

EDITORIAL NOTE

We are thrilled to present the 13th volume of the Indian Journal of Intellectual Property Law, a testament to our enduring commitment to fostering scholarly discourse and advancing the understanding of intellectual property law in India and beyond. As we stand at the crossroads of innovation and legal intricacies, this volume showcases the culmination of thoughtful research, rigorous analysis, and insightful discussions.

First and foremost, we extend our heartfelt gratitude to the brilliant minds who have contributed to this volume. The authors' dedication to their craft is evident in the rich tapestry of articles that span a spectrum of intellectual property topics. Their relentless pursuit of knowledge and their willingness to share their expertise continue to be the driving force behind the journal's success.

We would also like to express our sincere appreciation to the peer reviewers who have generously dedicated their time and expertise to ensure the quality and rigor of the articles presented in this volume. Their constructive feedback and thoughtful evaluations have been invaluable in shaping the scholarly content of the journal.

Furthermore, we acknowledge the unwavering support of the university administration, whose encouragement and resources have played a pivotal role in nurturing the growth of the Indian Journal of Intellectual Property Law. Their commitment to academic excellence and their recognition of the importance of intellectual property scholarship have been instrumental in creating an environment conducive to rigorous research and thoughtful discussions.

The landscape of intellectual property law is ever-evolving, and this volume is a reflection of the dynamism and complexity that define the field. From exploring the intersections of technology and intellectual property rights to delving into the intricacies of cultural

heritage protection, the articles in this volume collectively contribute to the ongoing dialogue on intellectual property in the modern world.

As we celebrate the 13th volume of the Indian Journal of Intellectual Property Law, we remain steadfast in our mission to provide a platform for scholars, practitioners, and enthusiasts to engage with the multifaceted dimensions of intellectual property. We invite readers to immerse themselves in the diverse array of articles and to continue supporting our endeavours to foster intellectual curiosity and advance legal scholarship.

Thank you to all the authors, peer reviewers, university administration, and readers who have contributed to making this volume a reality. Your dedication inspires us to keep pushing the boundaries of knowledge and striving for excellence in intellectual property scholarship. The first piece in our volume is authored by Muhammed Zaheer Abbas, in which he offers an informative and analytical overview of the evolution of India's patent opposition mechanism through legislative changes. The article argues that the mechanism, being a product of the linking of substantive patentability provisions along with the procedural mechanism of patent opposition, reflects a strategic use of public health flexibilities provided under the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which successfully caters to the Indian welfare goal of providing equitable access to essential medicines as per Article 47 of its Constitution. This is unlike the mechanism of the U.S., with its limiting patent opposition approach, and the EU, which fails to provide a model strategy in its mechanism of providing strictly post-grant opposition proceedings. Such a contrast places India as an exemplary model for other member states of the World Trade Organisation, in terms of balancing national interests and TRIPS obligations. In order to retain its welfarist and public interest-based approach, Abbas argues that India should resist any challenges posed to its national interest as it

has done in the past, considering the recent developments in its TRIPS-compliant pre-grant opposition procedures.

Next, Madhav Goel writes on the contemporary question of arbitrability as a focal point of legal inquiry in the context of trademark disputes. The author very articulately recognizes that arbitrability is a nuanced subject, contingent upon multifarious factors such as legislative intent, the nature of rights implicated, sought relief, and societal welfare considerations. His writing illuminates Arbitration as a probable substitute to resolve trademark disputes, the issues and tests involved with the arbitrability of such disputes and categorically dividing trademark disputes to decide on the arbitrability based on their respective nature. Goel has seamlessly weaved together legislative intent, judicial precedent, and theoretical perspectives, the paper navigates the contours of arbitrability with acuity. He makes a case that portrays how the expeditious resolution of trademark disputes is pivotal for a thriving free-market economy.

In the third article, Lokesh Vyas attempts to problematize what he terms to be copyright's 'balance' metaphor that has come to be entrenched in our social conscious without any sound reasoning, since the creation of the WIPO treaties. While the piece does not offer an alternative or reformulation of the balance metaphor, it lays out a critical discussion against the global glorification of the same. Against this backdrop, Vyas suggests further engagement with underlying politico-legal narratives that impact power hierarchies, and argues that the same should form a springboard to further question, analyze and revamp the existing hierarchies.

