defendant to prove that his process is new but also his act does not infringement involved.

In addition to the above three, which is known as industrial property (excluding copyright), the TRIPs agreement contemplates and recognizes the following three also as IP to be protected hereunder.

**Geographical Indications:**

Geographical indications are, for the purpose of this Agreement, indications which identify a good as originating in the territory of a
member, or a region or locality in that territory, where a given qualify, reputation or other characteristic of a good is essentially attributable to its geographical origin.

The Geographical Indication right is an IPR recognized under 1994 Final Act which protect certain type of goods based on its place or origin of goods. Unlike trademark which is owned by individual trader, this will be claimed by those who carrying on these business in that area.

Art 23 and 24

In respect of the above the Members shall provide the legal means of to prevent

(a) the use any means to misleads the public and

(b) any use which constitutes an act of unfair competition within the meaning of Art 10bis of the Paris convention 1967.

Additional protection for wines and spirits under geographical indications:

Art 23 & 24 (2) stipulates that in order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the council for Trips concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system.

1Art 23 and 24
It deals with wine alone as if the Act contemplates registration and protection whereas so many other things need to be referred. It is this omission contributed by lack of will by developing countries like India.

As per Art 24(5) if a trademark is applied and registered earlier in good faith before these provisions in that members as defined in Part (IV) will not invalidate it. It shall in no way prejudice the right of any person to use in the course of his trade that persons name or persons predecessor in business except that name mislead the public.

(9) There shall be no obligation under this Agreement to protect geographical indications which are nor or cease to be protected in their country of origin, or which have fallen into disgust in that country.

Art 23 and 24 obviously deals with wine and spirit as if the only product needs protection immediately under the agreement. However, clause 9 empowers country like India, which can demand proof for protection. India should follow Lisbon Agreement to enact municipal law to protect its innumerable product such as Rice, Neem, Kancheepuram Saree, Kolhapur Chapal and many.

**Layout Design (Topographies) of Integrated circuits.** (FN:Art 36 to 38)
Sec 6 of TRIPS Agreement Art 35 to 38 makes provision for layout design to be in conformity to Treaty on IP in respect of Integrated circuits (IPIC).

Art 36 defines the scope of protection which stipulates that subject to para 1 of the Act 37 Members shall consider unlawful the following acts performed without the authority of the right holder, importing, selling or otherwise distributing for commercial purposes a protected layout design, an integrated circuit in which a protected layout design is incorporated or an article incorporating such an integral circuit only in so far as it continues to contain an unlawfully reproduced lay out design.

Art 37 stipulates that if any unlawful act done by the person who did not know and had no reasonable ground to know that it incorporates unlawfully reproduced the layout design as illegal.

This provision which is to be treated as an exemption clause for violation of Art 36 and the right conferred on owner since it was not misused or not used in a way inhibiting compaction is not known or mentioned in any other IPR rights. This compensation provided for such use not as a violation but as remedy is a point to be used by developing nations in their municipal law for such eventuality.
This provision which is to be treated as an exemption clause for violation of Art 36 and the right conferred on owner since it was not misused or not used in a way inhibiting compaction is not known or mentioned in any other IPR rights. This compensation provided for such use not as a violation but as remedy is a point to be used by developing nations in their municipal law for such eventuality.

Art 38 provides the term of protection shall not expire before 10 years from the date of filing application for registration or first day of commercial exploitation wherever in the world occurs. Members may provide that the protection shall lapse 15 years after the creation of the layout design.

Protection of Undisclosed Information: (FN.Art:39 and 40)

One of the IPR recognized under TRIPS is the protection of undisclosed information to the general public, which is owned and used by person as his trade secrets. The grant and protection of this as an IPR, is just contrary to the principle grant of Patent for inventor on his disclosure.

