INDIA
IP UPDATES
THE YEAR 2023

LexOrbis | Intellectual Property Attorneys & Advocates

PREFACE:

The year 2023 marked a pivotal moment for intellectual property rights in India, marked by significant statutory updates that responded to evolving legal paradigms and reflected the rapid technological advancements across various industries. These changes played a crucial role in shaping India's legal landscape, with profound implications for inventors, creators, and businesses across diverse sectors.

As countries worldwide adapt their legal frameworks to the dynamic intersection of technology, creativity, and commerce, this compilation seeks to provide a valuable resource for navigating the latest developments in India's intellectual property laws and related industries. From amendments to IPR statutes to the introduction of new policies and schemes for technology sectors, and from noteworthy developments at the IP Offices to the enactment of the IPD Rules at the Madras High Court and draft IPD rules by the Calcutta High Court, this content stands as a testament to the ongoing efforts to strike a balance between safeguarding intellectual assets and fostering innovation in the country.

Research & Publication Team

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1. BUDGET ALLOCATION TO THE IP LANDSCAPE (FEBRUARY 1, 2023)

Union Budget 2023-24 has brought a 15% hike in the funds allocated for the intellectual property landscape this year. From last year's INR 285.41 crores (approx. USD 38.4 M), the budget has been elevated to INR 328.98 crore (approx. USD 40.1 M).

Around INR 281.60 (approx. USD 34.3 M) crores are allocated to fortify the Intellectual Property Rights Policy Management and IDCGPDTM - Infrastructure Development in Controller General of Patents, Designs and Trade Marks.

Additionally, INR 0.83 crores (approx. USD 101,291) have been allocated in furtherance of the alliance between the Department for Promotion of Industry and Internal Trade (DPIIT) and WIPO based on the Service Level Agreement (SLA) to set up Technology and Innovation Support Centres (TISC) Network in India. The Indian Government has been in association with WIPO in an endeavour to bolster the country's Intellectual Property landscape. The DPIIT serves as the nodal department for realising such initiatives between the Indian Government and WIPO.

2. OPPORTUNITY FOR APPLICANTS TO AVOID ABANDONMENT OF TRADEMARK APPLICATIONS (FEBRUARY 6, 2023)

By way of public notices dated February 6, 2023, the Trademarks Registry published a list of around 98,900 objected trademark applications in which examination reports were issued, but no reply was found in the records of the Registry. An opportunity was given to the applicants to bring their reply on record via email by March 06, 2023, if they had filed the reply earlier, so that those applications can be processed, otherwise they would be treated as abandoned.

Another list of around 82,700 opposed trademark applications was published where notice of opposition was served on the applicants, but no counter statements of the applicants were found in the records of the Registry. The Registry extended an opportunity to the applicants to bring their counter statements on record by March 06, 2023, via email, if they had filed the counter statement earlier, failing which the said applications would be deemed as 'abandoned'.

Subsequently, in continuation of the above-mentioned public notices dated February 06, 2023, and after considering the emails received by the applicants, the IP Office issued two public notices dated March 27, 2023, with a revised list of applications, giving the final opportunity to the applicants to make submissions before the Grievance Cell of the Registrar of Trade Marks within a period of 45 days from March 27, 2023, i.e., by May 11, 2023.

Thereafter, the Intellectual Property Attorneys' Association (IPAA) moved a writ petition before the Delhi High Order against the public notices dated February 06, 2023 and March 27, 2023. The IPAA moved the writ petition, citing grievances on the abandoned status of several trademark applications. On April 13, 2023, this writ petition came up before the Court, and the IP Office undertook to withdraw both public notices and submitted that all the applications would be reverted to their previous status within a period of 10 days from the Court's order.

Therefore, with the disposal of this writ petition, the public notices stand withdrawn, and all the applications will move before the Trade Marks Registry in accordance with the provisions of the Trade Marks Act and Trade Marks Rules.

3. ANNUAL REPORT OF THE OFFICE OF THE CONTROLLER GENERAL OF PATENTS, DESIGNS AND TRADEMARKS (CGPDTM) FOR THE FINANCIAL YEAR 2021-22 (FEBRUARY 13, 2023)

The Annual Report issued by the IP Office for the financial year 2021-22 illustrates its continued efforts to strengthen the country's IPR framework and align it with global standards in the said year. Simplification and IT-enabled functioning of procedures, as well as growth in technical manpower, have considerably improved timelines of processing applications as well as reduced existing backlogs. Strategic steps have also been taken to make the IP system user-friendly, environment-friendly, and transparent. Manpower has also increased, leading to faster disposal rates and reduced backlogs. Some of the highlights and trends mentioned in the annual report are:

Trademarks:

- A total of 4,47,805 applications were filed in the reporting year, and 2,61,408 registrations were granted, showcasing an increase of 3.8% and 2.1%, respectively, from the previous year.

- The largest number of applications have been filed in Class 5, with a 16.05 % share in overall filings, followed by Class 35 with a 9.55% share. Even for registrations secured, Class 5 leads with a 12.95 % share in total registrations, followed by Class 35 with an 8.41 % share.

- Top Foreign Applicants – U.S.A and China with 4599 and 1993 applications, respectively.

- Oppositions/Rectifications – A total of 54990 oppositions and 4071 applications for rectifications were filed in the reporting year. A total of 7233 cases were disposed of. Maximum oppositions were filed in Delhi (22361), followed by Mumbai (11553) and Chennai (10258).

Geographical Indications (GI):

- From September 2003 till March 31, 2022, the GI Registry has received a total of 861 GI applications, out of which 420 have been registered, 310 are in process, 02 are under opposition, and 129 have been met with other disposals.

- In the reporting year, a total of 116 applications were filed, which is the second highest number, just after the year 2011-12, wherein we saw a total of 148 GI applications.

Copyrights:

- Copyright (Amendment) Rules, 2021 have brought the following important changes:

    - Publication of a copyright journal on the Copyright Office website.
    - For registration of software works, the Applicant can submit the first 10 and last 10 pages of the source code, or the entire source code if it is less than 20 pages, with no blocked out or redacted portions.

- Third-party objections against any copyright application can now be filed online.

- 94% of the total applications filed in the relevant year have been through online mode.

- An increase of 26.7% has been recorded in filing copyright applications, 35.2% in examination and 26% in copyright registration.

- The maximum number of copyright applications in 2021-22 have been registered for literary/dramatic works (12867), followed by artistic works (4227).

Designs:

- An increase of 59.38% has been recorded in filing design applications, 59.75% in examination, 66.85% in registration and 66.85% in disposal.
- The E-filing facility for new and amended design applications was upgraded to facilitate better functioning.
- Pendency in examining new applications continued to be around 1 month in the reporting year.
- The e-register of designs has been made available to the public.
- Processing of various post-registration proceedings through an electronic module was initiated.
- Leading top 5 foreign applicants for the reporting year were Koninklijke Philips N.V., HTL Furniture (China) Co. Ltd., Samsung Electronics Co. Ltd., Kohler Co., and Beijing Xiaomi Mobile Software Co. Ltd.

Patents:

- In the reporting year, a total of 66,440 applications were filed, showcasing an increase of 13.57% from the previous year's 58,503.
- The total number of applications filed by Indian Applicants has been 29,508, compared to 24,326 in the previous year, exhibiting an increase of 21.3%.
- With respect to applications filed by foreign applicants, there has been an increase of 7.74% from the previous year's 30,612 to 32,977. Qualcomm Incorporated ranked first, followed by Samsung Electronics Co., Ltd.
- 30,073 patents were granted in the reporting year compared to 28,385 in 2020-21, showcasing an increase of 6%.

4. FOREIGN TRADE POLICY 2023 (APRIL 1, 2023)

To boost exports from the country, the Government of India has launched the Foreign Trade Policy 2023 (FTP 2023), which aims at process re-engineering and automation to facilitate ease of doing business for exporters. The policy is based on 4 pillars: (i) Incentive to Remission, (ii) Export promotion through collaboration - Exporters, States, Districts, and Indian Missions, (iii) Ease of doing business, reduction in transaction cost and e-initiatives and (iv) Emerging Areas – E-Commerce Developing Districts as Export Hubs and streamlining Special Chemicals, Organism, Materials, Equipment and Technologies (SCOMET) policy.

The FTP 2023 is based on tested schemes for facilitating exports and introduces a one-time Amnesty Scheme for exporters to close the old pending authorisations and start afresh. It also encourages recognition of new towns through the “Towns of Export Excellence Scheme” and exporters through the “Status Holder Scheme”. The Policy also seeks to facilitate exports by streamlining the popular Advance Authorization and Export Promotion Capital Good (EPCG) schemes and enabling merchanting trade from India.

5. MADRAS HIGH COURT INTELLECTUAL PROPERTY RIGHTS DIVISION RULES, 2022 (APRIL 5, 2023)

In line with the creation of the Intellectual Property Division and announcement of IPD Rules by the High Court of Delhi, the High Court of Judicature at Madras has also notified the creation of an Intellectual Property Division (IP Division) in the Madras High Court presided over by a Single Judge Bench and a Division Bench to deal with disputes and cases concerning IPR. The High Court has also notified "Madras High Court Intellectual Property Rights Division Rules, 2022 (the "Madras High Court IPD Rules"), which will govern and regulate the proceedings before the IP Division. The IPD Rules have come into effect from April 5, 2023. The IPD had its first sitting on April 13, 2023, after its inauguration on April 12, 2023.

The Madras High Court IPD Rules prescribe the practice and procedure for the exercise of the original and appellate jurisdiction of IP Division and for other miscellaneous petitions arising out of specific IP statutes, including the Patents Act, 1970, Trade Marks Act, 1999, the Copyright Act, 1957, the Designs Act, 2000, the Geographical Indications of Goods (Registration and Protection) Act 1999; the Protection of Plant Varieties and Farmers' Rights Act, 2001; the Semiconductor Integrated Circuits Layout- Design Act, 2000; and appeal under Section 62 of the Information Technology Act, 2000. Salient features of the Madras High Court IPD Rules are:

- Every IPR case or proceeding filed before, or transferred to, the IP Division shall be heard and decided by a Single Judge of the IP Division except those to be decided by a Division Bench.

- In case of multiple proceedings relating to the same or related IPR, irrespective of whether the said proceedings are between the same parties or not, the IP Division may on its motion or an application of any other parties, and after hearing such parties, direct consolidation of proceedings, hearings, and also to direct consolidated recording of evidence/ common trial and consolidated adjudication.

- The IP Division may seek the assistance or opinion of any persons with special knowledge and skills on the subject matter of the IPR case. The opinion of such experts shall be recorded in writing and may be considered by the IPD. The party whose interest the evidence of the said experts is adverse to shall be permitted to cross-examine such experts.

- The provisions of the Commercial Courts Act, 2015, Madras High Court Original Side Rules, 1994, as well as the practice notes/directions issued from time to time, to the extent there is no inconsistency with the IPD Rules, shall apply to the original petitions filed in the IP Division.

- Any order of the High Court in any IPR cases or proceedings involving any proceedings before the respective Intellectual Property Offices (IPO) shall be served upon the concerned IPO, and the said IPO shall cause such changes to the entry(ies) in the respective Register or proceed in the matter as directed therein.

- Evidence is allowed to be recorded through video conference by the Local Commissioner and/or videography and transcription technology or by use of any other technology.

- All cases under various categories received in the Madras High Court from the IPAB shall be renumbered, given the nomenclature as provided for in the IPD Rules, without levy of any fresh or additional court fees.

- The Madras High Court IPD Rules clarify that the cases pertaining to the Information Technology Act, 2000 dealing with the rights and liabilities of intermediaries, online marketplaces, and e-commerce platforms involving issues relating to any of the aforementioned rights shall be deemed to be within the purview of Intellectual Property Rights.

We have witnessed significant qualitative and quantitative changes in the adjudication of IPR disputes with the creation of the IP Division at the High Court of Delhi in 2021. The appeal cases, which were filed with the erstwhile IPAB and were pending adjudication for over a decade or so, are now being taken up and disposed of in a much faster manner. We expect to witness a similar result with the creation of the IP Division in the Madras High Court.

6. INDIAN SPACE POLICY 2023 (APRIL 6, 2023)

On April 6, 2023, the government of India published the Indian Space Policy 2023 to enhance the participation of non-government entities (NGEs) in carrying out end-to-end activities in the space domain and providing them a level playing field. The policy is aimed at augmenting the space capabilities of the country with a focus on encouraging advanced research and development in the space sector and promoting space-related education and innovation.