In the next piece, Soumil Jhanwar delves into the complex issue of trademark exhaustion in Indian law. It examines the conflicting interpretations of Section 30(3)(b) of the Trade Marks Act, 1999, which deals with the exhaustion of trademark rights, and highlights the ambiguity surrounding whether the term "the market" refers to foreign markets (international exhaustion) or the Indian market

(national exhaustion). The author dissects the divergent viewpoints of the single-judge and division bench decisions in the Kapil Wadhwa-Samsung case and argues for legislative resolution of the matter. The article analyzes various policy considerations, focusing on transaction costs, and proposes the adoption of a "partial international exhaustion" approach that considers the economic entity selling the parallel-imported products. The author suggests that such an approach would minimize transaction costs and provide a balanced solution to the challenges posed by trademark exhaustion in the Indian context.

Then, we present an article by Akshat Agrawal where in the landscape of the COVID-19 global health crises, the author presents a nuanced exploration of the distributive concerns inherent in Intellectual Property (IP) focusing on the pharmaceutical realm. The author encapsulates the historical inequities embedded in multilateral agreements and their implementation and then delves into the intricate interplay of IP, societal disparities, and global health. The paper makes a strong case to underscore the urgency and moves beyond a myopic "IP internalism" to critically examine the far-reaching implications of the TRIPS framework. Within this framework, the article probes the disparities in institutionalization across nations, delving into narratives of capability-building and the paradoxes within transition periods. The article carefully juxtaposes the theoretical intricacies with a call for action that ultimately compels a reader to consider the broader implications of norm shifting in the midst of a global pandemic.

The second half of our journal is initiated by Shubhadip Sarkar, who analyses IP Rights within the larger economic framework that they are intended to serve and strengthen. The article is critical of the high stature held by IP, discussing how the apparent potential associated with such rights is oversold. The paper delves into the factors used to trace the economic performance of a nation, and compares the same

with the utility provided by IP Rights. The author challenges the fundamental notion that IP is used to promote and distribute knowledge, talking about how IP Rights prove to be counter intuitive.

Next, Aditya Iyer and Radhika Sikri delve into the investigation of whether the creation of the Intellectual Property Division effectively addressed the shortcomings witnessed in the functioning of the Intellectual Property Appellate Board. Furthermore, it undertakes a comprehensive analysis of the efficacy and adequacy of the current framework for resolving disputes in the realm of intellectual property. In furtherance of undertaking this analysis, certain parameters have been considered, which include the aspects of available positions, the rate at which cases are resolved, the extent of expert engagement, the level of expertise in handling subject-specific matters, and, crucially, the extent to which the objectives of these bodies have been achieved. The scope of the article has been largely confined to the realm of patents and the process of patent adjudication so as to not only define the boundaries within which the study operates but also presents a more compelling rationale for why the domain of intellectual property necessitates a distinct and specialized approach to adjudication, with patents serving as a prominent exemplar of this need.

Then we have a piece by Ahaan Gadkari and Sofia Dash, who discuss contemporary issues in intellectual property law within the framework of international economic law. The authors identify the problems faced by a global IP regime, and discuss the precarious conflicts caused by international politics. The authors discuss the increasing trend of international IP litigation and arbitration, and the concerns of multiple parties regarding the role played by IP in investment arbitration. The article offers an interesting insight on how IP rights and subject matter are deliberated on in disputes not

isolated merely on questions of IP, but also investment and political concerns.

Next, Rajshree Acharya and Aditi Rathore write about traditional knowledge and traditional cultural expression within the scope of IP Protection. The article discusses the possibilities of protecting culture through IP, positing a regional framework to be adopted by countries forming the South Asian Association for Regional Cooperation (SAARC). The authors contextualise the need of such a framework, and discuss the traditional knowledge and expression of the member states that has come under threat due to a lack of proper IP protection.

To conclude this edition, we have Debdeep Das and Mohar Mitra who write on the copyrightability of airshows. The piece juxtaposes airshows with the existing ambit of subject matter, arguing for their protection as dramatic works and artistic works. Likening airshows to choreography, the authors discuss how, given the basic tenets of copyright are fulfilled, copyright does subsist in the work. The article analyses airshows from the perspective of various jurisdictions, juxtaposing the varying standards used globally to determine the protectability of such works.

Editorial Board
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