Art 39: In the course of ensuring effective protection against unfair competition as provided in Art 10 is of the Paris Convention 1967.
Member shall protect the information as secret lawfully within the control person without his consent in a manner contrary to honest commercial practices so long as such information is secret in respect of configuration and assembly of its components generally known among persons in the same field and trade secrets which has commercial value because it is secret within the knowledge of person who kept it lawfully under his control.

In this the remedy for the injured is to prove as to how the person violates the right come to know of his secrets like breach of Trust, Confidence, breach of contract etc. It is always difficult to prove what is secret to a person for his commercial success and the consequential violation by third parties who use it in violation of such disclosure. It is a difficult one to prove. The main benefactor under this is Coco Cola whose formula is not disclosed till date.

One of the IPR recognized under TRIPS is the protection of undisclosed information to the general public, which is owned and used by person as his trade secrets. The grant and protection f this as an IPR, is just contrary to the principle grant of Patent for inventor on his disclosure.

Art 39 stipulates that members shall protect undisclosed information, when requiring, as a condition of approving the marketing of Parma or agricultural chemical products which use new
chemical entities the submission of undisclosed test or other data, the origination of which involve a considerable effort, shall protect such data against unfair commercial use.

Members shall protect the interest of person who kept certain information as secret among them for their commercial use within their control and also under Art 10 of Paris convention 1967.

8 Control of Anti competitive practices in contractual licences:

Art 40 Members agree that some licensing practices or conditions pertaining to IPRs which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.

(2) Nothing in this agreement shall prevent members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of IPRs having an adverse effect on competition in the relevant market, consistent with other provisions of this Agreements.

Ex: Exclusive grants back conditions, conditions preventing challenges to validity and coercive package licensing, in the relevant law and regulations of Members.
As per this article the condition or practice that construe as unfair should be present and not a future one which is not a valid principle to control anti competitive practice.

Art 40(3) provides that each member shall enter, upon request, into consultation with any other Member which has cause to believe that an IPR owner of its national or domiciliary undertake a practice in violation, to secure compliance with such legislation without prejudice to their law.

Art 40(3) provides opportunity to the nationals or domiciliaries whose acts are questioned under Art 40(3) upon request.

The opportunity for consultations made available through above is an independent right conferred on members apart from its right to act in accordance with its law.

A recent UNCTAD Report drew attention to the need to ensure that trade obligations and concerns are not frustrated by private anti competitive practices and that there is a convergence in the objectives and the application of national competition policies to prohibit cartel and collusive tendering as most national competition policies still do not apply to restrictive business practices which solely attract foreign markets.
Transitional Arrangements:

Under Part VI Art 65 (4) provides that to the extent that a developing country Member is obliged by this Agreement to extend product patent protection to areas of technology not so protect able in its territory on the general date of application of this agreement for the members, defined in clause (2) or additional period of 5 years.

This period of exemption of five years to developing countries will not extend to Par I Art 3 (national treatment, Art 4 Most Favoured nation treatment and the rights conferred under various multilateral agreements, concluded under the auspices of WIPO

In the analysis it was found many provisions and requirements are such that member country shall follow and amend their municipal law in conformity to TRIPS. But however, the member country should always remember and if necessary invoke Art 7 and 8 of the TRIPS which provides the main objective for which the members agree to sign the treaty which is the promotion of technological innovation and transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare of the nation and to a balance of rights and obligations.
It further recommended that measures consistent with TRIPS to prevent the abuse of IPR by right holders or the resort to practices, which unreasonable restrain trade, or adversely affect international transfer of technology, should be made.

Art 68 provides council for TRIPs, which shall monitor the operation and compliance of this agreement and shall afford members the opportunity of consulting on matters relating to TRIPS.

Art 70 – Protection of existing subject matter.

Art 71 Review and Amendment:

The council for TRIPS shall review the implementation of this Agreement after the expiry of the transitional period referred to in para (2) of Art 65. It may review it after 2 years and thereafter at identical intervals. It may review in the light of new developments, which might warrant modification or amendment of this Agreement.