The policy document lays down the roles and responsibilities of the different entities and organisations which are and will be involved in the space sector. Indian National Space Promotion & Authorisation Centre (IN-SPACe) shall function as an autonomous Government organisation and a single window agency for the authorisation of space activities by government entities as well as non-government entities (NGEs), subject to relevant Government directives, keeping in mind safety, national security, international obligations and/or foreign policy considerations.

ISRO, as the National Space Agency, will primarily focus on research and development of new space technologies and applications and for expanding the human understanding of outer space.

The Department of Space (DOS) is the nodal department for the implementation of the policy, which shall oversee the distribution of responsibilities outlined in this policy and ensure that the different stakeholders are suitably empowered to discharge their respective functions without overlapping with others' domains. It shall also interpret and clarify any ambiguities arising in the implementation of the policy.

NewSpace India Limited (NSIL), as the Public Sector Undertaking under DOS, is responsible for (i) commercialising space technologies and platforms created through public expenditure, (ii) manufacturing, leasing, and procuring space components, technologies, and platforms, and (iii) servicing the space-based needs of users, whether Government entities or NGEs.

7. ONLINE GAMING RULES, 2023 (APRIL 6, 2023)

On April 6, 2023, the government of India introduced Rules for Online Gaming by way of amendment to existing Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The new Rules, called the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2023, are aimed at enforcing greater due diligence by online gaming and social media intermediaries and preventing negative impact and psychological harm to the users and especially safeguarding children by using parental and access controls.

An online game is defined as "a game that is offered on the Internet and is accessible by a user through a computer resource or an intermediary." Online games that are free to play are generally permissible, and the entities offering the same have been classified as Online Gaming Intermediaries ("OGI"). However, in the case of online real money games which make the users put in monetary deposits, only such games are allowed that are verified by a self-regulatory body (SRB) designated by the Central Government as (a) not involving wagering on any outcome; (b) being compliant with the obligations under these rules; (c) the age under law at which an individual is competent to enter into a contract, and (d) the framework made by the SRB.

Obligation has also been put on social media platforms and app stores to make reasonable efforts not to host, publish, or share any online game that causes user harm, or which has not been verified as a permissible online game by an online gaming SRB. The Rules also prohibit intermediaries from hosting or displaying any advertisement or surrogate advertisement or promotion of an online game that is not a permissible online game.

Further, if any non-real money online game has the potential to cause user harm or affect the security of India, the Central Government can require such online games to be subject to the obligations under the Rules as are applicable to online real money games.

8. MODIFIED SIPP SCHEME (APRIL 10, 2023)

The Scheme for Startups Intellectual Property Protection (SIPP) is a commendable initiative by the Government of India to promote and safeguard the intellectual property rights of startups and innovators in the country. The scheme aims to create awareness among startups about the importance of intellectual property rights and provide them with the necessary assistance to protect their patents, trademarks and designs in India and abroad. The scheme was launched in 2016 on a pilot basis and was extended until March 31, 2023. On April 10, 2023, the scheme was modified and further extended for a term of 3 years until March 31, 2026. Certain aspects of the scheme have been modified effective from April 1, 2023, based on the experience gained from its implementation so far.

Facilitators empanelled under the scheme will not charge any fees from eligible applicants and will be paid directly for any number of patents, trademarks, or designs applied for by the Central Government through the IP office and disbursed by the respective IP office. However, the eligible applicant must bear the statutory fees associated with each patent, trademark, or design application and PCT fees for an ISA application and payments under the Madrid System for an International Trademark application.

The scheme emphasises that the ownership of the intellectual property rights (IPR) created shall remain with the eligible applicant, and it shall not be transferred to the facilitator or the government. The scheme does not provide any guarantee for grant or registration of the IPR, and the applications will be processed as per the relevant laws and rules. The modified SIPP scheme is a significant step forward in the government's effort to encourage startups and innovators to realise their full potential and contribute to the country's economic growth and development. Therefore, eligible startups and innovators should take advantage of this scheme and protect their intellectual property rights.

9. NATIONAL MEDICAL DEVICE POLICY, 2023 (MAY 2, 2023)

The National Medical Devices Policy, 2023 was notified on May 2, 2023, to provide a roadmap for accelerated growth of the Indian medical devices sector with a mission of better access & universality, affordability, quality, patient centred & quality care, preventive & promotive health, security, research and innovation and skilled manpower. The policy focuses on regulatory streamlining, reducing compliance burden, and enhancing the ease of doing research and business. It lays down the implementation of a 'Single Window Clearance System' for licensing medical devices in line with the National Single Window System (NSWS). It also broadens the role of Indian Standards bodies such as the Bureau of Indian Standards (BIS) and sectoral standards development organisations for processes, products, wireless technologies, and performances. It also calls for establishing new and improved medical device marks and clusters and outfitting them with world-class common infrastructure facilities.

The policy also focuses on promoting research & development endeavours in India and supplements the proposed National Policy on R&D and Innovation in the Pharma-MedTech sector in India. Centres of Excellence in academic and research institutions, innovation hubs, and ‘plug and play’ infrastructures will also be established to extend support to startups. The policy aims to boost private investments, funding from Venture Capitalists, and Public-Private Partnerships (PPP) to foster innovation in the medical device sector. It also envisions creating a dedicated Export Promotion Council for the medical device sector to deal with any market access issues.

10. RULES ON THE DISPLAY OF WARNINGS AND DISCLAIMERS FOR TOBACCO PRODUCTS AND CIGARETTES BY OTT PLATFORMS (MAY 31, 2023)

On May 31, 2023, the Government notified the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Amendment Rules, 2023 (hereinafter the "Amendment Rules of 2023") with a view to broadening the ambit of entities covered under these Rules.

These Amendment Rules of 2023 make it mandatory for publishers of any online curated content to display relevant anti-tobacco warnings and disclaimers similar to the content screened in theatres and television programmes.

The Rules shall apply to any "online curated content", which is defined as "any curated audio-visual content, other than news and current affairs content, owned by, licensed to, or contracted to be transmitted by a publisher of online curated content, and made available on demand, including but not limited through subscription, over the internet or computer networks including films, audiovisual programmes, documentaries, television programmes, serials, series, podcasts and other such content."

The term "publisher of online curated content" is further defined as "a publisher who, while playing a significant role in determining what online curated content is being made available, makes available to users a computer resource enabling such them to access online curated content on the internet or computer networks and such other. The definition, while including persons functionally similar to publishers of online curated content, excludes any individual or user who is not transmitting online curated content in the course of systematic business, professional or commercial activity."

Under these definitions, all the content published by any over-the-top (OTT) media channels operating in India shall be covered by these Rules. The Amendment Rules of 2023 introduce a new Rule 11 that makes it mandatory for any publisher of online curated content (OTT platforms) that displays tobacco products or their use to display the following information:

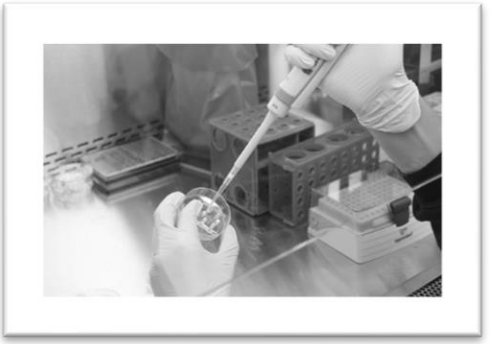
- Display anti-tobacco health spots for at least thirty seconds each at the beginning and during the programme.
- Display an anti-tobacco health warning as a prominent static message at the bottom of the screen during the period when tobacco products or their use is being displayed.
- Display an audio-visual disclaimer on the ill effects of tobacco use for at least twenty seconds at the start and during the programme.

Further, the anti-tobacco health warning message, health spot and audio-visual disclaimer must be in the same language as the one used in the online curated content. The anti-tobacco health warning message must also be legible and readable, with the font in black colour and white background, reading as "Tobacco causes cancer" or "Tobacco kills". These health spots, messages, and disclaimers will be made available for the covered entities on the MoHFW website or the National Tobacco Control Programme website.

However, there must not be any display of brands of cigarettes or other tobacco products/any form of tobacco product placement or display of any tobacco products or their use in the promotional materials for the online curated content.

In the event of non-compliance by the publisher of online curated content with these display requirements, an inter-ministerial committee comprising representatives from the MoHFW, Ministry of Information and Broadcasting and Ministry of Electronics and Information Technology may take suo moto action or act on a complaint against such publisher. The Committee shall first issue a note to the non-complying publisher, giving them an opportunity to elucidate on such non-compliance and a chance to make requisite rectifications to the content.

11. CABINET APPROVAL TO NATIONAL RESEARCH FOUNDATION (NRF) BILL 2023 (JUNE 28, 2023)



On June 28, 2023, the Union Cabinet approved the introduction of the National Research Foundation (NRF) Bill 2023 in Parliament. This significant move promises to reshape India's research landscape and propel scientific innovation to new heights.

The NRF's objective, as envisaged in the Bill, is to foster groundbreaking discoveries and ensure India's position at the forefront of global research excellence across various domains. The Bill, once enacted into law, would be a revolutionary step for India's research ecosystem to create opportunities for transformative advancements in science and technology.

NRF is proposed to be governed by an esteemed Executive Council chaired by the Principal Scientific Adviser to the Government of India. The council would comprise experts from various scientific disciplines, offer strategic guidance and foster a collaborative environment for research excellence.

The Bill underscores the government of India's unwavering commitment to scientific advancement and promoting a culture of research and development.

12. PROPOSAL FOR 24X7 VIRTUAL COURTS IN INDIA (JULY 8, 2023)

On July 8, 2023, the Indian Ministry of Law invited proposals from IIMs, IITs, law universities, and judicial academies across India to conduct an extensive study on 24/7 virtual courts for the disposal of all kinds of cases. The proposals were to be submitted by August 1, 2023.

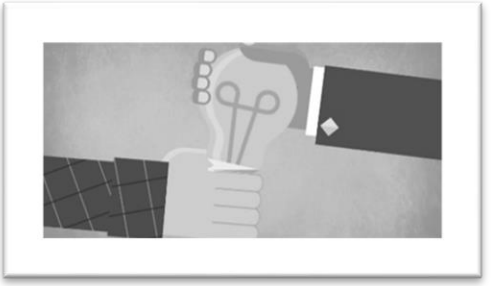
Currently, 21 virtual courts operate in India's 17 states and Union Territories, with more than 2 crore (20 million) cases of traffic challans handled and over INR 360 crore (USD 43 million) worth of online fines realised.

The establishment of 24/7 virtual courts for all kinds of cases is expected to reduce footfall in courts and eliminate the need for the physical presence of advocates or violators. The proposed virtual courts will be led by virtual judges with extended jurisdiction over the entire state and 24/7 working hours. This arrangement is hoped to save invaluable judicial hours and eliminate the need for the judge or the litigant to come to the court physically.

The ministry has also invited proposals for evaluating the performance of commercial courts and the timelines for disposing of cases. The institutes to which the project will be assigned would also have to come up with innovative suggestions and proof of concept based on extensive research studies that can be further extended to try other types of cases through virtual courts.

The digitalisation of the Indian court system has been a priority of the Government in recent times, with the allocation of INR 7000 crores for the launch of the third phase of the e-courts project in the Union Budget 2023-24. The setting up of 24/7 virtual courts will be a significant step towards establishing a prompt justice delivery system in the country, along with reducing the redundancy of physical presence for small matters.

13. INDIA TAKING STEPS TOWARDS IP FINANCING (JULY 15, 2023)



The Intellectual Property (IP) generation and protection regime in India has been continuously evolving over the past decade, mainly due to the Indian Government's constant efforts towards increasing ease of doing business and strengthening the rights of IP holders. A few factors contributing towards building a resilient Intellectual Property regime in India include its vibrant digital economic growth stemming from the 'Digital India' initiative, IP support provided under the 'Make in India' initiative, Global economic policy reforms by the Government, and the recently modified Startups Intellectual Property Protection scheme.

In the entire past decade, the Government of India has been launching several schemes to nurture the start-up ecosystem, such as the SIDBI Funds of Fund Scheme, Startup India Seed Fund Scheme, Startup India Investor Connect, etc. These schemes aim to raise the budding entrepreneurs of the country, who can turn into the next billion-dollar block of the second fastest-growing economy in the world.

Intellectual property possesses tremendous value, which can be sifted to identify and leverage significant financial power. Traditionally, such instances have been sparse, and IP financing is still a concept in discussion – a blueprint in the making!

The Indian Government recently announced the decision to lay down an action plan and blueprint for the promotion and institutionalisation of intellectual property financing in India. This step is being taken in an endeavour to improve the country's finances by leveraging IP rights vested in patents, trademarks, designs, copyrights, etc.

