

HISTORY OF PATENT SYSTEM.

MURALIDHARAN
ADVOCATE, PATENT AGENT
LAW LECTURER, MEDIATOR
MOBILE:-0-94482 47549
Mail to: muralimanu@gmail.com/
advrmuralidharan@gmail.com

**Manu Associates,
143/4, 8th Main,14th Cross,
Royal fort Apartments,
Malleswaram.
Bangalore.560003**

**R. Muralidharan
Advocate, Patent Agent
Law Lecturer, Mediator
Mobile:-0-94482 47549
mailto: muralimanu@gmail.com/
advrmuralidharan@gmail.com**

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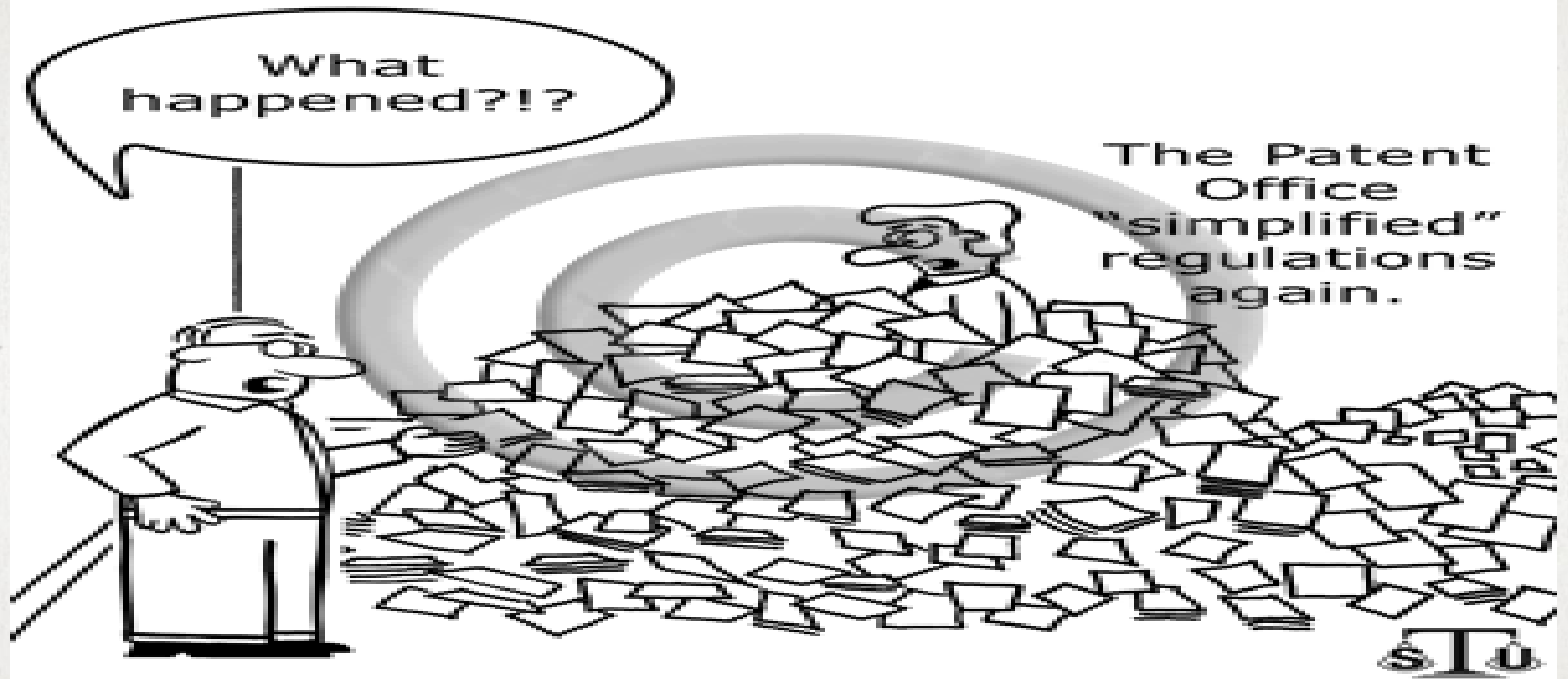
- Proprietary monopolistic rights over new technologies by grant of patents date back to 15th Century.
- It originated in the Greek City states.
- Industrial Revolution and the policy of colonisation pursued by the European nations facilitated the further growth of the Industrial property right system.
- By 1890, International community had two treaties in place to govern the international implications of the administration of the Industrial property right system. (The Paris Convention for the Protection of Industrial Property, signed in Paris, France, on 20 March 1883 and the Berne Convention for the Protection of Literary and Artistic Works adopted in 1886).

