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The Intersection of Innovation and the Food Law: A Socio-Legal Analysis

DR. POLAKI[1]

ABSTRACT

The economic growth of any nation depends on two factors mainly, first its natural marketable resources and secondly on its innovations and creations. In today's era of globalization, where the market size is huge and so is the competition, protection of innovation is crucial, as this sense of protection works as an incentive for innovators to come up with new ideas. After the TRIPS came into existence in 1995, the value and recognition of IPRs has increased manifold. R&D in every field of trade has proved to be of great importance and the food industry is no exception to it. Food, being the most essential commodity for human survival, also holds an economic value to it, and thus when a food product enters the market carrying with it its special manufacturing technology, uniqueness, and brand name, this technology or method of preparation becomes vulnerable unless protected. This is why the manufacturers turn towards IPR for the protection of their finished goods. Among all available ways to protect food recipes, business houses typically prefer to get them protected through patent and trade secrets, due to their high success rate in protecting food products.

This paper analyzes the protection provided to the food industry through IPRs and their social aspects apart from economic ones. Specifically, undertake the protection of 'food products' and their recipes through 'patent' and 'trade secrets' and their pros and cons. The paper will also cover the problems that arise in the international trade of food products due to disparity or absence of laws for the protection of patents and trade secrets in municipal statutes of different countries. Comparative analysis with major economies, like the US and EU in contrast with developing economies like India better clarifies the role of the Food Industry in economic growth.

Keywords: *IPRs, Patent, Trade secrets, Food Industry, International Trade Law.*

I. INTRODUCTION

Outset of civilization, food remains essential for human survival. In the same way, property plays a vital role in the economic growth of a human society. The barter system was kind of the oldest trading manner in which goods were exchanged with other goods and food was one

[1] Author is an Assistant Professor at Chitkara Law School, Punjab, India.

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of the major commodities for exchange, at times cacao beans were used as currency.[2] With time there has been incredible development in 'types', 'manners', and 'areas' of trading. The concept of property has transformed from a physical to an intangible asset. Similarly, there is a colossal boom in the food industry as well.

Starting with the new definition of the property, from its 'physical form' it is now recognized in its intangible form also i.e. Intellectual Property. Various thinkers have given their opinion on whether 'intellectual property' can be given the status 'property' in the real sense or not. According to Lockean theory, as everyone has property rights in their bodies, in the same manner, they have property rights over their labor too. So one who improves the land with his or her labor should be entitled to have some property right over that land.[3] Accordingly, intellectual property can be considered as a kind of property generated through mental labor. Every endeavor must be put into protecting it, like any other physical property in this world. After all intellectual property is the result of mental exertion put in by the innovator to bring something new to the world and with time it turns out to be a more profitable asset to have. Protecting this right is a kind of reward and incentive to innovators for their labor and creation. So protection of all kinds of intellectual property in all situations is indispensable. This paper will discuss the benefits that come with intellectual property protection and analyze the role they play in the expansion of the food industry.

II. TRIPS

With fast fast-changing society and globalization, it is a kind of challenge in itself to protect intellectual property rights without affecting or hindering the transfusion of knowledge and technology. In 1995 TRIPS[4] came as a guiding light particularly in the field of intellectual rights to the world. The main aim of this agreement was to set a common standard of definitions for all types of IPRs, to bring harmonization, and to eliminate ambiguity in the international trade market. However, it is to be noted here that TRIPS was nothing but a new step ahead of the century-old Paris Convention of 1883. The need for such agreements and conventions is to provide protection to the inventors and also to promote them in their endeavors to innovate new technologies and commodities. Also, it's not that before TRIPS,

[2] IHistory of Chocolate, **History,** https://www.history.com/topics/ancient-americas/history-of-chocolate. (last visited, May 1, 2025).

[3] John Locke, The Second Treatise Of Government § 27 (J.W. Gough ed., Basil Blackwell 1956) (1690).