The strategic blueprint and action plan will be formulated under the Department for Promotion of Industry and Internal Trade (DPIIT), the nodal department for the administration of the IP regime in India.

It is widely known that India is a regulated market with constant government interventions on policy changes and regulations. From large organisations to new startups, every enterprise needs access to capital to grow, scale up or diversify. Yet, raising funds is one of the most challenging tasks for any business. The Government of India's newest attempt to align IP financing with the overall 'Credit

System of India' is aimed at addressing some of these challenges and enabling businesses to monetise their intellectual property effectively.

IP financing involves using intellectual property rights to avail credit, generate revenue, and avail other financial benefits by using such intangible assets as collateral in financial transactions. The concept of IP financing is gaining recognition as it propels financial innovation, increases accessibility to credit, and enhances capital base by allowing IP holders to leverage the value of their intellectual property.

More investors have started identifying a well-managed IP portfolio as an addition to a company's overall value. IP protection indicates the high potential of a business to perform well against its competitors in the market. The ownership of a business in intellectual property serves as a testament to its innovative products or services, thereby strengthening its potential to be a profitable business with a larger market share and fewer competitors.

Several countries such as South Korea, Canada, China, and Japan are developing systemic plans to help Small and Medium-sized Enterprises (SMEs) raise financing (either equity and/or debt) in a big way towards securing loans and raising capital to fund the innovation ecosystem. In South Korea, state-owned banks like the Korea Development Bank and the Industrial Bank of Korea run IP finance transactions in the country. Interestingly, the Korea Development Bank also holds a USD 60 million IP recovery fund. The Chinese government has also been encouraging the sale and leaseback model as a base for optimising loan lending. In Japan, the government has been aiding commercial lenders engaged in IP-backed financing through valuation assistance and a lower degree of direct market intervention. The government plans to analyse and implement measures and procedures already enforced by foreign counterparts towards the adoption of IP financing.

Further, it is planned to identify all the reasonable methods for formulating a uniform system for the valuation of intellectual property as an intangible asset in order to further devise a mechanism to identify and appoint IP evaluators and optimise the evaluation of assets by financial institutions. It would also include putting in place relevant mechanisms for insurance protection against the financial risks associated with IP.

Due to the lack of recognition of intellectual property as a valuable asset, businesses often tend to overlook it when it comes to financing. Further, most banks and financial institutions remain unwilling to assume the contingencies

associated with IP as an asset. Owing to these factors, IP financing is still an extremely niche product in the mostly traditional Indian loan market.

It's imperative to understand that valuing the intangible nature and associating the potential revenue gains from IP can be a challenging task. The journey of transforming IP as a valuable financial instrument may witness its set of unprecedented challenges and will require new and innovative ways of financial modelling and breakthroughs.

A blueprint for IP financing would act as an assertive step towards solving a globally posed question of how to capitalise on IP and may offer a viable and resilient financial solution to the world. Such a step by the Indian Government can also be seen as a recognition of the complex nature of the problems relating to IP financing that may dampen its implementation. Additionally, the Government of India is working towards building an interface that can bring together different stakeholders and facets of the IP and finance industry, thereby making it a truly collaborative and united effort.

An action plan for IP financing in India will also attract numerous economic benefits, including financial innovation and the creation of more optimised financial technologies, corporate securities, new derivative contracts, and new pooled investment products. This move by the Indian government can also help in a systematic valuation of IP assets for businesses, especially for startups that often wish to raise capital from investors for financial institutions or resell their IP.

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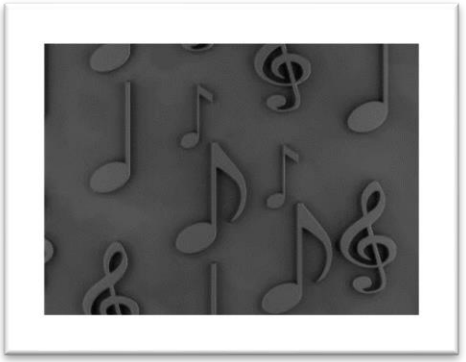
14. NO MUSIC LICENSE REQUIRED FOR MARRIAGE CEREMONIES: DPIIT (JULY 24, 2023)



On July 24, 2023, the Department of Promotion of Industry and Internal Trade (DPIIT) issued a Public Notice in response to several complaints received from stakeholders and the general public that copyright societies have been collecting royalties for communication and performance of copyrighted musical works and sound recordings in marriage functions. Via this Notice, the DPIIT clarified on account of the application of the exception given under Section 52(1)(za) of the Copyright Act, 1957, that performance or communication of any literary, dramatic, musical or sound recording work at any religious ceremony which includes marriage ceremony shall not amount to copyright infringement.

Via an earlier Notice dated August 27, 2019, the Copyright Office had already clarified that in view of the exception contained in Section 52(1)(za) of the Act, *read with the explanation thereto*, it is evident that utilisation of sound recordings in the course of religious ceremonies including marriage procession and other social festivities associated with marriage will not amount to copyright infringement and no license is required to be obtained for the said purpose. Section 52(1)(za) is reiterated for reference below:

52. Certain acts not to be infringement of copyright.— (1) The following acts shall not constitute an infringement of copyright, namely,—

(za) the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any bona fide religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority.

Explanation—For the purpose of this clause, religious ceremonies, including a marriage procession and other social festivities associated with a marriage;

With the latest Public Notice issued by DPIIT, copyright societies have been directed to strictly refrain from entering into any acts that violate Section 52(1)(za) of the Act to avoid legal action against them, and a caution advisory has been issued to the general public to not oblige to any uncalled for demands of any

copyright society/individual/organisation that contravenes Section 52(1)(za) of the Act.

15. THE MINES AND MINERALS (DEVELOPMENT AND REGULATION) AMENDMENT BILL, 2023 (JULY 28, 2023)

On July 28, 2023, the Lok Sabha passed the Mines and Mineral (Development and Regulation) Amendment Bill 2023 (the Bill). The Rajya Sabha further passed the Bill on August 02, 2023. By way of such amendments to the Mines and Minerals (Development and Regulation) Act, 1957, the government has laid down the mechanism for private players to enter the mining sector for lithium and other deep-seated minerals.

Definition of "Reconnaissance Operations"

The Bill expands the definition of the term "reconnaissance operations" to include preliminary prospecting of a mineral through regional, aerial, geophysical, or geochemical surveys, geological mapping, pitting, trenching, drilling, and sub-surface excavation. Such expansion of the scope of activities is aimed at attracting more investors and private players in the sector.

Exploration License

One of the most significant additions made to the Act by the Bill is the introduction of an exploration license for reconnaissance and prospecting operations for minerals specified in the 7th Schedule of the Bill. Further, an "exploration license" is also added alongside a "composite license", which is required for prospecting and mining.

An exploration license may be issued for 29 minerals as listed under the 7th Schedule, including gold, silver, copper, cobalt, nickel, lead, potash, apatite, cadmium, diamond, graphite, rock phosphate, and minerals of 'rare earths' group. Further, the Bill omits atomic minerals such as lithium, beryl and beryllium, niobium, titanium, zirconium, and tantallium from Part B of the First Schedule to the Act. Under the Act, prospecting and mining activities for atomic minerals are restricted to government entities. However, the Bill opens these activities for private entities, propelling more exploration and mining activities in the country for these minerals and reducing the country's import dependency.

These minerals have various applications in the space industry, electronics, communications, energy sector, and electric batteries and are critical in the net-zero emission commitment of India. Due to their inclusion in the list of atomic minerals, their mining and exploration are reserved for government entities.

State governments would issue the license through competitive bidding, which would be conducted as per the benchmarks, terms and conditions, and procedures set through state rules. The validity of the exploration license is set as five years, which may further be extended by up to two years through an extension application to the state government. Such an application may be filed after three years of issuance of the license and before its expiry.

After the first three years of the license, the exploration license holder shall be allowed to retain up to 25% of the authorised area to carry out their operations. A detailed report shall be required from the license holder to state reasons for approval from the state government to retain the area.

The exploration licensee shall have to submit a geological report on their findings within 3 months of completing the exploration operations or before the expiry of their license. Necessary action, including the imposition of a penalty, may be taken against an exploration license holder if there is a failure to complete the reconnaissance and prospecting operations before the expiry of such license or failure to submit the geological report.

Upon successful exploration, an auction shall be conducted by the state government within 6 months of receiving such geological report. The licensee shall also receive a share in the mining lease auction value for the minerals explored. The central government shall prescribe such share value along with the value that the state government would need to pay the exploration licensee if the mining lease auction is not completed within the provided timeframe.

Exclusive Auction of Certain Minerals

The Bill empowers the Central Government to auction composite licenses and mining leases for certain critical minerals such as rhenium, tungsten, cadmium, indium, gallium, graphite, vanadium, tellurium, selenium, potash, tin, lithium, cobalt, nickel, phosphate, etc. However, the power to grant these licenses to successful bidders further shall reside with state governments. The respective state governments shall also receive the auction premium and other payments for the specified minerals.

16. THE CINEMATOGRAPH (AMENDMENT) BILL, 2023 (JULY 31, 2023)

The Parliament passed the Cinematograph (Amendment) Bill, 2023 ('the bill'), with the bill receiving the nod from Lok Sabha on July 31, 2023. The bill comes in furtherance of the Cinematograph (Amendment) Bill, 2021. This bill was first introduced in the Rajya Sabha, which is the upper house of the Indian legislature, in February 2019. The initial bill only dealt with changes with respect to film piracy. It was then referred to the Standing Committee on Information Technology, which submitted its report in March 2020, after which the revised bill of 2021 was opened to the public. Following consultations with industry stakeholders and receiving public comments, the bill was again revised to become as it stands today.

In a nutshell, the bill proposes some key changes to the Cinematograph Act, 1952 ('the Act') with respect to the certification of films, copyright coverage, the menace of piracy as well as the extent of governmental control over the Central Board of Film Certification ('CBFC' or 'the Board').

The bill proposes the following changes to the Act:

- **Expansion of Copyright Protection–**

The bill has introduced two Sections, 6AA and 6AB, which will respectively deal with the 'Prohibition of unauthorised recording' and 'Prohibition of unauthorised exhibition of films'. It also makes the *attempt* and *abetment* of these acts punishable.

Further, both Sections use the terminology "infringing copy", which will be added in the definition clause under Section 2 (*ddd*) of the Act and shall have the same meaning as assigned to it under sub-clause (*ii*) of clause (*m*) of Section 2 of the Copyright Act, 1957 ('the Copyright Act').

- **Punishment for Piracy–**

While there is no definition provided for 'piracy', as per the proposed Section 7 (*1A*), the abovementioned offences under Sections 6AA and 6AB will be punishable with imprisonment for a minimum period of 3 months and a maximum of 3 years and a fine of minimum INR 300,000 (USD 4000) which may be extendable up to 5% of the audited gross production cost, this will however be subject to Section 52 of the Copyright Act which lays down the exceptions to copyright infringement.

The proposed Section 7 (*1B*) further goes on to state that any person aggrieved by the offences committed under the abovementioned Sections 6AA and 6AB shall

not be prevented from taking suitable action for infringement under Section 51 of the Copyright Act or for computer-related offences under Section 66 of the IT Act, 2000.

- **Age-based Certification–**

In addition to the current U, UA, A and S ratings as given under Section 5A of the Act, the bill trifurcates the UA rating into further age-based indicators, namely, **UA 7+**, **UA 13+** and **UA 16+,** which will indicate that the film is suitable for children above the respective ages of 7, 13 and 16 under parental guidance.

These changes will take effect through Section 4 under 'Examination of films' and in the definition clause under Section 2 (*i*) of the Act.

It is pertinent to mention that this new classification system aligns with the graded-age classifications implemented for streaming platforms under the IT Rules, 2021.

- **Recertification of films for TV and other media–**

Historically, films rated for adults in India have been under a blanket ban from being televised since a 2004 Order of the Bombay High Court in the case of *Pratibha Naitthani v. Union of India*. As a result, the producers of the films used to apply for recertification of the film after making appropriate cuts to make it eligible for the UA certificate. However, the bill will now formalise the process under proposed Section 4 (*3*) of the Act by empowering the Board to sanction films with a separate certificate for exhibition on television or such other media as may be prescribed.

- **Perpetual validity of Certification–**

As per Section 5A (*3*) of the Act, the validity of a certificate granted under the Act is prescribed as 10 years. However, the bill has proposed to remove this limit, thereby making the certification perpetual.

