



## INTELLECTUAL PROPERTY RIGHTS EDUCATION IN INDIA: A CASE FOR REFORM

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*In this Brief, we discuss the disappointing state of affairs of intellectual property rights (IPR) education in India. We begin by bringing attention to the deficiencies in IPR research and teaching, focusing particularly on the IPR Chairs established by the Ministry of Human Resource Development (MHRD). In the wake of the recent draft National IPR Policy, we recommend a few reforms which can help improve the quality of teaching and research in IPR in India. This brief is drawn from a more comprehensive document prepared by the Centre for Intellectual Property and Technology Law (CIPTL) at Jindal Global Law School, in response to the draft Policy.*

**Law and Policy Research Group**, at the Jindal Global Law School, brings the tools of legal analysis and policy analysis in conversation with each other. Its **Law & Policy Brief** presents inter-disciplinary analyses of Bills pending before the Parliament, recent court judgments, amendments to existing laws, recently enacted laws, and other topical legal issues that have important policy implications.

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### Introduction

In a paper published nearly thirty years ago, Upendra Baxi had lamented the “scant juristic attention” devoted towards copyright law in India.<sup>1</sup> However, Baxi saw “some signs of change” for the better as far as academia was concerned, singling out three developments. First, that a number of universities were offering courses in IPR law. Second, that Delhi University — in those days, perhaps the leading law school in India — had “at long last” established a specialist Chair in IPR law. Third, that the World Intellectual Property Organisation (WIPO) — a specialised United Nations agency that, *inter alia*, administers international IPR treaties — was beginning to engage with and assist Indian academicians. In this regard, Baxi noted that an Indian academician had been awarded a fellowship by WIPO. Baxi also remarked that he himself had been able to enrich his knowledge through a “chance encounter” with senior WIPO officials, including its then Director-General. Baxi thus prophesied that the future would see the emergence of a “mature scholarly concern” in India in relation to not just copyright law, but IPR law as a whole.

Today, there is much in Baxi's prophesy that has been fulfilled. To begin with, all major five-year law schools in India offer IPR law as a compulsory subject. Many offer advanced elective courses, and specialised LLM courses. Some National Law Universities (NLUs) even allow students to pursue a BSc LLB (Hons.) course instead of the standard BA LLB (Hons.) course, enabling graduates to appear for the patent agent examination. Since 2001, the MHRD has instituted research Chairs in IPR in twenty universities across India. These include five NLUs, six Indian Institute of Technology (IIT) colleges and three Indian Institute of Management (IIM) colleges. Considerable prestige is attached to these Chairs, and they are entitled to generous financial and logistical support from the MHRD. Meanwhile, every year, from 2004 onwards, WIPO — in conjunction with the World Trade Organisation (WTO) — has awarded an Indian academician a fellowship to attend the WIPO-WTO Colloquium for Teachers of Intellectual Property in Geneva (including one of the authors of this brief).

\* JGLS ranked 1<sup>st</sup> among all private law schools in India by **Careers360 Magazine** (2014)

\* JGLS ranked 5<sup>th</sup> among all law schools in India in **Legally India's Graduate Recruitment Rankings** (2014)

\* JGLS ranked 2<sup>nd</sup> by an **India Today – Nielsen** survey for top emerging law colleges in India (2014)

However, while the state of IPR law teaching and research in India has advanced greatly since the time Baxi wrote his paper, it is arguably riddled with deficiencies. In this brief, we highlight some of these flaws and put forward a few solutions to rectify them. Our analysis is divided into two sections. First, we provide a general overview of the shortcomings of IPR teaching and research in Indian law. We discuss specific criticisms of the MHRD IPR Chairs by a government-appointed committee. We supplement this with our findings from a series of interviews undertaken by us at a recent workshop for IPR teachers in India. Second, we discuss the observations on education and research made by the recently-established National IPR Think Tank, in the draft National IPR Policy. We mention a few recommendations submitted to the Think Tank by us, as part of a document prepared by CIPTTEL.

There are many reasons why education should form an integral part of a country's IPR policy. At a time when negotiations at the WTO, and in bilateral trade forums, are growing in complexity, it is imperative for governments to be assisted by competent IPR experts. Today the volume of IPR litigation and prosecution is increasing manifold, often involving advanced aspects of global IPR law. Universities around the world, whether in developed or developing countries, must possess the capability to impart relevant knowledge and skills to students, particularly in law schools. Furthermore, as IPR is a rapidly evolving subject, there is a need for universities to produce research that is up-to-date, of high quality, and of use to lawmakers, diplomats, judges and industry. The draft National IPR Policy has envisaged IPR as “an integral part of India's overall development.” The draft Policy states that the government's “Make in India” initiative must be “predicated on fostering innovation and creativity by generating, protecting and utilising intellectual property assets.” In the absence of a well-trained pool of IPR experts, such goals are unlikely to be realised. Thus, IPR education and research in India merits further attention for this reason.