[4] The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is one of the outcomes of the Uruguay Round. The TRIPS agreement came into effect on 1 January 1995, till date the most comprehensive multilateral agreement for recognition and protection intellectual property rights. The main aim of TRIPS Agreement is to synchronize and reinforce the principles of safety of all forms of Intellectual Property and grant for their effectual enforcement at both national and international levels.

there was no law anywhere in the world providing similar protection. Many countries had their own set of laws and regulations for the protection of their Intellectual Property Rights. TRIPS only sought to bring about uniformity among various laws of the member nations of the agreement. The primary motive behind the TRIPS agreement was to offer protective cover to all kinds of intellectual property not only within their own country but also globally in the international market. However, it is a setback for TRIPS, that after almost two decades of its introduction, member countries still rely more on their municipal law rather than the TRIPS Agreement. The main cause for this setback is the freedom of 'choice to choose' under the TRIPS mandate that was given to the member nations.

III. UNDERSTANDING TRADE SECRETS AND PATENT

Among various recognized forms of IPR like patents, copyrights, trademarks. A very significant and sensitive subject matter of Intellectual Property Rights has been dealt with under Art. 39[5] of the Trade Related Aspects of Intellectual Property Rights i.e. security of unrevealed information and the technical knowledge related to it. As in almost every intellectual property, there is an element of the secret present, keeping such information unavowed is very crucial for any intellectual property till the time it gets registered, through copyright or patent, etc.

As per the definition given of trade secrets in TRIPS as well as under various major Acts like UTSA of 1985 and Directives of EU addressing trade secrets, there are certain essential conditions to be fulfilled to qualify as trade secrets:-

- Secrecy: - it means it must not be information of common knowledge or common usage.

[5] Article 39

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.

2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices so long as such information:

(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b) has commercial value because it is secret; and

(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public or unless steps are taken to ensure that the data are protected against unfair commercial use.

- Commercial value: - The second essential qualification for trade secrets is that they must have some kind of economic value. It means it must have some special characteristic that helps its owner to earn more profit than its competitor.
- Efforts to maintain secrecy:- to claim certain things as their trade secret, certain efforts must be shown and put in to keep them a secret by the owner.

Summing up the above definition, any undisclosed information that gives extra-monetary benefits to its possessor as compared to its competitor in the market can be qualified as trade secrets provided steps are taken to protect such information and they are not against the public interest. Protecting information through trade secrets provides unlimited exclusive protection to the owner of the secret, till the time secrecy is maintained. Another benefit of having protection under this branch of IP is that the piece of information that needs to be protected as a trade secret, need not go through the test of novelty or technicalities like other forms of IPRs. As long as secrecy is maintained and gives the owner an edge over the competitors, trade secrets have an objective reality.

Article 27[6] of the TRIPS Agreement, mentions the kind of patent protection to be given by its member nations. According to this provision, all member states must provide 'patent protection' available to all kinds of products, processes, and technical innovations with novelty and without making them subject to any kind of discrimination based on the place of invention.

Sub-section of Article 27 further provides an exception to the above basic rule. The first exception is that any invention that is contrary to the public interest or morality cannot be the subject matter of a patent and can never be allowed to exploit it commercially. According to the second exception, any method or process that is for medical purposes (treatment or

[6] Article 27
1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.
2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre publicor morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.
3. Members may also exclude from patentability:
(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

diagnostic) for the protection of human life and animals can be excluded from patentability by member nations. And third exception talks about the exclusion of plants and animals, and biological processes that are essential for their production from the subject matter of patentability.

Article 28 illustrates the special rights conferred to the patent holder. The first one is the exclusive right to use the patented product or process. Secondly, like succession is done in the case of physical property patent rights can be transferred through succession or by contract or can be assigned to another person.

With the above discussion, we came to know that, certain monetary benefits flow with IPR protection, especially trade secrets and patents, now we will discuss the importance of the food industry and its relation with IPR.