- **Extent of Government Regulation–**

Giving effect to the judgment of the Supreme Court in *Union of India v. K. M. Shankarappa*, the bill proposes to curtail the Revisional Powers of the Central Government by removing Section 6 (*1*) of the Act in its entirety. With this, the autonomy of the CBFC is emphasised and strengthened.

Overall, the Cinematograph (Amendment) Bill, 2023 is a welcome step towards tackling some significant issues that have been ailing the film industry for decades. In addition to curbing piracy, the bill has also harmonised the law with the Copyright and the IT Act, both of which play a crucial role with respect to audio-visual, cinematographic, and digital content. The harmony of laws is imperative for the smooth functioning of any system, and this bill seems to have the potential to act as a facilitator towards achieving that climax.

The bill will amend the Cinematograph Act almost 40 years after its last significant amendment in 1984. Could this then be called its coming of age? Only time will tell.

17. DRAFT NATIONAL DEEP TECH STARTUP POLICY (NDTSP) (JULY 31, 2023)

The Government of India released the draft National Deep Tech Startup Policy, 2023 (draft NDTSP) on July 31, 2023, seeking feedback from the market stakeholders till September 15, 2023.

The Policy was drafted after extensive consultation with end-users and stakeholders in the deep tech startup ecosystem to identify the existing challenges and priority sectors. Investors, incubation centres, and academia were also consulted, along with individuals and organisations, through thematic focus group discussions and virtual consultations. The draft version v.3.0, dated July 31, 2023, is now also open for public consultation.

Key Highlights of the Draft NDTSP

The draft NDTSP was released to identify and address the numerous hurdles encountered by deep tech startups in India. The Policy aims to offer the much-required invention and framework for an encouraging technology ecosystem in the country. Once enacted, the Policy will serve as the groundwork for India's deep tech startup sector and bolster innovation and economic development.

The draft NDTSP stands on four key pillars: securing India's economic future, progressing towards a knowledge-driven economy, bolstering national capability and sovereignty through the Atmanirbhar Bharat imperative, and encouraging ethical innovation.

The vision of the policy aims to strengthen research and innovation, enhance the intellectual property regime, provide funding and resources, foster industry-relevant research, create a favourable regulatory environment, attract top talent, promote indigenous technologies, align with national priorities, and support deep tech startups through challenging phases.

Priorities of the Draft NDTSP

The draft NDTSP outlines the following areas as key priorities and interventions for the deep tech startup ecosystem in India:

- **Nurturing Research, Development & Innovation:** The policy aims to strengthen the deep tech startup ecosystem through increased R&D investment, fostering partnerships for knowledge commercialisation, and supporting entrepreneurship among faculty and students in academic institutions.

- **Strengthening Intellectual Property Regime**: To address challenges faced by deep tech startups in intellectual property protection, the policy proposes the creation of a Single Window Platform, guidelines for deep tech IP and cybersecurity, building in-house capabilities among research institutes, and strengthening global IP conventions.

- **Facilitating Access to Funding**: Funding is crucial for deep tech startups, and the policy suggests creating a centralised platform for grant payments, establishing long-term patient grants for research institutions, and providing various fiscal incentives and collaborations to attract investment.

- **Enabling Infrastructure Access and Resource Sharing**: Access to shared scientific infrastructure is vital for deep tech startups, and the policy aims to establish Frontier Scientific Infrastructure (FSI) with technology-specific facilities, incentivise academic institutions to open up labs to startups and facilitate access to data from various sectors.

- **Creating Conducive Regulations, Standards, and Certifications**: The policy aims to reduce costs, increase efficiency, and promote innovation by developing regulatory frameworks, establishing regulatory sandboxes, providing subsidies and exemptions for certification costs, and granting access to government-owned datasets for research and innovation.

- **Attracting Human Resources & Initiating Capacity Building**: The policy focuses on attracting talent and initiating capacity building through specialised courses, workshops, mentorship programs, and partnerships with global universities.

- **Promoting Procurement & Adoption**: The policy proposes utilising public procurement as a first market for deep tech products, simplifying tendering processes for startups, and exempting startups from certain clauses to promote procurement and adoption of deep tech solutions.

- **Enhancing Policy & Program Interlinkages**: The policy aims to align and interlink various initiatives, promote international collaborations,

reduce import dependencies, and position India as an attractive destination for startups.

- **Sustenance of Deep Tech Startups**: The policy aims to help startups overcome the Valley of Death (VoD) by providing funding programs, strategic investments, and simplification of approval procedures, along with monitoring their success through key performance indicators.

18. THE DIGITAL PERSONAL DATA PROTECTION BILL, 2023 (AUGUST 3, 2023)

On August 3, 2023, the Digital Personal Data Protection Bill, which primarily focuses on the protection of personal data, was introduced by the Minister of Railways, Communications, and Electronics and Information Technology before the Lok Sabha. If both Houses pass the DPDP Bill 2023 in its current form, it will be sent to the President of India for approval, after which, by publication in the Official Gazette, it will become the "Digital Personal Data Protection Act, 2023".

Some of the salient features of the proposed Digital Personal Data Protection Bill are:

- The object and reasons of the Bill are to provide for the processing of digital personal data in a manner that recognises both the right of individuals to protect their personal data and the need to process such personal data for lawful purposes.

- Digital Personal Data, as per the Bill, means data either in digital form or subsequently converted into that form.

- The Bill defines the individual to whom the personal data relates as a "Data Principal", and any person who determines the purpose and means of the processing of personal data is a "Data Fiduciary". Data Principal and Data Fiduciary under the proposed Bill are equivalent to "Data Subject" and "Data Controller" under the GDPR of Europe.

- The territorial jurisdiction provided under the proposed Bill extends to the whole of India and India and outside the territory of India if the processing of data is in connection with any activity related to the offering of goods or services to Data Principals within the territory of India.

- As per the Bill, digital personal data can be processed for any lawful purpose by way of consent or for certain legitimate uses. The

expression “lawful purpose” means any purpose which is not expressly forbidden by law.

- The Bill prescribes the contents of the notice to be made for seeking the consent of the Data Principal and that notice must be accompanied or preceded by a notice containing (a) the personal data, (b) the purpose for which the same is proposed to be processed; (c) the manner in which the Data Principal may make a complaint to the Board, etc.

- The consent given by the Data Principal shall be (a) free from all encumbrances, (b) for a specified purpose only that is clearly defined; (c) every Data Principal must know each aspect of what is being collected, (d) without any conditions attached; (e) expressed in a way that makes it completely clear what is meant; (f) with a clear affirmative action (g) and shall signify an agreement to the processing of her personal data for the specified purpose and be limited to such personal data as is necessary for such specified purpose;

- Data Fiduciary under the Bill may (a) engage, appoint, use or otherwise involve a Data Processor; (b) ensure its completeness, accuracy and consistency; (c) implement appropriate technical and organisational measures; (d) take reasonable security safeguards to prevent personal data breach; (e) shall give each affected Data Principal, intimation of a breach in such form and manner as may be prescribed, (f) erase and cause to be erased all personal data where the Data Principal has withdrawn consent or specified purpose is no longer being served; (g) publish, in such manner as may be prescribed, the business contact information of a Data Protection Officer, if applicable, or a person who is able to answer on behalf of the Data Fiduciary, the questions, if any, raised by the Data Principal about the processing of her personal data and (h) establish an effective mechanism to redress the grievances of Data Principals.

- The Bill provides that the Central Government may restrict the transfer of personal data by a Data Fiduciary for processing to such country or territory outside India as may be so notified. However, if a law provides a higher degree of protection or restriction of transfer, then that law will supersede this provision.

19. THE BIOLOGICAL DIVERSITY (AMENDMENT) ACT, 2023 (AUGUST 3, 2023)

The National Biological Diversity Act, 2002 has been amended through the Biological Diversity (Amendment) Act, 2023. The amendment Act was notified by a Gazette publication on August 3, 2023, introducing different reliefs for Indian entities to protect their intellectual property and decriminalising the violation of provisions of the National Biological Diversity Act. At the same time, some changes have been made to expand the scope of applicability of the Act. One of the most significant amendments of the Act is that Indian-controlled companies would no longer fall under the definition of 'body corporate, association or organisation' under Section 3 (2) (c) (ii).

The companies that are incorporated and registered in India and have Indian control and management, but due to being listed on the stock exchange, lack restriction on holding their share by any non-Indian entity are now exempted under Section 3 (2) (c) (ii) of the Act. Under the amendment Act, only the companies which, though incorporated and registered in India but are controlled by a foreign company would fall within the purview of section 3 (c) (ii) of the Act, wherein the "foreign controlled company" is defined as a foreign company within the meaning of clause (42) of section 2 of the Companies Act, 2013 which is under the control of a foreigner.

This amendment clarifies that Indian companies that have foreign shareholdings but are Indian-controlled companies do not come under the scope of Section 3(2) of the Act. Another important change for Indian entities under the Amendment Act is that no prior approval from the National Biodiversity Authority (NBA) would be required by a person covered under Section 7 of the Act to obtain IPR.

The amendment has introduced a new provision as Section 6(1A) that requires Indian nationals or entities covered under Section 7 to apply for an IPR in or outside India for any invention based on any research or information on Indian biological resources, including those deposited in repositories outside India or associated traditional knowledge thereto, must register themselves with the NBA before granting of IPR. It means that the Indian nationals or entities falling under Section 7 need not go through the lengthy process of NBA approval and only need to register with the NBA before the grant of the patent.

It would not only expedite the grant of IPR/patent to Indians but would also shorten the process at the NBA office, as signing access and benefit-sharing agreements with the NBA would no longer be required. However, Indian nationals accessing biological resources for commercial utilisation of IPR would need to give prior intimation to the State Biodiversity Board (SBB) and seek NBA approval for commercial utilisation. The Amendment Act has introduced a new provision, Section 6(1B), stating that any person falling under Section 7 must seek prior approval from the NBA before the commercialisation of IPR. Further, Indian citizens or body corporates can access biological resources and their knowledge for commercial utilisation only after giving prior intimation to the concerned SBB and only after their approval under Sections 23 and 24.

Given the above, for access to biological resources for commercial utilisation or commercial utilisation of IPR, approval from the NBA as well as SBB would be required. Furthermore, only registration with the NBA will be needed at the time of making an application for obtaining IPR; however, an NBA approval letter and signing of access and benefit sharing agreement will be required at the time of commercialisation of IPR. The Amendment Act also changes the penal provisions under the Act with an increment in penalty amount and omission of imprisonment for violation of provisions of the Act. By the amendment of Section 55, the penalty imposed for contravention of the provisions of Sections 3, 4, or 6 has been revised with the lower limit of penalty being INR one lakh, which may reach a maximum of INR fifty lakh. However, where the damage caused exceeds the amount of penalty, the penalty shall be commensurate with the damage caused. If the failure or contravention continues, an additional penalty may be imposed, which shall not exceed INR one crore.

The amendment omits the imprisonment punishment and appoints an adjudication officer under Section 55(A) to hold an enquiry or impose penalties under the Act. Any person aggrieved by the order made by the adjudication officer may appeal to the National Green Tribunal established under Section 3 of the National Green Tribunal Act, 2010. The aforementioned amendment for the abolition of imprisonment and revision of penalty is somewhat correlated to a lack of awareness about the Act.

The Amendment Act also extends the exemptions available under the Act. For instance, Section 40 of the Act is amended to provide exemptions to the use of agricultural wastes, as notified, and cultivated medicinal plants and their products for entities covered under Section 7 of the Act. However, activities under sub-section (1) and (2) of Section 6 are not exempted. Previously, this exemption was available only to the use of biological resources when normally traded as commodities or to the items derived from them. This exemption extension aims to

facilitate the fair trade of agricultural wastes and promote the herbal and ayurvedic medicine industry using cultivated medicinal plants and their products as raw materials for product manufacturing.

Another example of extension in exemption available is evidenced in the exemption available to local people and communities, including growers and cultivators of biodiversity and vaids and hakims for accessing biological resources for commercial utilisation without prior intimation to SBB concerned under Section 7 of the Act. This exemption is now extended to registered AYUSH practitioners who have been practising medicines, including Indian systems of medicine, for sustenance and livelihood. Also, access to codified traditional knowledge, cultivated medicinal plants and their products are exempted from prior intimation to SBB under amended Section 7 of the Act.