### **Shortcomings in IPR Teaching and Research**

As the President of India has noted, there is a “general neglect towards research” in Indian universities, and not a single Indian university features in overall rankings of the world's top 200 universities (see *Indian Express*, Nov. 18, 2014). A ranking of the world's top 200 law schools by Quacquarelli Symonds (QS) has never featured an Indian law school. While the NLUs have no doubt succeeded in

attracting students of excellent quality, they possess flaws in other aspects. According to N. R. Madhava Menon, the Founding Director of the National Law School of India University (NLSIU), most NLU graduates prefer to pursue higher studies abroad, where they “learn much more about legal research and writing” (see *Legally India*, Sep. 25, 2009). It is an unfortunate fact that very few alumni of NLUs join their alma mater as teachers. In contrast, many NLU graduates, after pursuing higher studies abroad, have gone on to become faculty members at universities overseas. These individuals have published papers in reputed journals, while their counterparts at NLUs (barring some honourable exceptions) arguably possess a comparatively weaker publication record.

In the context of IPR teaching and research, a government-appointed committee has identified serious flaws with the MHRD IPR Chairs.<sup>2</sup> The committee has stated: “The Activities of most of the chairs have been limited to organising one or two day seminars/workshops or delivery of a few lectures by the IPR Chair [...] The research component has been weak [...] There is very little evidence of published research papers.” The report also found that many institutions endowed with the MHRD IPR Chairs had been unable “to find a suitable Professor-level person to occupy the IPR Chair,” due to a paucity of scholars with doctoral degrees in IPR. This was recently confirmed by the MHRD Minister in Parliament (see *Lok Sabha Debates*, Dec. 17, 2014). Responding to a question on the functioning of the MHRD IPR Chairs, the Minister stated that only six out of the twenty Chairs presently had full-time professors at the helm.

The functioning of the MHRD IPR Chairs has been mired in various unseemly controversies reported in the media, which we shall avoid mentioning here. However, to better understand the challenges facing IPR education in India, we conducted a number of questionnaire-based interviews. The respondents were academicians participating at an annual IPR law teaching workshop organised at NLU Delhi. We received responses from fourteen faculty members from private and public universities, across eight states. The respondents belonged to institutions ranging from a leading IIT, to a top-ranked NLU, to a relatively less prominent private university. While our sample may have been non-representative — several academicians at the workshop declined to participate — we still received some useful insights.

In response to a question on published research papers, only one respondent claimed to have published in an international journal. Three claimed to have published in the *Journal of Intellectual Property Rights*, a reputed Indian journal. Yet, collectively, the number of publications was very low with many respondents listing no publications at all. All the respondents identified various problems confronting them as instructors and researchers. Two faculty members – one from an NLU and another from an IIT – stressed on the need to have training programmes for IPR teachers. A large number of respondents pointed towards lack of incentives to pursue research, excessive teaching workload and inadequate knowledge of industry practices. Almost all respondents complained of the inability to access quality resources, and a shortage of funds. When asked to suggest reforms, some suggested granting research sabbaticals and organising more seminars.<sup>3</sup>

Amidst this gloom, one positive experiment deserves a mention. The Gujarat National Law University (GNLU) has established two IPR research Chairs — one supported by the Microsoft Corporation and the other supported by the government of Gujarat — based on an innovative model. According to an advertisement seeking applicants, the Microsoft Chair offers a high salary and generous research support. It also waives the requirement of a doctoral degree and imposes, as an alternative requirement, an LLM degree with five years of work experience. A separate advertisement has sought applicants for the Microsoft Chair at an Assistant/Associate professor level, similarly waiving the requirement of a doctoral degree. For the second Chair, GNLU has advertised for a Visiting Assistant Professor, to be offered substantial remuneration and research support, but to be considered “for all legal, administrative and practical purposes a non-employee” of the university.

GNLU's experiment (though not unprecedented in NLUs) shows that, in the absence of qualified faculty, some universities are willing to break the convention and recruit academicians who may not be “senior”, but may be productive researchers and teachers. As we submitted before the National IPR Think Tank, such experiments, while not necessarily ideal, are preferable to the stagnant state of affairs currently facing the MHRD IPR Chairs.

### ***Comments on the Draft National IPR Policy***

The National IPR Think Tank was established in October 2014, as a part of the economic reform process initiated by Prime Minister Narendra Modi. The six-member Think

Tank, chaired by Justice Prabha Sridevan, has been assigned the task of drafting a National IPR policy. In December 2014, the Think Tank released the first draft of the Policy. As a general criticism, it must be noted that, although quite comprehensive in its coverage, the draft Policy contains scarce empirical data, no cost estimates and no scholarly opinion in support of its recommendations. The draft Policy also does not provide clear timelines for its objectives, apart from stating that a “major review of the Policy will be undertaken after three years. The draft Policy offers recommendations on a vast range of topics, grouped under seven broad chapters: (1) IPR Awareness and Promotion, (2) Creation of IP; (3) Legal and Legislative Framework; (4) IP Administration and Management; (5) Commercialisation of IP; (6) Enforcement and Adjudication, and (7) Human Capital Development. CIPTTEL submitted comments on all chapters and was invited to present its recommendations, before the Think Tank on February 6, 2015.<sup>4</sup> In this brief, we will confine ourselves to CIPTTEL's comments on IPR education.