It is the responsibility of the Central and State Govt to create awareness among the business community and intellectuals in the filed to study the Treaty and its implication on India and its welfare and suggest measures which should take the form of Legislation and amendments. Create like-minded members and move in the Review Mechanism and WIPO for proper remedy and clarifications etc.
Art 72  Reservation may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Art 75: Security Exceptions:

Nothing in this Agreement shall be constrained

(a) To require a member to furnish any information the disclosure of which it considers contrary to its essential security interest.

(b) To prevent a member from taking any action which, it considers necessary for the protection of its essential security interest.

(c) From taking any action in pursuance of its obligation under UN charter for the maintenance of international peace and security.

The brief analysis of the various provisions of IPRs agreements clearly show that the it contains clauses which are not in conformity with our municipal law which is evolved over a period of time and on experience but however it stipulates condition that are not beneficial to the present day condition of our nation. The fact remains that these developed countries are in the same condition 50 years ago and now INDIA as the very same developing country placed to face the situation.
Concerns of TRIPS provision in the WTO Agreement

The main provisions of the TRIPS in the agreements relating to patents are:

1. The member countries to provide product protection in all the fields of science and technology without any exception.

2. The duration of the patent to be uniformly at least 20 years from the date of filing.

3. The grant of compulsory license to be given on the individual merit of the case and after approaching the owner of the patent for obtaining license on reasonable terms and conditions.

4. The burden of proof in the cases of process patents leading to the production of new products to be placed on the defendant in the circumstances enumerated in the agreement.

5. The availability of patent rights equally regardless of whether the products are locally produced or imported.

6. Providing protection for micro organism and

7. Enactment of an effective system for the protection of new plant varieties under Sui generis or a combination of both.

In TRADE MARK :-

It is specifically provided that trademark can be sold with or without the Organisation. The requirement for registration of trade mark is expanded.
Trade Secrets were protected as an IPR which encourage non disclosure as a business strategies and provide source for unnecessary litigation.

The consequences of becoming a member to the agreement is as follows:

1. Enforcement of product patent in pharmaceutical and agricultural sector.
2. Impact of domestic industry, and its Research & Development.
3. Consideration of import of patented products as working as patents.
4. Grant of compulsory license.
5. It being a legal international Treaty, it must be accepted in Toto must go without it.
6. It is not possible for any country to pick and choose the provisions of the TRIPS. Therefore it has been accepted.

The main amendments that requires in our municipal law in the above analysis primarily as follows: -

i) In patent the universal acceptance of product patent in the place of process patent which was introduced in the Indian Patents Act 1970 after elaborate discussion in parliament based on the two committee reports submitted by the retired judges of the High Court who found on merits that the product patent was not beneficial to our nation and it is a failure.
ii) The TRIPS provides 20 years for all patents without any discrimination and a provision for a further period of 20 years of any improvements made in it which also eligible for a further period of 20 years in total it is 40 years. Whereas Indian patents Act prescribes duration of patents in respect of Patent on drug and agricultural at 7 years and others 14 years. In this the reverse engineering technology is in full force which produce remarkable success in pharmaceutical and agricultural sector. The removal and restriction on this will virtually closed down the R and D in these areas, which in affect alls and most of the industry and virtually bring to a stand still the industrial development in INDIA which is a challenge to the developed countries. Even the USA provides only 17 years for its patent.

iii) In case of any dispute in process patent claim the TRIPS provision requires the defendant to prove his case even though under certain circumstances is apparently against our Municipal laws like CPC and evidence which require the plaintiff to prove his case and then only the burden shifts to the defendants. This provision shall be misused only against our nation taking into account the strength of the foreign manufactures. In my experience as an advocate I found so far six Indian exporters received legal notice from its foreign competitors that they violate their patent rights and the notice was issued under copy to the foreign importers who in turn refused to buy from exporters on the condition to clear the case before continue to import from our exporters.
iv) The importation provision given contemplation only on emergency and that to till it is in force. Compare this with our provision in Patent Act 1970 where the Government has got ample power to order compulsory license on various occasion.