The term “biological resource” determines the scope of the Act as it defines the use of which materials would require compliance with legal provisions under the Act. Though the definition of "biological resources" is always a matter of confusion, the amendment Act attempts to redefine it by cancelling the term "by-product" and introducing the phrase “derivatives of the biological resources with actual or potential use or value for humanity”. The term “derivative” is defined under Section 2(fa) as “a naturally occurring biochemical compound or metabolism of biological resources, even if it does not contain functional units of heredity”. Accordingly, the term “biological resources” is expanded to bring derivatives, including biowaste with potential use to humanity within the ambit of the Act. Otherwise, the term “biological resources” was limited to plants, animals, microorganisms or parts of their genetic material. Since there is no change in the definition of value-added products, the amendment brings more restrictions on the use of biological resources.

Some provisions are also amended or introduced to bring further clarity and avoid confusion. For instance, the term "access" is defined as "collecting, procuring or possessing any biological resource occurring in or obtained from India or associated traditional knowledge thereto, for research or bio-survey or commercial utilisation”. Similarly, Section 4 is amended to clarify that if the purpose of the transfer of research results is to carry out further research, the transferor is required to only register with the NBA. However, if the purpose of the transfer of research results is commercial utilisation or for obtaining IPR within or outside India, prior approval from the NBA would be required. For instance, an Indian researcher transfers a mutant strain developed having improved fermentation capacity to a foreign research institute to carry out further research; they are required only to register with the NBA in the prescribed manner.

However, if the purpose of the transfer is for commercial utilisation of mutant strain in brewery industries or for obtaining IPR on a mutant strain, they must obtain prior NBA approval in the prescribed manner. The amendment of the Act simplifies the patenting procedure and expedites the grant of patents for Indian nationals. The amendment of decriminalising the violation of the provision of the Act may be due to a lack of awareness about the provisions of the Act. The amendments bring more clarity about the functioning of the NBA and SBB. The exemptions provided for the use of codified traditional knowledge, cultivated medicinal plants and their products and registered AYUSH practitioners under Section 7 would benefit local people, and the expansion of biological resources exempted under Section 40 would promote ease of doing business for domestic companies.

20. JAN VISHWAS (AMENDMENT OF PROVISIONS) ACT, 2023 (AUGUST 11, 2023)

The Jan Vishwas Act of Parliament received the assent of the President on August 11, 2023. The Bill was introduced in the Lok Sabha on December 22, 2022, and referred to the Joint Committee of Parliament. The Act aims towards the ease of living and ease of doing business. The Jan Vishwas Bill proposes to amend 183 provisions in 42 Central Acts administered by 19 Ministries/Departments, covering various domains such as environment, agriculture, media, industry, trade, information technology, copyright, motor vehicles, cinematography, food safety, etc.

An Act to amend certain enactments for decriminalising and rationalising offences to further enhance trust-based governance for ease of living and doing business.

Impact of Key Amendments:

1. Changes related to the IT sector

The Act introduced omission of disputable section 66A in the Indian Information Technology Act, 2000, which stated that punishment for any person sending offensive information using any electronic devices. This section remained in the statute and was used to prosecute citizens despite the order of the Supreme Court of India in 2015. Section 66A was declared unconstitutional on the grounds of violating the right to freedom of speech as given under the Constitution of India. Further, the Act has also several amended and decriminalised penalties prescribed under the IT Act, including penalties in respect of failure to furnish information, return, etc. The penalty for failure to preserve and retain information by online service providers or platforms, etc., is in favour of retaining financial penalties and increasing the quantum of compensation payable thereunder.

2. Changes in Laws related to Intellectual Property

The Act Introduced certain amendments in the Trademarks Act, 1999, such as the removal of imprisonment terms for some offences (while increasing the monetary penalty prescribed for the same) – such as the offence of falsely representing a

trademark and the removal of penalties for describing a place of business improperly as connected with the Trademarks Office. The Act likewise removes penalties for improperly describing a place of business as connected with the Geographical Indications (GI) registry and falsification of entries in the register of the GI registry from the Geographical Indication of Goods Act. In the Patents Act, 1970, the Act removes the penalty for implying a false connection with the patent office. Meanwhile, the Copyright Act entirely removes the penalty for making false statements for the purpose of deceiving or influencing any authority or officer.

3. Changes in Media Laws

With respect to the Cinematograph Act of 1952 and the Cable Television Networks (Regulation) Act of 1955, the Jan Vishwas Act introduces substantial changes to the penalties related to various offences related to the exhibition and use of. In relation to the latter statute, the Act removes the imprisonment terms prescribed for contravening the Act's provisions. In relation to the amendments stipulated in the Act, a person who contravenes the Cable Television Networks (Regulation) Act, 1955 is liable for advisory, censure, warning, or a payment of fines (the given amount of which has been increased) for such contravention (subject to whether it is the first contraventions or a subsequent one contravention in last three years).

4. Changes under the Indian Post Office Act

The Act has abolished all the offences under the Indian Post Office Act, 1898. However, these eliminated offences encompass acts committed by officers employed in post offices, such as theft or dishonest misappropriation of postal articles, fraudulent activities linked to postal marks and unauthorised opening of postal articles or mail bags. While crimes like theft, misappropriation, etc., are still governed by other statutes like the Indian Penal Code 1860, the act of unlawfully opening postal articles or mailbags remains unaddressed. The removal of punishments for this offence may lead to unjustified invasions of privacy and is against the 'right to privacy' recognised as the 'right to life' by the Supreme Court of India. This amendment is also criticised on the ground that it does not align with the objective of the Act of 'ease of business' and 'ease of life'.

5. Changes in Laws related to Food, Drugs & Pharmacy

The Act replaces the punishment with a penalty and allows the compounding of an offence at some places under the Drugs and Cosmetics Act, 1940, the Food Safety and Standards Act, 2006 and the Pharmacy Act, 1948.

6. Changes in Environmental Laws

The Act made a substantial reduction in the monetary penalty for offences under the three environmental legislations (EPA, Air Act and PLI). For instance, the minimum penalties for certain violations under the Air Act are reduced by 90% (from INR 1 Lakh to INR 10 thousand), and the maximum penalty is reduced by 85% (from INR 1 Crore to INR 15 Lakhs).

7. Changes in the Payment & Settlement Act

The Act amends the Payments and Settlement Act, 2007, like residuary offences and offences related to failing to produce any statement, information, returns, or other document asked for, which may also be an acclamatory step in the era of electronic payments.

8. Changes in the Legal Metrology Act

The amendments introduced by the Act in Legal Metrology Act decriminalise minor offences, which may give relief to businesses and may further help to reduce the burden on courts with the backlog of cases.

21. THE STANDARD OPERATING PROCEDURE FOR PROCESSING OF FDI PROPOSALS (AUGUST 17, 2023)

The Ministry of Commerce and Industry, through the Department for Promotion of Industry and Internal Trade (DPIIT) vide Notification dated August 17, 2023, announced the amended Standard Operating Procedure (SOP) for Processing FDI Proposals in India.

The first and most significant change that has been introduced is that any FDI proposal requiring approval from the government shall be filed only online using the National Single Window System (NSWS). It is applicable for both FDI approval and FEMA approval. Thus, there is no need for filing a physical copy of the application. However, the concerned government department can call for originals of any scanned documents for scrutiny or verification if required.

The applicants must adhere to the formats provided on the portal for making the FDI application. The documents to be uploaded along with the application have been listed in Annexure 1 to the SOP. The applicant must digitally sign these documents before uploading them along with the application for approval. There is also a requirement for filing Annexure 2, which is the form for Security Clearance as per Press Note 3 of 2020.

Once the completed application with digital signatures and annexures is filed through NSWS, the DPIIT shall identify the concerned administrative department, which is the Competent Authority as per Chapter 4 of the FDI policy and assign it for processing and disposal of the Proposal. The Administrative Department/Competent Authority shall process the application seeking post facto approval in terms of clause 4.1.2 of the FDI policy.

DPIIT shall also share the FDI application with RBI for comments from the FEMA perspective. The proposals that require additional security clearance in terms of Press Note 3 of 2020 shall also be referred to the Ministry of Home Affairs for their comments. In addition to this, the proposals which require scrutiny from the Ministry of Home Affairs are the ones that pertain to FDI in Broadcasting, Telecommunications, Satellites (Establishment and Operation), Private Security Agencies, Defence, Civil Aviation and Mining and Mineral separation of Titanium bearing minerals and ores and related activities. If MHA needs additional time or

clarification before communicating, then the same has to be communicated in writing by MHA, along with clear visibility of how much additional time is needed to examine the Proposal and confirm clearance.

DPIIT shall also forward all FDI proposals to the Ministry of External Affairs to invite their comments. All the comments and inputs from RBI, Ministry of Home Affairs and Ministry of External Affairs shall be shared by DPIIT with the Concerned Department/Competent Authority processing the FDI application. If no comments are received within the prescribed time frame, it will be assumed that there are no observations from these departments to be forwarded to the Concerned Department/Competent Authority.

Proposals that require clarification on FDI policy alone shall be referred to DPIIT with the approval of the Secretary of the Concerned Department/Competent Authority. Other than that, there is no requirement to refer to every Proposal for discussion with DPIIT. Similarly, consultation with any other department or ministry will require justification and approval from the Secretary of the Concerned Department/Competent Authority.

Another significant change that has been introduced is that the Concerned Department/Competent Authority shall, after examining the Proposal and the inputs received from the other departments, such as the MEA, MHA, DPIIT and RBI, ask for additional documents or clarifications from the applicant in one consolidated request through the Foreign Investment Facilitation (FIF) Portal. This has been done to ensure that repeated back-and-forth requests and submissions cause no waste of time.

Once these inputs are received, the Concerned Department/Competent Authority shall examine the Proposal in the light of the recommendations and comments received from various departments and ministries such as MHA, MEA, DPIIT, RBI, etc., and also examine the sectoral requirements and policies under the prevailing legislation. Once the Proposal is examined, the Concerned Department/Competent Authority shall communicate the outcome to the applicant through the FIF portal with a copy to all the concerned departments, such as DPIIT, MHA, MEA, RBI, etc.

There are certain FDI proposals that may be pending for longer than usual or that may be required to be fast-tracked. An inter-ministerial committee has been formed, which includes Secretaries from the DPIIT, Ministry of Corporate Affairs, MHA, Department of Economic Affairs, Concerned Department/Competent Authority and representatives of RBI and Niti Ayog to examine such proposals for timely disposal.

Further, if the FDI proposal involves Foreign Equity more than the prescribed sectoral limits in Chapter 4.1 of the FDI Policy, the Concerned Department/Competent Authority shall place it for the consideration of the Cabinet Committee on Economic Affairs. Once the Cabinet Committee communicates its decision, the Concerned Department/Competent Authority shall publish it on the FIF Portal within 7 days.

Any amendments sought through the NSWS to the applications earlier granted shall be considered valid applications, and there shall be no requirement for a fresh application in such cases.

Where an applicant has not furnished any required supporting documents as requested by the Concerned Department/Competent Authority, the application will be considered incomplete. It shall be then closed by the Secretary of the Concerned Department/Competent Authority after giving one reminder to the applicant about the pending information and documents. A closed application does not mean a refusal or denial of the Proposal, and the applicant can make a fresh application once all documents as required are available with him.

In addition to the above process, there is also a provision for the withdrawal of the FDI application by the applicant. The applicant can also request corrections as may be required in the permission granted, and a format of corrigendum to be issued by the Concerned Department/Competent Authority has also been included in the annexures to the SOP. The SOP is thus quite exhaustive, and the Annexures detail all required formats and documents needed to make the FDI application.

A quick look at the List of Annexures shows the following:

Annexure I- Documents and contents of the FDI Application to be filed by the applicant on NSWS after affixing his digital signature.

Annexure II – Proforma for Security Clearance as applicable to FDI proposals.

Annexure III – Format of Approval Letter to be issued to the applicant by the Concerned Department/Competent Authority.

Annexure IV – Format of Corrigendum to Approval Letter in Annexure III

Annexure V – Timelines to be adhered to by different departments in scrutiny and approval of the FDI proposal.

Annexure VI – Draft of Affidavit of Applicant to be filed along with the FDI Proposal.

22. THE DRAFT PATENTS (AMENDMENT) RULES, 2023 (AUGUST 22, 2023)

The Ministry of Commerce and Industry, Department for Promotion of Industry, and Internal Trade has proposed a comprehensive set of draft amendments to the existing Patents Rules, 2003. In pursuance of the powers conferred by Section 159 of the Patents Act, 1970, amendments in the existing Patents Rules, 2003, have been proposed, and recommendations have been invited within thirty days from its publication in the Gazette of India, i.e., August 22, 2023.