HISTORY OF INDIAN PATENT SYSTEM.

- Under the ancient Hindu jurisprudence, there was no equivalent for monopolistic rights over technological efforts.
- In ancient India, each avocation was taken by a caste and technological improvements in an area of industry remained as a trade secret with the members of that caste.
- Governor General In Council in British India applied the laws passed by the British Parliament such as (a) Patents And Design Protection Act 1872, (b) Protection of Inventions Act 1883 which were consolidated into Inventions and Designs Act 1888.
- The first comprehensive Indian legislation for Patent and Design was enacted in 1911. This enabled the British to keep the goods of other European Nations from entering the Indian market.

PATENTS AND DESIGNS ACT 1911

- This is a common legislation covering both patents and designs. Under this law, '*local novelty*'(*novel to Indian territory*) was sufficient for the grants of patents . Currently, the statute demands global novelty.
- After India become independent, two important Committees were constituted to consider reforms to Indian Patent law.
 1. Justice Bakshi Tekchand Committee.(1948. Retired Judge High Court of Lahore)
 2. Justice Rajagopala Iyengar Committee .(1959) Retired Judge Supreme Court
- Justice Bakshi Tekchand Committee soon after independent incorporated the requirement of global novelty as an essential criteria for the grant of patent.



JUSTICE N. RAJAGOPALA IYENGAR COMMITTEE REPORT(1959)

- During this time, India was predominately an agrarian economy. There was no serious industrial activity.
- Iyengar Committee recommended the most restrictive and patentee unfriendly legal regime. Some of the salient features the Patents Act 1970 reflected this restrictive attitude.
 1. 1970 Act did not allow product patent for substances that can be used as food , medicine or drug. For these inventions only process patents were permissible.
 2. The process patents for food , medicine or drug will have only a truncated term of five years from the date of grant or 7 years from the date of application whichever ever is earlier.
 3. Other patents had 14 year term from the date of Application.
 4. Pharma and food process patents came with the endorsement 'licenses of right'.

INDIA - THEN AND NOW

- Since, the passing off 1970 Act that came into effect on 20th April 1972, lot of changes have occurred to Indian economy.
- Some of the important changes are as under:
 - a) Only about 55% of India's population today are engaged into agriculture contributing to about 18% of India's GDP. AT the time of independence, 85% of India's population were involved in agriculture.
 - b) India has become the generic drug capital of the world.
 - c) We are seeing the emergence of Indian multinationals like TATA Group , Reliance, Sun Pharma, Wipro, Infosys etc.
 - d) India today is a very important actor in global software industry and trying to make improvements in its hardware chip and the other IT goods industry.
 - e) Indian PM Modi remarked in USA that the cost of Indian Mars Orbital Mission is less than 8 Rs /km which in many states is lower than cost of auto fare.

HISTORY OF INDIAN PATENT SYSTEM

1856 - ACT VI OF 1856 on protection of inventions based on the British Patent Law of 1852

1872 - Patents & Designs Protection Act.

1883 - Protection Of Inventions Act.

1888 - Inventions & Designs Act.

1911- The Indian Patents & Designs Act.

1972 -The Patents Act (Act 39 Of 1970) came into force on 20th April 1972.

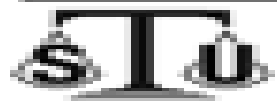
1999 - Patents (Amendment) Act, (1999) came into force from 01-01-1995.