v) The working of the patent is nothing but illusory. The reason being it equates importation equal to working of patents. Whereas our law stipulates that working of the patent in India is a must and the availability of goods in India is a precondition is a must.

vi) The working of the patent and license of use are very strict in India law whereas in TRIPS it provides only one circumstances and that to far a very narrow reason

vii) The grant of compulsory license to be given on the individual merit of the case and after approaching the owner of the patent for obtaining license on reasonable terms and conditions.

viii) The availability of patent rights equally regardless of whether the products are locally produced or imported.

(ix) Providing protection for micro organism and
Enactment of an effective system for the protection of new plant varieties.

OBLIGATION OF THE MEMBER COUNTRIES:

On signing of the TRIPS and the establishment of WTO, a legal international institution for enforcement of these agreement and provide mechanism for Dispute Settlement among members were came into force. The member countries are to ensure that their Municipal laws are consistent with TRIPS.

The Agreement provides for a general transition period of five years with effect from 1.1.1995 for the developing countries for the implementation of all provisions of TRIPS. It also provides for an additional period of five years to those developing countries like India, which do not presently provide product protection in all fields of Science & Technology.

Though there is transition period provided for implementation of TRIPS, the agreement further provides that the member countries (who are following process patent) should facilitate to file applications for Patent in respect of Pharmaceutical and Agricultural Chemical product alone containing claims for the products from the date of enforcement of the agreement i.e. 1.1.1995.
The agreement further stipulates that if patents are granted for such products and marketing approval also granted for the said products in any other country and if the patent owner desires to introduce the said products in the market of the country where the person has filed the above said application, the person should be given Exclusive Marketing Rights (EMR) for five years or till his patent application is approved or rejected in the said country whichever is earlier [Recently our Patent Law amendment was passed providing product patent]

These Articles in effect override the transition period provided under TRIPS because whether the municipal law provides patent or not for the applicant or the law is changed to grant product patent the applicant got what he wants which is not the intention of members.

It being a legal international Treaty, it must be accepted in Toto or must go without it. It is not possible for any country to pick and choose the provisions of the TRIPS. This in effect imposes a law on a member country without the approval of the legislature, which cannot be the spirit of the treaty nor should be the intention of any treaty.

The above are the direct conflict with the Municipal law of our country which laws were enacted after elaborate discussion at various level and in the Parliament too before it become the Act of the nation.
The direct consequences of the implementation of the provision warrant the repeal of number of welfare legislation, which were enacted taking into account the peculiar circumstances of the people and their social placement.

Art.8.2: Clarifies that measures maybe adopted to prevent or remedy abuses of IPRs. Under this, it may be possible for national law to provide for grant of compulsory licenses where practices are noted that are not in keeping with the proper exercise of industrial property rights and adversely affect free competition, especially when they constitute an abuse by the owner of the patent of his dominant position in market.

The relationship between IPRs and legislation on competition is of particular importance. While the strengthening of IPRs in developed countries has been parallel to the development of competition law, most developing countries have been forced to expand and reinforce the latter in the absence of legislative mechanism to prevent and remedy anti competitive policies. This is probably one of the major imbalances in economic law regimes in developed countries.

Art.8.1 makes it clear that the agreement is to be put into effect by member countries through implementing municipal laws. The provisions of the agreement are addressed to member countries. It does not directly modify the legal situation of private parties, who
cannot claim rights based on the agreement until they are translated into national law.

The developing countries shall attach much importance to these articles for the transfer and dissemination of technology for social and economic welfare of their countries.