Some of the important changes proposed under the Draft Rules are as follows:

1. **Duty to file details of corresponding applications on Form 3 (Section 8(1))**: The Draft Rules propose to relax the current continuous duty of the applicant to provide details of the corresponding application within six months of filing such application. The Draft proposes that the details of all corresponding applications be provided only once within 2 months from the date of issuance of the First Examination Report (FER). The Controller is also mandated to monitor the prosecution of corresponding applications based on publicly available information and can ask the applicant to submit details only with reasons to be recorded in writing.

2. **Divisional application proposed to be filed based on the invention disclosed in provisional application**: The Draft Rules provide that a divisional application can be filed in respect of an invention disclosed in the provisional specification, and hence, there would be no limitation for the claims of the divisional to be drawn from the claims of the parent application.

3. **Reduced timeline for Request for Examination (RFE)**: The date for filing of RFE is proposed to be reduced from the current 48 months to 31 months from the earliest priority date. This timeline will apply only to the applications filed after the notification of the new Rules.

4. **Separate application to be filed for availing grace period**: The Draft Rules introduce Form 31 for filing an application to avail the grace period

provided under Section 31 of the Act and prescribe an official fee of INR 84000 (approx. USD 1000) for such application.

5. **Changes proposed in procedure related to Pre-Grant Opposition**:

   - The Controller must first decide the maintainability of pre-grant opposition, and only if it is found to be meritorious will the Controller notify the applicant. The Controller can thus dismiss a pre-grant opposition at their end if found to be frivolous.

   - The timeline to file a reply to the pre-grant Opposition by the applicant is proposed to be reduced from 3 months to 2 months from the date of notice.

   - The Controller has to issue a decision ordinarily within 3 months.

   - The hearing procedure currently applicable to the post-grant opposition is to be applied to the pre-grant opposition.

   - If the pre-grant opposition is found to be maintainable, then the Controller has to follow the expedited examination procedure prescribed under Rule 24C.

   - The official fee proposed for filing pre-grant opposition and such fees will cover the patent filing cost, including fees applicable for Form-2, Form-9, and Form-18.

6. **Timeline reduced for the Opposition Board to submit the report**: For post-grant oppositions, the Opposition Board is proposed to submit its report within 2 months instead of the current 3 months.

7. **Increased Fees for Post-grant Opposition**: The increased official fee proposed for filing Post-grant Opposition fee will be equal to the aggregate patent filing cost, including Form-2, Form-9, and Form-18.

8. **Discount on payment of multiple advance annuity**: The patentees may avail of a 10% discount on the official fee if they make online payment in advance for 4 or more years to maintain the patent.

9. **Relaxed Requirements for working statement**: Working statements which currently are required to be filed annually are proposed to be filed only once every 3 years for the previous 3 financial years. A provision to

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condone the delay in filing the statement is also introduced. Under the changes proposed in Form 27, the format of the working statement, the patentee and licensees are only required to state whether the patent is worked or not worked. No additional information as to the value or amount of work is required under the proposed changes.

10. **Relaxed provision for extension**: The amendment proposed in Rule 138 covers all the provisions for which extension can be taken for a period of up to 6 months. This would include an extension for national phase entry and RFE, which may be extended up to 6 months if a request for extension is filed before the expiry of the prescribed period. However, the Controller's discretion would still apply to such requests.

11. **Age of Natural Persons**: The new format of Form 1: Application of Patent will require details regarding the age of natural persons.

23. GUIDELINES FOR PREVENTION AND REGULATION OF DARK PATTERNS 2023 (SEPTEMBER 6, 2023)

The Department of Consumer Affairs shared the draft "Guidelines for Prevention and Regulation of Dark Patterns, 2023" on September 6, 2023, which will be implemented the day they are notified in the Official Gazette. The Department of Consumer Affairs then also sought comments from the public until October 5, 2023.

What are Dark Patterns?

Dark Patterns are "any practices or deceptive design patterns using the User interface or user experience (UI/UX) interactions on any platform designed to mislead or trick users into doing something that they originally did not intend or want to do, by subverting or impairing the consumer autonomy, decision making or choice, amounting to a misleading advertisement or unfair trade practice or violation of consumer rights".

In the contemporary digital age, the online marketplace has become an equally important aspect of everyone's daily lives. Consumers make more purchases online than in physical mode, which has led to the need for regulations to prevent consumers from falling prey to the nefarious activities of platforms and sellers. The activities prohibited explicitly under these guidelines have been arrayed in Annexure I to the Guidelines.

The Dark Patterns listed in Annexure 1 to the Guidelines are as given below:

1. **False Urgency**- Creating a false sense of urgency to manipulate the user into making an immediate purchase decision. It may be done by showing the false popularity of a product or by implying a scarcity of availability of the product.

   For example, stating that it is a limited period offer exclusively for a select user group or showing that only a few units remain while many viewers are considering the purchase at any given moment. Creating such a false sense of urgency and scarcity is now prohibited under these guidelines.

2. **Basket Sneaking**- Including additional items in the invoice at the time of checkout, such as contributions to charity, donations or additional items

and services without the knowledge or consent of the user in such a manner that the total amount payable by the user exceeds the amount payable by the user for the goods and services that he has explicitly chosen and given consent for.

However, applicable taxes, transport costs, or any such overheads due to be paid to deliver the goods or services to the user will not be considered basket sneaking, provided that the same was disclosed to the user when making the purchase.

For example- Automatically adding travel insurance on purchasing a flight ticket is considered basket sneaking. Similarly, automatically selling AMC or subscriptions without consent to purchase goods or services is considered basket sneaking.

3. **Confirm Shaming**- Use of any word or words, whether through audio, visual or written medium, to create a sense of shame, ridicule, guilt or fear to nudge the user to act in a certain manner and be propelled towards purchasing the said goods or services.

   For example, adding prompts for making charitable contributions as an ethical activity or emphasising the need for buying insurance by using words or imagery to compel the user to choose insurance along with travel booking.

4. **Forced Action**- If any online platform, supplier or e-retailer tries to force the user or potential buyer into taking additional services or subscriptions to complete the purchase of the goods or services chosen by the buyer, this is considered Forced Action and is barred under the present Guidelines.

   For example, buying an annual subscription to a newsletter or magazine to access an individual article without allowing the option of purchasing just one or a few articles or products.

   Another example is forcing to download additional service apps (utility apps for carpenters, masons, electricians, plumbers, etc.) to make use of the app that the buyer has chosen (for renting a house) by making the app for housing defunct till all the other services app in the bundle is not downloaded.

5. **Subscription Trap**- Any act of the online platform, seller or e-service provider that makes cancelling the subscription to any service more cumbersome than registration by creating a long and confusing process of

cancellation, which is ambiguous and uncertain, is considered a Subscription trap.

For example, creating conditions of auto-renewal, even if the user has not opted for renewal, without any alerts or prompts regarding the expiry date of the subscription being near at hand.

6. **Interface Interference**- This means a design element in the interface that manipulates the users' choices by highlighting certain aspects and concealing other relevant factors that may have affected the user's decision.

   For example, using a colour pallet that makes the detection of negative confirmation or cancellation options difficult for the user of the interface.

   Another example is using the "X" icon to redirect the consumer to other websites of advertised products rather than allow the consumer to close the advertisement.

7. **Bait and Switch**- This refers to advertising a particular outcome based on the user's action but giving an alternate outcome that interests the platform or the seller.

   For example, offering a discounted product, but when the consumer attempts to purchase, the platform or the seller states that the desired product is out of stock and offers an alternative product which is not of similar quality, is more expensive or both.

8. **Drip Pricing**- This is a practice by which all price elements are not revealed at the first instance. The user is lured into making the purchase, and the final price is revealed only when the actual payment is made after the purchase has been confirmed and the consumer has reached the checkout stage.

   Another similar situation arises when the product that has been purchased is later revealed to be possible for use only by downloading an app, which turns out to be a subscription-based app. However, if the price change is due to an actual increase in input costs that is beyond the control of the supplier or the platform, then the supplier or platform will not be liable under the offence of Drip Pricing.

   For example- The mandatory purchase of merchandise carrying the gym logo, such as shoes, towels and other gym equipment, which was not

disclosed at the time of purchase of gym membership and not permitting the use of a gym without the merchandise carrying gym logos.

Any online game that was purported to be free at the time of downloading the app but turns out to be free only for a trial period of 7-15 days, after which it becomes a paid-for service. Increase in price of flight tickets even during the completion of the booking process due to which consumer pays more for the ticket than what has been advertised on the web page.

9. **Disguised Advertisement**- This is a practice of masking the advertisement as website content or user-generated content that makes false claims in such articles that unduly influence the purchase of the product or service.

   In such a case, the website or seller is responsible for disclosing that the content is actually an advertisement so that it does not deceive potential customers. The Guidelines for Misleading Advertisements and Endorsements for Misleading Advertisements, 2022, also apply to Disguised Advertisements as mentioned in these guidelines.

10. **Nagging**- This is the practice of bombarding the user with repeated interruptions by suggesting the download of some other app or providing an option for going to some other web page repeatedly to create a situation where the intended transaction of the user is getting interrupted, and alternate option or even unrelated goods and services are being repeatedly offered to the user.

    For example, websites that send pop-ups to download their app repeatedly. Another example is when a website shows a constant request to turn on notifications without the option to decline the request.

24. THE DEPARTMENT OF BIOTECHNOLOGY (DBT) INTELLECTUAL PROPERTY GUIDELINES 2023 (SEPTEMBER 6, 2023)

The Department of Biotechnology (DBT) issued guidelines on September 06, 2023, outlining the principles and procedures for managing and transferring intellectual property (IP) generated through publicly funded research in India. The guidelines emphasise the importance of disseminating research knowledge for the public good and aim to facilitate the seamless transfer of IP from academic institutions and research laboratories to commercialisation for broader societal impact.

DBT held discussion meetings with the PMO and PSA and organised inter-ministerial brainstorming meetings, details of which have been provided in Annexure C (page 55) of the guidelines. Many deliberations were held with scientists, IP experts, academicians, policymakers, and Government officials, and it has been recommended that grant Memoranda of Agreement (MoA) be amended to provide options for all forms of licensing (nonexclusive and exclusive). The main deterrent to the successful dissemination of IP from academic institutions and research laboratories to commercialisation for broader societal impact was the "non-exclusive licensing clause" in the previous grant MoA guidelines.

With the amended grant MoA, the licensing mechanism will be decided on a case-to-case basis by the inventor and the host institute through the institutional IP committees and informed to the Government. DBT thereafter constituted a Working Group (WG) to draft a Report and recommendations (the working members of which are listed on page 43 of the document). The recommendations were shared with DPIIT, and their recommendations were obtained. DBT committee, under the Chairmanship of Additional Secretary & Financial Advisor, was constituted to suitably draft the Policy and implementation modalities of the WG recommendations.

The drafted guidelines clarify that IP generated through **DBT intra-mural funding** may be owned by DBT institutions and commercialised according to the outlined principles as discussed below. IP ownership lies with the institutions for extra-mural competitive grant funding, and IP-sharing agreements may be made among collaborating institutions.

The following are required to be followed by the IP-generating institutions funded by DBT:

The guidelines require that means and modes of IP transfer should be decided by the scientists based on their Institutional committees with external expert members. A suitable committee comprising external experts from the scientific, legal, finance and other relevant fields may advise the Director/Head of the institute. The committee may review IP filing and granted status, as well as their transfer or licensing. IP piling up for long periods without transfer or licensing should be avoided. Therefore, all DBT-funded institutes should have an institutional IP committee comprising competent professionals from various relevant sectors.

The investigators and host institutions must report the research outcomes, i.e., publications and IP granted (if commercialised, the mechanism of tech transfer). Links on which such reports can be done are https://dashboard.dbtindia.gov.in/sbt/patents and https://dashboard.dbtindia.gov.in/sbt/publication

The investigators and host institutions must acknowledge the support of DBT in their publications and products.

The investigators and host institutions are required to follow the broad principles for IP commercialisation modality as provided in paragraph 05 of the guidelines:

Licensing Mechanism: Licensing mechanisms are to be determined case-by-case through institutional IP committees with transparency to ensure the right industry partners are selected, especially for exclusive licensing.

Reporting to DBT: Host institutions should report details of licensing agreements to DBT.

Affordability Clause: In exclusive licensing agreements for products intended for large-scale public deployment, the licensor should include clauses for affordability in Indian markets.

Public Interest Protection: The IP generators/ licensors are required to include an appropriate clause in the exclusive licensing agreement clearly capturing the fact that if there will be any exigency arising for a technology/patent, then the Government of India (GoI) through March-in Rights will exercise its right including the option of compulsory license under our patent law as the GoI secures all Indian patents. This is to protect the public interest appropriately.