2002 - Patents (Amendment) Act 2002 Came Into Force From 20th May 2003

2005 - Patents (Amendment) Act 2005 effective from 1st January 2005

AMERICAN INDUSTRY AND INDIAN PATENT RIGHTS

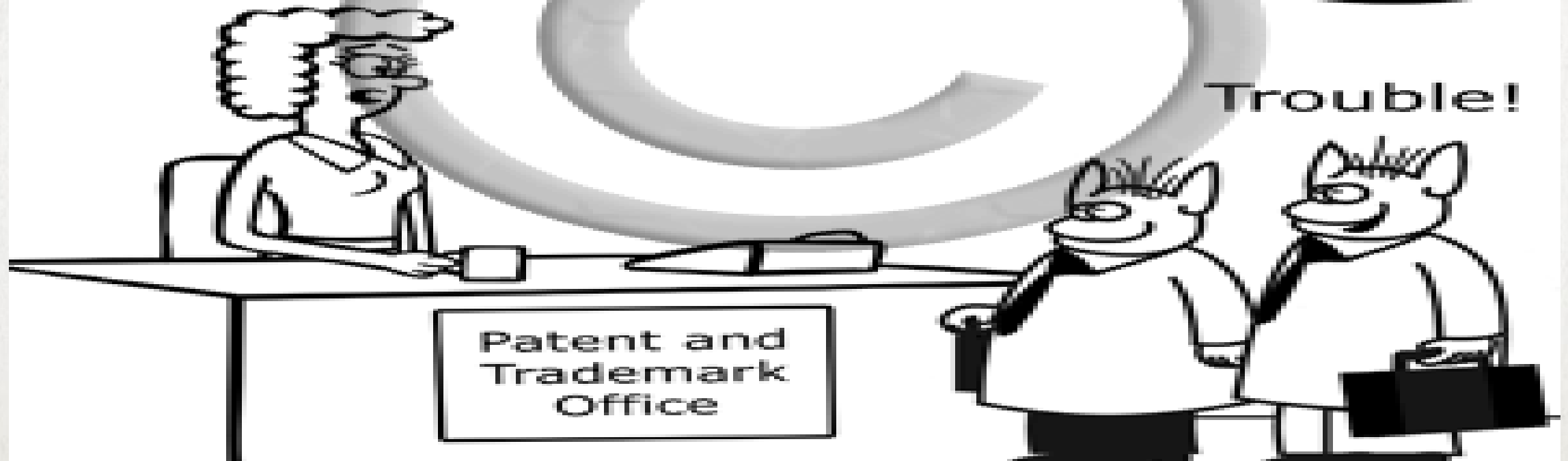
- United States passed Omnibus Trade Act that contained two provisions known as Super 301 and Special 301. These provisions enabled the USTR to impose Trade sanctions on countries that do not provide adequate level of Patent protection and those who consistently failed to enforce IPR rights in a credible manner. Pharmaceutical Manufacturers Association of USA played a very important role in the implementation of these provisions.
- Similarly Motion Picture Manufacturers Association and Computer Software Alliance demanded better enforcement of copyright protection.
- The efforts of the Global community under the aegis of GATT to facilitate more efficient Global Trade by reducing Tariff and non tariff restriction resulted in the culmination of WTO TRIPS agreement . India is one of the founder members of WTO and played an important role in the evolution of WTO.



Wow, you
want to register
658 patents?!?
What do you
make?



Trouble!



WTO TRIPS AGREEMENT AND INDIA.

- WTO TRIPS Agreement tries to ensure a minimum level of IPR protections which is common to all countries. No state which is a member of WTO can grant a level of protections that is inferior to what has been provided in TRIPS. However, they are free to grant more superior IPR protection than what is prescribed under TRIPS.
- In India, the PV Narasimha Rao Government guided by Dr. Manmohan Singh unleashed the process of Liberalisation , Privatisation And Globalisation.
- The subsequent BJP Governments followed the same policies in a more aggressive way. Globally, India started gravitating more towards USA as it is the major trading partner of India. Hence after India's membership to WTO TRIPs agreement in 1995, there was hectic legislative activity. New Trademarks Act, Design Act, Geographical Indications Act , Semiconductor Chips Act were passed.