India's experience with food imports under the P.L. 480 program made it very clear that foreign countries, particularly the U.S., view food as a weapon with which it pressure foreign countries to comply with American political objectives. It is likely that food imports into India could easily be cut off or jeopardized if India refuses to comply with American demands regarding any sector of trade or foreign relations. We must therefore conclude that the Agreement on Agriculture, increased cost of medicine, protection to trade secrets will have a direct and inevitable effect on the right to live which is an integral component of the right to life guaranteed under Article 21 of the Constitution.

In view of the foregoing changes to existing laws required by the TRIPS Agreement and Agriculture Agreement and the anticipated effect on the price of medicines and self-sufficiency in food, we are of the view that the Final Act will have a direct and inevitable effect on the fundamental right to life enshrined in Article 21 of the Constitution.
The entry into WTO is not a temporary commitment but a continuous and permanent commitment. Therefore the nation as a whole should become aware of and adjust their commitment and participate in future negotiation effectively and collectively. As the old Roman adage says all should decide whatever touches us all. The issue of TRIPS is analyzed not merely as an economic issue but in the legal and constitutional basis since its mandates is inseparable separating the domestic law for compliance without discussion by the Union and the State whereas the effect is contemplates otherwise.

The source of all power, Executive, Legislative and judicial, is the Constitution. If there be a conflict between the WTO agreements and the Constitutional mandates, the latter will invalidate the former so far as the Indian jurisdiction and jurisprudence are concerned. In the great words of U.S. Chief justice Marshall in Marbury v. Madison, "certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be that an act of the legislature repugnant to the Constitution is void". A mere decision of the Council of Ministers pro tem, who are in power under the Constitution, is an a fortiori case.

"Don't be dazzled by the splendors that comes to you from the West. Do not be thrown off your feet by this passing show.

"[M.K.Gandhi- Socialism of MyConception-Page27]"
I do not believe that multiplication of wants and machinery contrived to supply them is taking the world a single step nearer its goal. I whole-heartedly detest this mad desire to destroy distance and time, to increase animal appetites and go to the ends of the earth in search of their satisfaction. If modern civilization stands for all this, and I have understood it to do so, I call it Satanic."[Young India: March 17, 1927]

No country in the world, powerful or weak can boast that its own policies, laws or regulations could remain unaffected. It should be the endeavor of each member country to narrow down the gap between its own laws and obligations it assumes by virtue of its membership, if not make it completely consistent with the Agreement. In short, every member country has to have a give and take attitude and will be required to change in varying degrees; its laws, regulations and practices to conform to its international obligations.

No country in the world can boast itself that it can survive without the help and cooperation and assistance of other country or countries. In the world of tomorrow, national geographical boundaries will increasingly be disrespected in the flow of information, knowledge, goods services and economic activities in general.
International Private Trade is mainly based on International customary Law. It is based on the practice of merchants.

The convention, developed over more than a decade of work by United Nations Commission on International Trade & Law (UNCITRAL) was designed to unify at least certain aspect on international commercial (Sales) Law, combining common and civil law as well as the interest of communist countries and developing countries. It entered into force on 1.1.1988. It is hoped that Vienna Convention will become the basis for a widespread uniform law on International Trade.

Every Nation State has an economy and the mutual relations amongst national economies constitute the international economic system. The distinguishing feature among States and their economic relations is market transaction. Contemporary nation states are not willing to be determined only by market forces. All national governments have foreign economic policies that are intended to regulate, restrict, promote or otherwise influence international trade and investment.

National economic policies that are apparently wholly domestic in nature may nevertheless have profound effects on international trade and investment. It is therefore necessary that a national must keeps its economy adjusted to the world economy.
However the parliament while enact laws to be in conformity with TRIPS shall use Art 7 and 8 to the maximum extent and provide and protect the circumstances for enactment by which the owners of IPRs should not exploit our nation's natural wealth and heritage. The right granted to a patentee under Art 28 has to be tempered with the objective and principles that should go hand in hand. Refusal to grant a license on reasonable terms could, in itself, justify the granting of compulsory licensing.