The draft Policy discusses the issue of education in the chapter on Human Capital Development which outlines the objective of “strengthening and expanding human resources, institutions and capacities for teaching, training, research and skill building.” In the context of the MHRD IPR Chairs, the draft Policy mentions the need to “energise” the Chairs to promote “high quality teaching and research”. In a welcome step, the draft Policy also mentions the need to “evaluate their work on performance based criteria”. However, the Think Tank has not made any concrete recommendations on how exactly the functioning of the Chairs can be improved. In this regard, CIPTTEL has submitted that the first hurdle of finding an appropriate Chair Professor could be met by waiving the requirement of a doctoral degree and accepting only a master's degree in cases where an individual has substantial practical experience or a strong research record. Furthermore, specific publication targets should be set for the Chairs. A selective list of highly regarded IPR journals (and general law reviews) should be compiled, and the occupants of the Chairs should be expected to publish a minimum number of full-length articles in these journals.

The Chairs should further be required to assist the Indian government and judiciary on matters of law and policy (for example, by undertaking empirical studies). It is also necessary to ensure that occupants of the Chairs are not burdened with high teaching workload (ideally, not more

than four hours a week). Stringent annual reviews should be undertaken to measure the qualitative research output of the Chairs. If a Chair is found to have fallen short of expectations, the Chair should be transferred to another university through a transparent, competitive “bidding” process. As only a handful of universities have been awarded the Chair, such a process will create healthy competition between universities. The bidding process should also be opened to private and unaided minority institutions. For instance, if awarding a Chair to the Indian School of Business in Hyderabad (which ranks higher than most IIM colleges in international rankings of business schools) is likely to result in a superior research output, this is surely preferable to the present state of paralysis.

The draft Policy has also proposed the introduction of IPR as a compulsory subject in institutions linked to sectors where intellectual property plays a major role, specifically mentioning the National Institutes of Design (NID) and the National Institutes of Fashion Technology (NIFT). Here too, the Think Tank has not provided detailed and actionable inputs. CIPTTEL has suggested that IPR courses in such institutions can be offered by fostering links with law schools. Diploma courses catering to specific sectors — be it engineering, agriculture, fashion or film — can be introduced with the help of law schools, including through distance mode.

Finally, among the many other recommendations, we wish to highlight two. First, as many IPR academicians lack practical work experience, we have recommended that a system be devised where academicians can undertake two-month secondments at law firms and companies, to learn about industry practices and trends. Law schools should also introduce skill-based clinical courses familiarising students with issues in IPR litigation and prosecution, collaborating with practitioners if required. Second, an annual colloquium on IPR should be organised in India, involving academicians, judges, lawyers, activists, and industry representatives from India and overseas. Apart from providing a platform for the exchange of ideas, the colloquium should expose academicians to teaching methods and practices being employed in India and abroad.

### Conclusion

In the draft Policy, the National IPR Think Tank has acknowledged the importance of IPR education, and implicitly recognised that all is not well with the MHRD IPR Chairs. However, IPR education, especially in law schools, occupies relatively limited space in the draft Policy. No

member of the Think Tank hails from the legal academia and several recommendations are also not clearly defined. As the Think Tank is yet to release the final Policy, it would perhaps be unfair and impatient to judge these shortcomings too harshly. We hope that the Think Tank will eventually pay heed to the voices critical of the state of IPR education in India — including ours — and provide clear recommendations to remedy the situation in the final Policy. We also hope that those recommendations will, among other things, seek to enforce accountability in law schools and prioritise efficiency and subject matter expertise over seniority. ■

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<sup>1</sup> Upendra Baxi, *Copyright Law and Justice in India*, 28 J. INDIAN L. INST. 497 (1986).

<sup>2</sup> See S. K. Jain Et Al, *Report of the Evaluation Committee on Continuation of the Scheme of IPERPO in the XII Five Year Plan 5 - 7* (2013).

<sup>3</sup> The full questionnaire is available at <http://bit.ly/17AKxhE>

<sup>4</sup> The complete document is available at <http://www.jgls.edu.in/content/ciptel-comments>.

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### About the Centre for Intellectual Property & Technology Law (CIPTTEL)

Centre for Intellectual Property and Technology Law (CIPTTEL) is a research centre, based at the Jindal Global Law School, dedicated to scholarship in intellectual property law, as well as allied areas like media and technology law. The Centre, comprising of faculty members of the Law School, conducts research, advises regulator bodies and regularly organizes academic events, often in collaboration with various stakeholders, ranging from industry-backed associations to activist groups.

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