IV. FOOD AND FOOD INDUSTRY

From the period of the age-old barter system to the era of globalization, food remains a universal need. Some countries are good in certain kinds of resources like oil and petroleum; some countries may have an abundance of flora and fauna, and some may be technically advanced but lack other natural resources. Different countries have diverse needs, but all countries need food for the well-being of their citizens. This makes the food and beverages industry a universal phenomenon. Advancement of technology with higher economic growth and the shrinking of the world due to faster modes of traveling, food does not remain only a matter of necessity but also a subject of fashion and choices. With the advancement of technology tourism, traveling, and migration from one country to different continents become easier. This affair helps in the dispersion of the food industry to a wider reach. One may develop a special kind of taste for the cuisine of another country or one may migrate with his indigenous taste to another place and may commercially use it by opening his special cooking skills. That's how food that was originally cooked to meet the needs of a family turns into the biggest merchandise for trade. Liberalization helped in easy access to any kind of food from any country. Big business houses understood the demand of the market both at the domestic level as well as at the international level. They put effort and money into bringing small-scale domestic suppliers of food under one big brand, this helped to bloom the food and beverages industry to the fullest. As per the report prepared by the Committee for Economic Development of the Conference Board (CED)[7], in the US, $831.80 billion was spent on food

[7] Economic Contribution of the Food and Beverages Industry, CED. *Available at:* http://www.ced.org/pdf/ economic contribution of the food and beverages (last visited on November 15, 2024).

in the year 2024 and the food & beverages industry exported $ 70 billion worth of processed food products.[8] This industry alone generates $164 billion in value-added; it costs almost 15.3 cents to every individual's dollar spent on food and gives employment to 1.46 million workers in the country. Similarly, according to the report prepared by the Indian Brand Equity Foundation(IBEF) in November 2016, only the food industry in India can be valued at US$ 39.17 billion and the grocery market ranked sixth in the world ranking. India is the largest milk producer and second largest producer of fruits and vegetables. The food processing industry in India contributes approximately 14 percent to the gross domestic product. Almost 70 percent of the food industry is unorganized so it is difficult to find out the number of employment this sector generates but the number is surely huge.[9]

Parameter	2016 Data	2024 Data
Value of Food Industry	US$ 39.17 billion	US$ 1,274 billion (estimated for 2027)
Ranking of Grocery Market	6th	5th
Milk Production	Largest Producer	Largest Producer
Fruits and Vegetables Production	Second Largest Producer	Second Largest Producer
Contribution to GDP	14%	10.54% in Manufacturing, 11.57% in Agriculture
Unorganized Sector	70%	Data not available
Employment	unorganized (exact number not available)	10.3 million (estimated for 2028)

This is evident now, that whether a country is developed or developing, the food and beverages industry plays a significant contribution to its economic growth for example by generating employment, contributing to export and import, foreign investment, agro development, etc.

[8] Food - United States | Statista Market Forecast

[9] *IBEF Annual Report*, **India Brand Equity Foundation**, https://www.ibef.org/annual-report (last visited May 10, 2025).

To meet the worldwide demand for a variety of food and beverages, that are perishable by nature. Food industries have to invent various techniques and methods that help to increase the shelf life of products last longer and make them travel-friendly.

The processing of food involves different stages in preparation, starting from raw material, procuring, and storage, and then processing, packaging, and finally product gets ready for retail. This preparation and processing bring certain changes in the nature and taste of food items (may be enhanced or depreciated). There may be certain types of edible goods with peculiar tastes and not popular because of their specific taste or fragrance but after undergoing different procedures and techniques that flaw could have been removed. This change in taste and shelf-life of goods probably helps to increase the market demand for that particular food. In such situations, IPR can come into action to guard the new form of food invention. Any recipe that is formulated or a special ingredient added to already known food recipes that enhances the flavor change in the quality of life of a food item can be a point of commercial gain for the inventor.