IP Assignment Requests: Host institutions must refer any request for IP assignment to DBT, encouraging the formation of spinouts and startups.

For research in higher Technology Readiness Levels (TRLs), non-exclusive licensing is preferred, with licensing fees determined case-by-case, encouraging competition, defining timelines, and giving preference to Biotech SMEs and Indian manufacturing.

For research in lower TRLs, exclusive licensing may be considered. Still, it must protect the public interest, ensure the availability of the product in Indian markets at affordable rates, define timelines, give preference to Biotech SMEs and Indian manufacturing, and allow preferred purchase arrangements for start-ups. A standard licensing agreement framework may be developed to ensure revenue-sharing with public institutions.

The license is subject to the irrevocable, *royalty-free right of the Government of India to practice or require sublicense*, on reasonable terms, when necessary to fulfil health, safety, or security needs.

These guidelines aim to streamline the transfer of IP from publicly funded research to the commercial sector, *promoting innovation, economic growth, and public welfare*. The emphasis is on flexible approaches to licensing, transparency, and safeguarding public interests in IP commercialisation.

25. PRODUCTION LINKED INCENTIVE (PLI) SCHEME FOR PROMOTING DOMESTIC MANUFACTURING OF WHITE GOODS (AIR CONDITIONERS & LED LIGHTS)- CORRIGENDUM TO GUIDELINES DATED JUNE 4, 2021 (OCTOBER 9, 2023)

The Department for Promotion of Industry and Internal Trade (DPIIT) has, vide **Corrigendum dated October 9, 2023**, issued certain clarifications regarding the Guidelines dated June 4, 2021, in respect of the PLI Scheme for Promoting Domestic Manufacturing of White Goods (Air Conditioners and LED Lights) which was announced vide Gazette Notification dated April 16, 2021.

The Scheme aims to provide financial incentives to boost domestic manufacturing and attract large investments in the manufacturing of White Goods to create economies of scale, enhance exports and create a robust ecosystem for components of White Goods in addition to acting as a source of employment generation. The Scheme is valid for FY 2021-22 to FY 2028-29 and has a budget of Rs 6238 crores.

The PLI scheme extends an incentive of 4% to 6% on incremental sales (net of taxes) for 5 years subsequent to the base year and a one-year gestation period. Actual disbursement of PLI for any year will be based on an assessment of parameters being met in the subsequent year. The applicants have to fulfil both criteria of cumulative incremental investment in plant and machinery as well as incremental sales over the base year in that year to be eligible for PLI. Investment in land and buildings is not included in the assessment of eligibility under this Scheme.

The guidelines to the Scheme lay down all the criteria, such as base year, eligibility criteria, target segments, quantum of investment, pre-qualification criteria for different target segments, and application period.

Based on the suggestions from industry stakeholders, DPIIT has notified the following changes in the Guidelines dated June 4, 2021, for the benefit of the participating White Goods Manufacturers:

1. In clause 11.1(c), in case of captive consumption by group companies, the gross sales turnover of eligible products shall be calculated by multiplying the actual quantity of goods sold with a lower of the Arm's length price

and a margin of 5% as certified by a Cost Accountant or the actual transaction price offered to Group companies.

2. In clause 11.1(d), the same criteria mentioned above in clause 11.1(c) shall apply in case of sale to group or non-group companies.

3. A new clause 11.2 has been added, which states that verification of eligibility of claims and disbursement of incentives shall be done by the PMA, i.e. the Project Management Agency, which is the public financial institution designated by the DPIIT to act on its behalf for this purpose.

4. In clause 2.8, the definition of the Arm's length price stands modified. The price applied or proposed to be applied in a transaction in uncontrolled conditions has to be further certified by a Cost Accountant to be valid as per the Cost-Plus Method of Computation.

5. In Clause 8.1.1, investment for determining eligibility stands revised to include Tool Room, which was not included in the initial Guidelines.

6. In Clause 12.4, the deadline for filing a claim has been revised to January 15 in the following financial year to which the claim pertains as opposed to October 31 in the initial Guidelines. Further, in the event of any discrepancy observed between Statutory Compliances and records provided at the time of filing the claims, the applicant shall return the excessive incentive availed along with the interest calculated at 3 years SBI MCLR prevailing on the date of disbursement, compounded annually for the period between excess payment and date of refund.

7. A new Clause 14.7 has been added, which extends the time for setting up an additional manufacturing facility at a location and submission of documents to substantiate the same within 3 years of commencing commercial production from the earlier mentioned 2 years in the FAQ of the initial Guidelines.

8. In clause 13.3, it is clarified that in addition to the role played by the Project Management Agency in carrying out the physical inspection of the offices and manufacturing units of the applicant, the Administrative Ministry may also visit manufacturing facilities to review the progress made under the Scheme and also solicit feedback from the industry.

9. A new para 10.11 has been added to include the Rollover of the Bank Guarantee prior to the expiry of the existing Bank Guarantee during the tenure of the Scheme.

To incorporate the changes mentioned above, there are revisions in certain proforma that are to be submitted by the applicants under the Scheme. The revised annexures are incorporated in the Corrigendum as part of the APPENDIX and will be used by the applicants in place of the earlier forms. These forms pertain to the following:

1. Annexure IIA- Bank Guarantee for availing incentive against Incentive.

2. Annexure-II B- Undertaking for Bank Guarantee against Proposed Investment

3. Appendix V- Quarterly Review Report

4. New Annexure I – Integrity Compliance in Production Linked Incentive Scheme

5. Format of letter for Declaration under the Disbursement Claim Form issued to IFCI by the applicant.

6. Format of Auditor Report of Applicant company to IFCI along with Annexures I to VI

7. Appendix IV B- Independent Auditor's Certificate for Incremental Sales & Investment to IFCI along with annexures I to IX

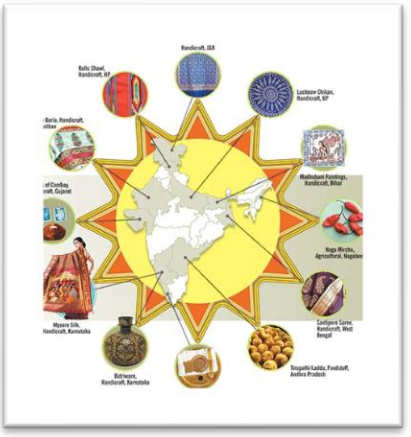
8. Letter to IFCI by Applicant regarding Integrity Compliance in PLI Scheme – 2 formats for ensuring compliance with anti-corruption laws.

9. Draft of Undertaking for verifying the sales figures and authenticity of data shared for availing PLI scheme.

10. Draft of Undertaking for Claim Submission to be submitted to IFCI by the applicant.

The above guidelines and the changes introduced are expected to further facilitate and simplify the procedure by clearing existing doubts and providing a roadmap for availing the incentives under the PLI scheme with transparency and accountability, thus removing any ambiguity that may have existed. The DPIIT shall continue to issue further clarifications as and when required to facilitate the seamless implementation of the policy.

26. DRAFT GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) (AMENDMENT) RULES, 2023 (OCTOBER 17, 2023)



The Department for Promotion of Industry and Internal Trade (DPIIT) has published the Draft Geographical Indications of Goods (Registration and Protection) (Amendment) Rules, 2023, for public consultation. The Draft rules have introduced some changes to the fee structure for filing certain applications and requests under the Geographical Indications Act through a notification dated October 17, 2023.

Certain entries in the Table of First Schedule, which mention the fees in respect of filing applications, registrations, renewals, and alteration of details related to geographical indications, authorised users or any other matters under the act or the rules, have been substituted now.

It is noteworthy that there has been a drastic change in this aspect as the amendment brings about a substantial reduction in the fees for filing applications as some of these fees have been slashed to one-fifth specifically for registration and renewal of authorised users. This could possibly be for encouraging producers/ agriculturists at the grassroots level to be more active with having their GIs protected.

Some changes are as follows:

- The application for the registration of a geographical indication for goods included in one class or from a convention country amounted to Rs. 5000/- , which now has been amended to Rs 1000/- only.
- The application for the registration of an authorised user, which costs Rs 500/-, has changed to Rs 10 only.
- The renewal of an authorised user, which cost Rs 1000/-, has now changed to Rs 10 only.
- The application to the Registrar for additional protection to certain goods, which cost Rs 25,000/-, has now been amended to Rs 12,000/-.

The draft rules may be accessed here. Objections or suggestions may be addressed to the Secretary, Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India, Vanijya Bhawan, New Delhi- 110011 or by e-mail at anurag.saxena@nic.in.

27. THE BROADCASTING SERVICES (REGULATION) BILL, 2023 (NOVEMBER 10, 2023)

The Ministry of Information and Broadcasting published the Broadcasting Services (Regulation) Bill, 2023, on November 10, 2023, soliciting suggestions and feedback from stakeholders as well as the general public. The draft Bill, once approved, shall replace the existing Cable Television Networks (Regulation) Act 1995. There is an urgent need to replace the existing legislation as there has been significant diversification in media and broadcasting services with internet-based services such as OTT platforms, IPTV, etc.

Therefore, the proposed Broadcasting Services (Regulation) Bill, 2023 is aimed at regulating the different types of Broadcasters and Broadcasting networks in India and is divided into four parts, i.e.

Part A pertains to broadcasters and cable and satellite broadcasting networks. It outlines the procedures for broadcasters, cable and satellite network operators, etc. Broadcasters need approval for transmitting programs, while network operators must register to operate. The broadcasters, satellite and network operators are required to fulfil specified obligations and maintain accurate subscriber data. The regulations aim to ensure compliance with standards, fairness and smooth functioning of broadcasting services in the country.

Part B pertains to radio broadcasting networks. Individuals or organisations intending to operate a radio broadcasting network must apply by filing a letter of intent. Permission may be granted subject to prescribed clearances and requirements.

Part C pertains to Internet Broadcasting Networks. Unified license holders can provide IPTV services by intimating the Central Government. OTT broadcasting service providers meeting the prescribed threshold must inform the Central Government.

Part D relates to terrestrial broadcasting networks. Persons intending to operate a terrestrial broadcasting network must apply for permission, which will be granted subject to prescribed terms and conditions and clearances.

These regulations state that no person shall operate a broadcasting network or broadcast anything without a proper license or intimation. However, Government Departments, Political Parties, and Public Authorities are not eligible for registration except for authorised entities like Prasar Bharti and the channels operated by Parliament. In addition, the central government may also regulate broadcasting services or networks in terms of parameters like eligibility criteria, terms, conditions, and fees.

All broadcasters and network operators must transmit their programs in adherence to the Advertisement Code and Program Code. The broadcasting services must not interfere with the authorised telecommunication systems and must meet specific interference standards. Operators must comply with government orders and provide information on request to show that all equipment used is as per government standards. The government can make different rules for different types of network operators and broadcasters, thus allowing for bespoke regulations suitable for different kinds of operations. Also, guidelines may be issued for providing platform services for other broadcasting network operators. Further, the broadcasters are required to transmit certain specific channels compulsorily.

The next Chapter outlines the regulations pertaining to content standards, accessibility and access control measures. The significant sections outlined in this Chapter are as follows:

Section 19 outlines the Advertisement Code and the Program Code to be adhered to by all broadcasters. Section 20 clarifies that the Advertisement code and Program code mentioned in Section 19 apply to all individuals and organisations broadcasting news and current affairs content online, such as through websites, social media or news portals.

Section 21 further lays down guidelines for broadcasters to classify their programs into different categories based on factors like content, theme and target audience. These categories will have relevant ratings and descriptors, and broadcasters must prominently display the program classifications at the beginning of the show to help viewers make informed decisions about watching the show.

Further, Section 22 requires the broadcasting network operators to implement access control measures for programs that are classified as appropriate for restricted viewing due to the nature and classification of the content. These measures ensure that only the intended audience can access such content.

Section 23 provides that the Ministry of Information and Broadcasting may issue guidelines to make broadcasting services more accessible to persons with

disability. This may include aspects like adding sub-titles, audio descriptions for the blind, sign language translations and use of accessible applications. Broadcasters may be required to make a certain percentage of their content accessible to people with disabilities within a prescribed time frame, failing which penalties may be imposed on the defaulting network operator or broadcaster.

The subsequent chapters outline the regulatory framework to be followed by the broadcasters and network operators. All broadcasters and network operators should appoint a Content Evaluation Committee (CEC) with members from various social groups such as women, child welfare, scheduled castes and scheduled tribes, minorities and any other relevant categories defined by the government. The government shall also specify the quorum, size and further operational details of the CEC from time to time. The broadcaster must disclose the details of the CEC members on their website and inform the government of the effect through specific communication. Broadcasters are required to air programs only after obtaining the CEC's certificate, which should be displayed with all prescribed details at the beginning of the program. These provisions will be implemented 180 days after this Bill becomes an Act.