INTERNATIONAL TREATIES – INDIAN RATIFICATION

India became a founder member of WTO and agreed to the TRIPS obligations during 1995. Indian membership of IP treaties and date of ratification is appended below.

• Berne Convention	April 1, 1928
• WIPO Convention	January 5, 1975
• UCC	January 7, 1988
• WTO (TRIPS)	January 1, 1995
• Paris Convention	December 7, 1998
• PCT	December 7, 1998
• Budapest Convention	December 17, 2001
• Madrid Protocol	July 8, 2013

DIFFERENT INDIAN PATENT LAW REGIMES.

- Indian Patents and Design Act remained in force till 1972. This enactment was not patentee unfriendly. The Patent part of this legislation was repealed by the Patents Act 1970 when it came into force on 20th April 1970.
- Patents Acts 1970 as recommended by Justice Rajagopal Iyengar committee remained in force till 1995. Indian membership to WTO compelled India to pass patent Amendments Ordinance that provided for the grant of exclusive marketing rights and also enabled applicants for Pharma products to place their application in Mail Box to review the product claims should there be a regime change. This development took place in January 1, 1995. This was in force till the coming into force of Patent Amendment Act 2005.

PATENT AMENDMENT ACT 2005.

- The third millennium saw more resurgent India. More and more Indians are getting global recognition and India became more confident politically and economically. Both BJP and congress governments were convinced that to facilitate bigger inflow of foreign capital, grievances of global investors relating to the administration of Indian patent system have to be satisfactorily resolved. So India made substantial changes to the Patent law.
 1. Product patent for food and drugs are also possible.
 2. Term of 20 Years from the date of priority.

PATENT AMENDMENT ACT 2005.

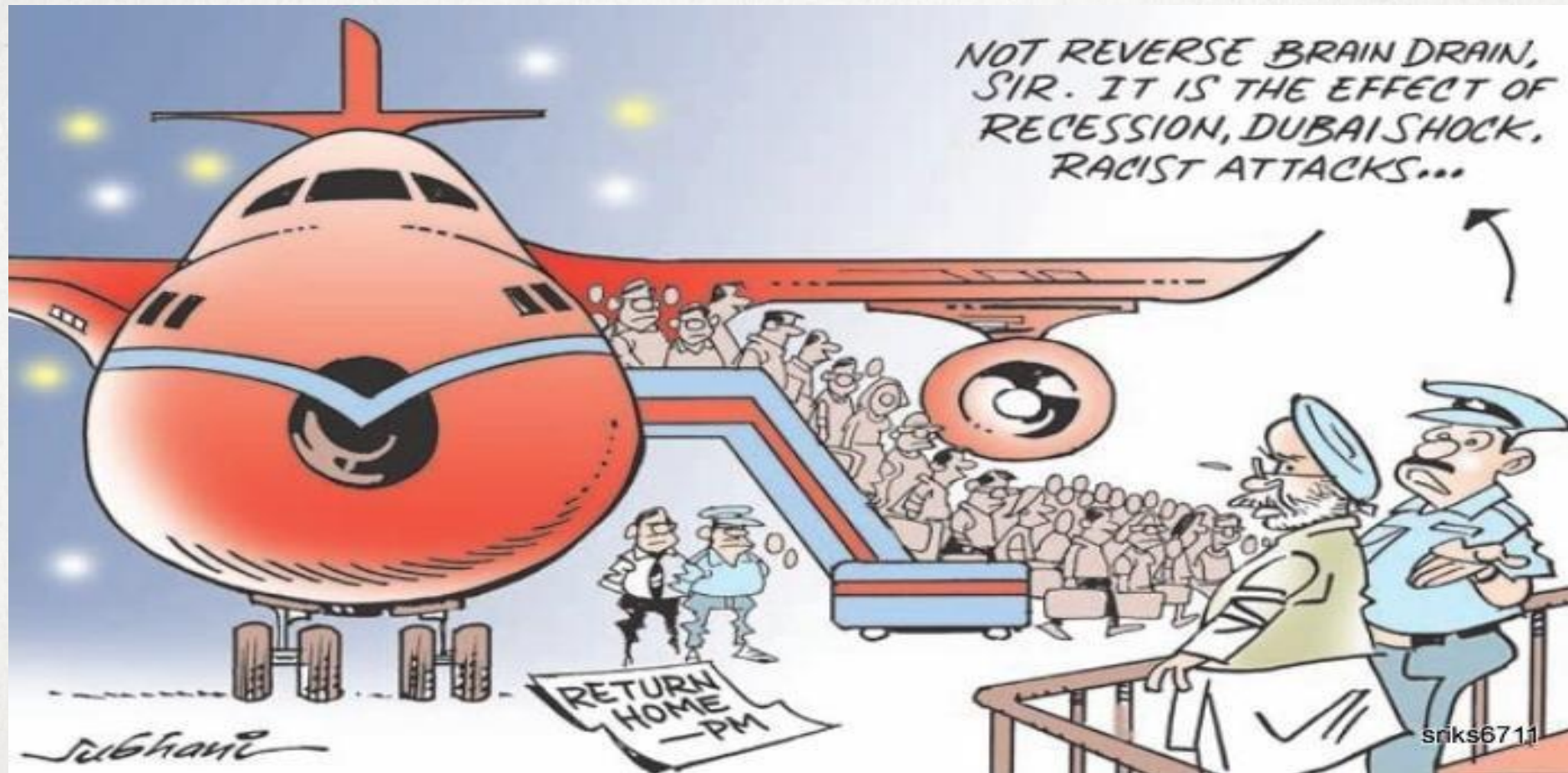
3. Indian patent law provides 4 checks against the possibility of grant of a bad patent.