People in general are not very aware of their IP rights, till the time somebody tries to steal it or enters into direct competition to hit their business. Especially small business houses failed to pay much attention to their intellectual property, due to which their growth remains limited. If we look at the case of India only, though the country is the hub of spices and has a large variation of cuisines which change in a few kilometers distance. But in world food industry does not hold any prominent brand names in its account, like KFC, Coca-Cola cola, etc. few names like Haldiram and Bikanerwala have some fame other than India but not much in comparison to other brands in the international market. This is because of a lack of awareness and the absence of adequate measures to protect intellectual property[10]. With the clear identification of type IP in the food industry, profit in business can be increased and such information can be either protected by patent or trade secrets as per the discretion of the owner of information. One is free to choose the kind of protection he wants to give to his invention.

Having the protection of food product or processing by patent:

Pros

- The exclusive right to use the patented recipe or process is given to the patent holder.
- The product or process is secured for at least 20 years for sure.

[10] No express provision to protect trade secrets which is very common in food industry, patent protection provided by Indian Patent Act 1970 is not much successful mean for protection of food items due to absence of proof of novelty.

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- Disclosure and details of the information needed to be given to official authorities for the record, so that no one else can claim protection for the same thing.
- In case of infringement of patent legal liability can be ascertained.
- Easier to prove in court that patent rights have been infringed.

Cons

- Protection is for granted for a very limited time.
- Involve highly technical and lengthy procedures in granting patents.
- Heavy fees are levied to get the patent done.
- Proof of novelty is required which may not be a condition possible in the case of food items.

Having the protection of product and process through Trade secrets:

Pros

- Unlimited protection means there is no time limit for protection under trade secrets. A holder of trade secrets can reap the fruit of his invention as long as he wants.
- Secret remains secret, which means having protection through trade secrets one need not disclose it to anyone. That's the essence of secrecy.
- No extra fees are charged for this type of protection.
- Novelty is not essential, uniqueness which is beyond the general knowledge of people is sufficient to become IP. It is not possible to bring every time something very new in the food industry as raw materials remain the same and with little change in technique or sequence of use of ingredients new flavors can be created but they cannot pass the test of novelty as set by patent law.

Cons

- Protection can be easily lost with the loss of a secret or by independent invention by some other person or by reverse engineering.
- Extra money, effort, and caution have to be taken to protect the secret.
- In case of infringement, it will be a difficult task to prove the loss in the court. As everything was secret only.
- Worldwide law is much diversified in this kind of protection.

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- The threat of loss of information at times always remains there.

Trends in the Food and Beverages industry show that preference is given to trade secrets protection over patent protection. Reason majorly can be as we discussed above, cost efficiency, absence of novelty, and less technicality. Moreover, the success of brands like Coca-Cola and KFC also established the usefulness of trade secrets over patents in the food industry.

V. SOCIAL IMPACT OF NEW TRENDS ON THE FOOD AND BEVERAGES INDUSTRY

It is quite evident from the above discussion that with the addition of every stage in the manufacturing of food, its cost will lead to rise. Everyone in this industry is for business and with only the purpose of earning more profit. Large industries and foreign companies are taking over the local small businesses and creating a highly competitive market. Their main target group is high and middle-class strata of society reason being they have good pockets as well as a desire for new advanced, fancy, and healthy food. Moreover, innovation and design in food, are primarily done to attract larger customers instead to make food healthier. Even if they are labeling their products with 'low fat', 'no artificial flavors added', or 'no MSG (monosodium glutamate)' does not make them healthy food. They just substitute one not-so-healthy ingredient with other less-healthy things. Their main aim is to earn maximum profit and not to make a healthy society. And they misuse intellectual property rights as a tool to hide flaws in their products. This is one of the major reasons for preferring trade secrets as IP protection over patents. Some examples of trade secrets in the food industry are:

- French fries served by McDonald's, some of the reports claim that they use genetically modified for their French fries. McDonald's use of GM potatoes in French fries, most litigation in this area focuses on labeling or safety of GMOs broadly. However, a relevant case is Alliance for Bio-Integrity v. Shalala. This case challenged the FDA's policy on GM foods, arguing that the FDA's presumption of "substantial equivalence" (treating GM foods as equivalent to non-GM foods unless proven otherwise) violated the Federal Food, Drug, and Cosmetic Act (FFDCA). The court upheld the FDA's policy, finding that the agency's decision not to require mandatory labeling of GM foods was within its discretion, absent evidence of material health risks. This case became important as it establishes the regulatory framework allowing companies like McDonald's to use GM ingredients without specific labeling, provided they meet FDA safety standards.[11] Even though it has not been proven so

[11] Alliance for Bio-Integrity v. Shalala*, 116 F. Supp. 2d 166 (D.D.C. 2000).

far but is established that to maintain the length and color of fries, their potatoes undergo rigorous treatment of pesticides and chemical processing.[12]

- Some of the packed products come up with the label of 'zero sugar'. That does not mean that there is no harm in it. Rather company has used his creativity to replace it with extra salt and more saturated fat, such products may not be healthier overall. A study in "The Journal of Nutrition" (2020) examines "zero sugar" and low-calorie products, noting that manufacturers often compensate for reduced sugar with sodium, artificial sweeteners, or saturated fats to maintain palatability.[13] The FDA as regulatory body permits to mark zero sugar on product if per serving of it contains less than 0.5 grams of sugar. However there is no compulsion to disclose about compensatory additives like salt or fat.[14] Williams v. Gerber Prods. Co.[15], this case involved a consumer class action against Gerber for misleading labeling on fruit juice snacks, claiming they were nutritious despite high sugar content. The court held that a reasonable consumer could be misled by health claims if the product's overall composition was unhealthy, even if technically accurate. This principle applies to "zero sugar" labels, where companies might emphasize one healthy attribute while concealing others (e.g., high salt or fat). The "Williams" and "Frito-Lay"[16] cases demonstrate that courts are willing to scrutinize misleading health claims, including those that highlight one positive attribute (e.g., "zero sugar") while ignoring others (e.g., high sodium).

- Red-colored food items generally mentions 'carmine', 'cochineal extract' or 'natural red 4' on their cover. It means that the red food dye is made up of crushed 'bugs'. Up until 2012, Starbucks was using red food dye in many of its products. A "New York Times" published a article ln 2012 that confirms the claims that cochineal is derived from crushed Dactylopius coccus insects. It reported that Starbucks used cochineal extract in its Strawberry

[12] Marc Gunther, "McDonald's GMO Dilemma: Why Fries Are Causing Such a Fuss", The Guardian (Dec. 4, 2013), http://www.theguardian.com/sustainable-business/mcdonalds-fries-innate-potato-genetically-modified.
(An article discusses McDonald's GMO dilemma regarding the J.R. Simplot Company's Innate potato, a GM variety designed to reduce bruising and acrylamide formation. Activists, including Food & Water Watch, urged McDonald's not to source these potatoes, citing potential health risks, though the scientific consensus at the time supported the safety of GM crops. McDonald's ultimately decided not to use the Innate potato, as reported in "Modern Farmer" (2014), reflecting consumer pressure rather than legal mandates.)

[13] Marion Nestle & Lisa Young, "The Not-So-Sweet Side of Sugar Substitutes: Health Implications of Non-Nutritive Sweeteners", 150 J. Nutrition 1 (2020).

[14] U.S. Food & Drug Admin., "A Food Labeling Guide" (Jan. 2013), http://www.fda.gov/files/food/published/Food-Labeling-Guide-%28PDF%29.pdf.

[15] Williams v. Gerber Prods. Co., 552 F.3d 934 (9th Cir. 2008).

[16] In re Frito-Lay N. Am., Inc. All Natural Litig., No. 12-MD-2413, 2013 WL 4647512 (E.D.N.Y. Aug. 29, 2013).