Further, every broadcaster and network operator must appoint a Grievance Redressal Officer to handle complaints related to violation of guidelines for content on their platform or channel. The process for making complaints and handling them should be prominently displayed on the website.

All broadcasters and network operators should also be part of a self-regulatory organisation that should work in the interest of all the members. The self-regulatory organisation must be registered with the government and look into complaints related to content violations that the member broadcaster or network operator does not resolve at an individual level.

A Broadcast Advisory Council shall be formulated by the government, which will consist of government representatives and independent experts to oversee the implementation of these Regulations. The Council shall receive complaints regarding content violations and share its recommendations after reviewing the content and the complaint. The Council can appoint review panels that can be assigned specific cases examined by the panel, and recommendations are given, which will be considered to be the recommendations of the Advisory Council. The government shall issue appropriate orders and directions based on the recommendations of the Advisory Council.

The next Chapter addresses the issues of inspections and penalties for non-compliance. Any seized equipment can be confiscated if the operators and

networks do not demonstrate compliance with orders and directions of the government. Non-compliance to the Program Code and Advertisement Code may also result in taking the program in violation off the air and cancellation of registration of the broadcaster or network operator and can also result in monetary and punitive measures for the responsible persons from the broadcaster or network operator. For serious offences, imprisonment may also be prescribed in addition to a monetary penalty.

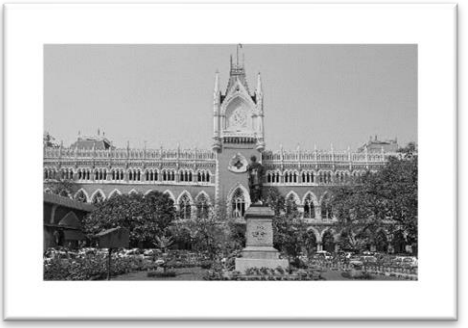
The amount of penalty is proportionate to the size of the broadcaster or network and defined as up to 100% for large, 50% for medium, 5% for small and 2% for micro category of broadcaster or network operator.

Other miscellaneous regulations pertain to the sharing of broadcasting infrastructure and equipment by multiple network operators and broadcasters for which application must be made to the government for prior approval subject to terms and conditions imposed by the government on the entities sharing the equipment and the roles and responsibilities of each of the parties to the sharing arrangement.

Grant of Right of Way on public property and the process for obtaining the same by the network operators or broadcasters is another crucial aspect covered under Section 38 of the Miscellaneous Chapter. All disputes pertaining to the Right of Way will be resolved by the District Magistrate, and his decision shall be final and binding on the parties. Additional provisions under this section include provision for open access through common ducts and cable corridors set up by the government for the benefit of all network service providers, cable operators, and broadcasters. Any request for relocation or removal may require compensation to be made to the network operators for the disruption of services.

The draft regulations are comprehensive in scope and allow the government to regulate and govern the landscape for new and emerging methods of streaming services, OTT platforms and other network operators. Attempts are being made to transition the existing operators and broadcasters to the new regime smoothly and seamlessly. The regulations are expected to soon be implemented as an Act, which will address the grey areas that have so far escaped specific legislative control in recent years since the evolution of online and web streaming services.

28. THE INTELLECTUAL PROPERTY RIGHTS DIVISION RULES OF THE HIGH COURT AT CALCUTTA, 2023 (DECEMBER 19, 2023)

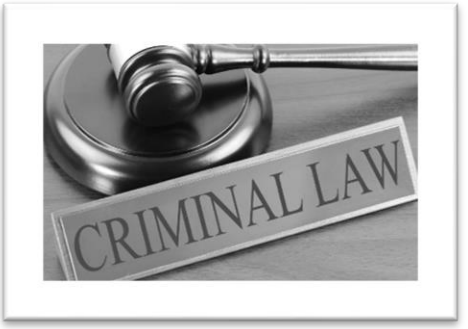


The announcement regarding the formulation of the Intellectual Property Rights Division Rules of the High Court at Calcutta, 2023, was made on December 19, 2023, marking a commendable milestone. Upon finalisation and notification, these rules are anticipated to not only expedite the resolution of IP-related disputes but also to provide urgent and essential interim relief, as outlined in draft Rule 7(e). The draft rules have been circulated for feedback from legal professionals and stakeholders before they are formally enacted. Comments are to be submitted by January 5, 2024, via email to calhc.registrarcc@gmail.com.

The Calcutta High Court's move to establish a separate Intellectual Property Division is a significant development in the legal landscape aimed at improving the handling of IP matters and delivering timely resolutions. This step underscores the court's commitment to enhancing the overall efficiency and effectiveness of IP dispute resolution.

To access the draft rules, please visit the following link: https://www.calcuttahighcourt.gov.in/Notice-Files/general-notice/10299

29. INTRODUCTION OF THE NEW CRIMINAL LAWS (DECEMBER 25, 2023)



The President of India gave her assent to the three new criminal laws on December 25, 2023, which include the Bharatiya Nyaya Sanhita (BNS), Bharatiya Nagarik Suraksha Sanhita (BNSS) and Bharatiya Sakshya Adhiniyam (BSA) that will replace the Indian Penal Code, Code of Criminal Procedure and the Indian Evidence Act respectively.

The Bhartaiya Nyaya Sanhita, 2023

The Bhartiya Nyaya Sanhita comprises 358 sections, divided into 20 chapters. The structure of the code is similar to the Indian Penal Code. The new code also introduces "community service" as a new form of punishment for petty offences and brings about changes to fines and punishments for various offences.

Offences against women and children have been introduced with new provisions and offences under Chapter V of the new Act. Under the IPC, these offences are part of the chapter dealing with offences against the human body. Now, the offences against the human body are all put together after the offences against women and children.

The definition of child and transgender is included under Section 2; movable property under the Sanhita includes tangible as well as intangible assets, and documents include 'electronics and digital record' under Section 2(8).

Under Section 69 of the proposed code, an individual who engages in sexual intercourse not amounting to rape with a woman through deceitful means or by providing false assurances of marriage will face a potential punishment of up to ten years of imprisonment, in addition to being liable for a fine.

The Sanhita removes age-based punishment for the gang rape of a minor girl; Section 70(2) prescribes life imprisonment or the death penalty for the gang rape of a girl below 18 years of age.

Attempt, abetment, and conspiracy, which were earlier part of the different chapters, are now brought together under chapter IV of the Sanhita. Snatching has been introduced as a new offence in the new Code, which was not there in IPC. Snatching is considered an offence in every part of the Court under Section 304.

Under Section 95 of the Sanhita, if anyone hires children under 18 to commit an offence, then such a person will be held liable for the offence committed by the children. Section 106(2) seeks to punish with higher imprisonment a person who causes death by a rash or negligent act and then escapes from the scene of the incident. The maximum punishment in such a scenario is up to 10 years and a fine.

A new provision has been introduced for offences under the category of 'mob lynching' in Section 103(2) of the Sanhita, which provides punishment for murder on the grounds of race, caste or community, sex, place of birth, language, personal belief or 'any other ground'. The offence is punishable by life imprisonment or imprisonment for a term of seven years or more and a fine.

To combat organised crime and terrorist activity, the Sanhita has added new provisions for these offences with severe penalties. Sections 111 and 113 of the BNS 2023 now criminalise the commission, attempted commission, abetment, and conspiracy of organised crimes and terrorist acts, respectively. These sections also make it illegal to be a member of any organised crime syndicate or terrorist organisation, to harbour or conceal individuals who have committed such crimes, or to possess property derived from them. Section 111 on organised crime takes into account various state laws related to this domain, while Section 113 on terrorist activity is modelled after the UAPA. It has also been specified that in case of a terrorist act, an officer not below the rank of SP will decide whether to register a case under the provisions of the Sanhita, 2023 or UAPA.

The Bharatiya Nagarik Suraksha Sanhita, 2023

The Bharatiya Nagarik Suraksha Sanhita ("BNSS") replaces the Code of Criminal Procedure, 1973, comprising 531 sections, with 177 sections revised, 9 sections added, and 14 sections repealed.

It is now possible to register FIRs electronically. The person who provides the information must sign it within three days of submitting it. The BNSS has introduced a preliminary inquiry process before FIR registration. This inquiry is limited to cognisable offences that carry a prison sentence of three to seven years. The inquiry must be completed within 14 days of receiving the information. It is mandatory for the police to register an FIR when they receive information about a cognisable offence, regardless of whether they have jurisdiction or not. This is called a Zero FIR. Once a Zero FIR is registered, the police station concerned can transfer it to the police station that has jurisdiction over the case.

BNSS under Section 2 has introduced new definitions to the key terms such as 'audio-video electronic means' [Section 2(1)(a)], 'bail' [Section 2(1)(b)], 'bail bond' [Section 2(1)(c)], 'bond' [Section 2(1)(e)], and 'electronic communication'

[Section 2(1)(i)]. These changes reflect the ever-changing technology landscape in investigation, trial, and court proceedings. The changes cover various aspects such as the service of summons and notices, audio-video conferencing for deposition of evidence, and recording of search and seizure. Furthermore, terms related to 'bail' have been defined, and the definition of 'victim' [Section 2(1)(y)] has been broadened. Victims can now receive compensation entitled to them in certain cases without the requirement of the accused person being formally charged. These modifications speed up providing compensation to the victims.

In order to bring uniformity in the classes and judges across the country, the posts of judicial magistrate of third class, metropolitan magistrate, and assistant session judge have been abolished.

Section 107 enables the police to attach and forfeit any property obtained as proceeds of crime, provided they have the permission of the Court. It is the first time that such a provision on attachment, forfeiture, and restoration of proceeds of crime has been introduced in the BNSS, 2023. The provision aims to increase the liability of fugitive criminals and act as a compelling factor for their participation in the legal proceedings instituted against them.

Section 187 allows for the examination of accused persons in custody for a maximum of 15 days within the first 40 to 60 days of their total detention period. This is to address the issue of accused persons avoiding police custody in the initial 15 days. The police officer can only have custody of the accused if they are not on bail or if their bail has been cancelled. This provision strengthens the investigation process without violating the rights of the accused persons. Additionally, Section 480 specifically states that the accused is required for police custody beyond the first 15 days will not be the sole reason for refusing bail to the accused.

Electronic means have been included under Section 193(3)(i) as a means of forwarding police reports by the officer in charge of the police station to the magistrate. While harnessing the technology and approving the usage of the same during criminal trials, the new code has also sought to allow the trials, proceedings, and inquiries under the code to be conducted in an electronic mode by use of electronic communication or use of audio-video electronic means.

Bharatiya Sakshya Adhiniyam, 2023

The Bharatiya Sakshya Adhiniyam, 2023 replaces the Indian Evidence Act 1872, comprising 170 sections, with 23 sections modified, five removed, and one added, as compared to the previous version, which had 167 sections.

The terms 'Vakil', 'Pleader' and 'Barrister' have been substituted with the term 'Advocate'.

The meaning of Documents under Section 21(1)(d) has been extended to include an electronic or digital record on emails, server logs, documents on computers, laptops or smartphones, messages, websites, cloud, locational evidence, and voice mail messages stored on digital devices. Similarly, the definition of 'evidence' in Section 2(1)(e) now also includes information given electronically.

Under the Adhiniyam, changes have been made to recognise modern technological practices where information is distributed and stored across multiple platforms in different forms. Section 57, which deals with primary evidence, has been expanded to include new Explanations that recognise electronic or digital records. These Explanations state that if an electronic or digital record is created or stored simultaneously or sequentially in multiple files, then each file is an original. If an electronic or digital record is produced from proper custody, its contents are considered sufficient evidence unless disputed. If a video recording is simultaneously stored in electronic form and transmitted or broadcast to another, each of the stored recordings is considered an original. Finally, if an electronic or digital record is stored in multiple storage spaces in a computer resource, each such automated storage, including temporary files, is considered an original. These additions establish a framework for the legal treatment of electronic or digital records. The emphasis is on their proper custody and establishing their originality in various storage scenarios. The procedure for validating and verifying electronic content has been streamlined as a result.

The Adhiniyam has expanded the scope of secondary evidence. Section 58 allows oral admissions, written admissions, and evidence of a person who has examined the document to be produced as secondary evidence.

Section 61 ensures that electronic/digital records are admissible as evidence with the same legal effect as other documents. Sections 62 and 63 of the Adhiniyam provide a comprehensive framework for the admissibility of electronic records as evidence.

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