1. Pre-grant Representation by way of Opposition
2. Post grant OPPOSITION (Sec 25(2) Rules 55 to 62)
3. Revocation under IPAB under Sec 64.
4. Counter claim of invalidity of a patent in a patent infringement case under Sec. 104
5. Making compulsory license provision reasonable and fair to all concerned.
6. Incorporation of statutory provision to define inventive step.

CURRENT INDIAN DEVELOPMENTS

1. The number of Patent applications filed in India is continuously increasing.
2. Indian Patent office is becoming one of the designated search authorities under patent co-operation treaty.
3. India is an active participant in the WTO and figures often as a Petitioner or Respondent in many of the WTO dispute resolution cases.
4. India will in the long run be the exporter of Doctors, nurses, engineers, teachers and other skilled workforce to countries around the world.
5. India has almost abandoned non-alignment and its pro-Russian tilt and increasingly trying to impress USA, Germany, France and other east Asian Countries. This is an important shift in foreign policy.

TRUMP IS THE PRESIDENT

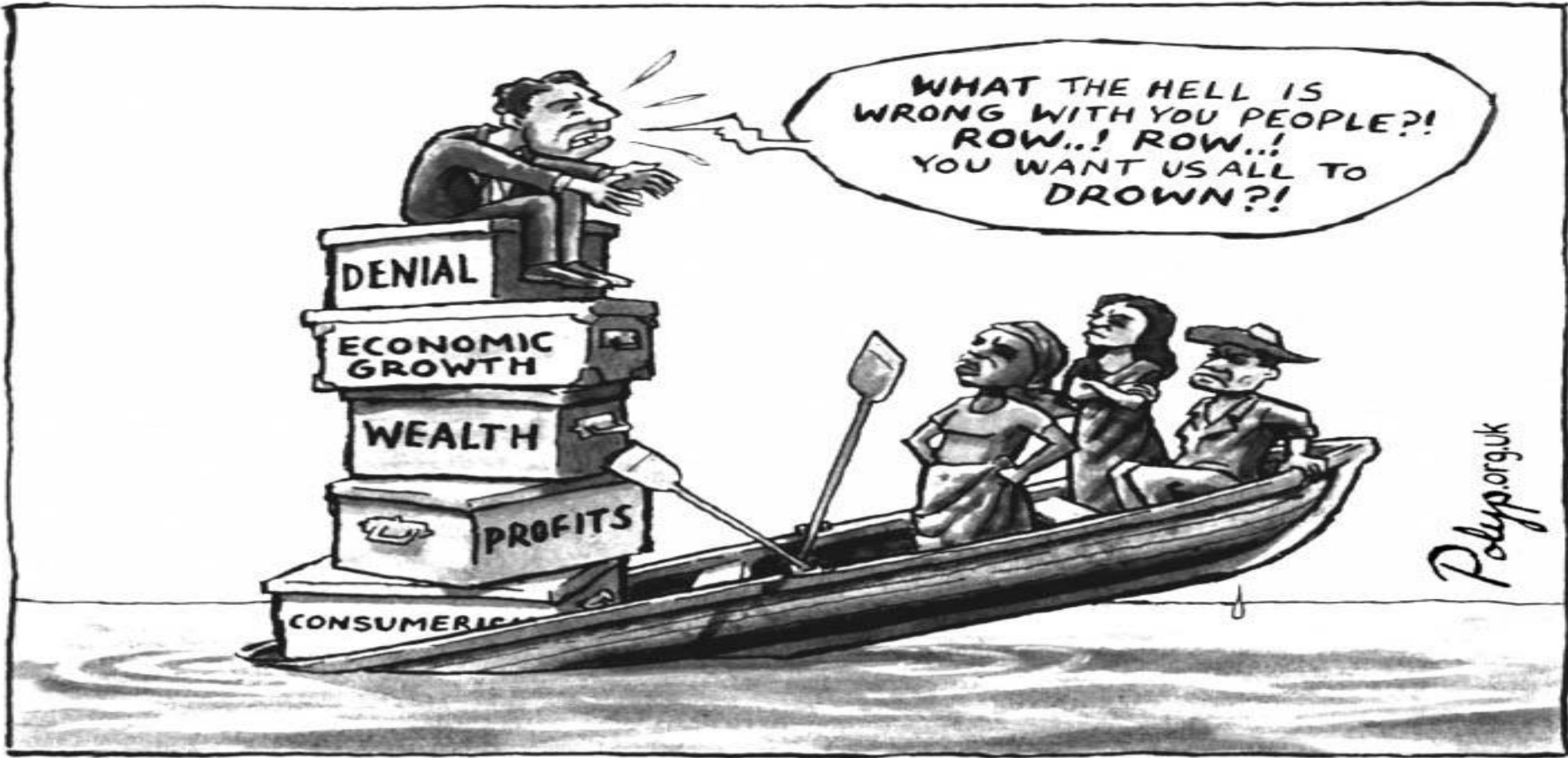


INDIAN PATENT SYSTEM:- CURRENT SCENARIO

- The awareness of IPR in India is less.
- Owning a patent is like owning an elephant.
- T.A Edison said patent is a license to a law suit.
- US Patent OFFICE receives about 350000/- 3 lakh fifty thousand patent applications. In fact Chinese patent office receives more number of applications. Indian number is $1/10^{\text{th}}$ of the US number. We receive about 40,000 applications per year.
- Most of the Applicants are foreigners or foreign countries
- Indian Justice administration system where IPRs will have to be ultimately enforced is under staffed and are yet to get used to the nuances of IPR litigations

INDIAN LEGAL SYSTEM:- CURRENT SCENARIO

- Indian formal legal system of redress of disputes is essentially colonial in origin and unfortunately remains that way.
- A person seeking damages seeking patent infringement has to shell out out fee at the rate of 7.5 % ad valorem besides paying reasonably well paid IPR solicitors and also senior counsel.
- Relatively there are less number of IPR cases in India. Among IPR disputes Trademark cases constitute ,more than 60 to 70% o f the cases. Copyrights around 20%. Patent cases are few in number.



'THE SAME BOAT'