Frappuccinos and other red-colored products until 2012, when it switched to lycopene-based dyes due to consumer backlash, particularly from vegans and those with allergies.[17]

There is no effective legal authority to check the accountability of these big business houses towards the health of innocent masses. Some of them are sharing part of their profit in social welfare but on the other hand, they playing with the health of people too. FSSAI (India), and Food and Drug Administration (US) check mainly labeling and other standards to follow but not the long-term effect of ingredients used in a product. Even they consider the limited use of chemicals or MSG to be safe.[18] For instance, the controversy on Maggie in India involves the question of 'excessive use of lead'[19] in their tastemaker, where as 'presence of lead'[20] in food item needs to be matter of concern. However, it is a proven fact that lead has detrimental effects on the human body and brain.[21] Food is vital not only for the growth of the human body but for the development of the mind too. With low-grade food and more focus on profit earning, the balance of society surely is disturbed. The food industry has started its journey to meet the needs of communities and gradually turned into a giant profit-generating industry.

VI. CONCLUSION

We have discussed so far the innovative use of intellectual property rights in the growth of the food industry. There is an evident growth in the food industry, at the same time there is a rise in poverty and scarcity of food in the world too. As per a report made by the World Food Programme[22], approximately 124 million people in 51 countries are presently suffering from food scarcity. A rise of 11 percent in food-insecure people can be noted as compared to the previous year's report. Making a profit must not be the sole purpose of the food industry. A strong food industry brings a stronger society and a better-secured nation. With the help of intellectual property efforts needed to be made in the direction of providing more healthier and reasonable food products for the betterment of the society as a whole.

The government must inspire people to develop more cost-efficient methods to bring more quality to their food products and profit to their businesses too. There must be an effort to

[17] Stephanie Strom, "Starbucks to Stop Using Bug-Based Coloring in Drinks", N.Y. Times (Apr. 19, 2012), http://www.nytimes.com/2012/04/20/business/starbucks-to-stop-using-bug-based-coloring-in-drinks.html.
[18] U.S. Food & Drug Admin., "Questions and Answers on Monosodium Glutamate (MSG)" (2025), http://www.fda.gov/food/food-additives-petitions/questions-and-answers-monosodium-glutamate-msg.
[19]Centers for Disease Control and Prevention, *Lead in Foods, Cosmetics, and Medicines* (Feb. 22, 2022), https://www.cdc.gov/lead/prevention/sources/foods-cosmetics-medicines.html.
[20]World Health Organization, *Lead Poisoning and Health* (Aug. 23, 2019), https://www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health.
[21]Bruce P. Lanphear et al., *Low-Level Environmental Lead Exposure and Children's Intellectual Function: An International Pooled Analysis*, 113 ENV'T HEALTH PERSPS. 894 (2005).
[22] Global Report on Food Crisis,2018 *available at*: https://www.wfp.org/content/global-report-food-crises-2018 (visited on November 17,2018).

shift focus from the efficacy of the process to utility to customers. With the use of IPRs, local food, and products can be identified and protected. It will not only provide monetary benefits to natives of that place but also provide recognition and protection to the life of those groceries (especially regional and seasonal foodstuff with limited life span and availability). New laws must be framed with certain amendments in the existing ones must be done to meet the challenges of changing mold of society. Stronger Intellectual property laws will be the economy, the US and European Union is two glaring examples of this. One of the major drawbacks that are possible due to weaker IP laws is that goods rejected by one market can land in another market with not-so-strict laws, ultimately affecting the health of innocent people. India is seen as one of the most promising developing nations in the international market for purposes of trade as well as the most capable country to meet the world's food scarcity due to its diverse climate and fertile soil. To meet the challenges at the international level stronger legal framework is considered necessary for India, especially in the field of IP. Innovation is essential to growth but it must be used for the benefit of mankind. Sustainable development is the crucial need of the hour no industry can ignore this.

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