



South Asian University

Faculty of Legal Studies

LLM

Monsoon Semester 1 in 2017

Course Information

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Part I

Course Title: INTELLECTUAL PROPERTY RIGHTS

Nature Compulsory Paper

Course Code: LW008

Course instructor: Dr V.G. Hegde, [vghegde@sau.ac.in](mailto:vghegde@sau.ac.in)

Course Duration: One Semester

Credit Units: 4 (MSE/TPW/ESE)

Medium of Instruction: English

Prerequisites: Nil

Precursors: Nil

Equivalent Courses: N/A

## Part II

### ***Importance of the Course***

The proposed course will deal with national and international IP-related issues in the context of South Asia. The main focus of the course will be to study South Asian IPR regimes in the context of Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs). The TRIPs Agreement (within the institutional and multilateral structure of the World Trade Organization) has set certain minimum standards with regard to substantive IPR norms. It requires Member States to implement these minimum standards within their domestic legal systems. The course will examine these implementation issues in the context of South Asia, examining specifically the domestic IP regimes. The impact of TRIPs and other IP regimes on the South Asian States will form the main thrust of this course.

Significantly, in recent times the ambit of IPR protection has been expanded to include not only technological and other related resources, but also such areas as traditional knowledge, biodiversity and genetic resources. How is South Asia responding to these challenges in terms of formulation of legislations and developing an interpretative matrix within its own judicial bodies? The Course will study these issues.

At the global level, some of these areas of IPR protection have been dealt with both substantively and procedurally through varied multilateral treaty frameworks as administered by e.g., World Intellectual Property Organization (WIPO), World Health Organization (WHO), and United Nations Environment Programme (UNEP). There is a need to examine these IPR-related national and multilateral treaty regimes comprehensively and on a continuing basis within an inter-disciplinary framework. This legal process at the global level, specifically for IPRs, has been raising several difficult implementation issues for developing countries, including South Asia. The course will address these issues.

### ***Objectives of the Course***

While identifying this changing nature of national and international legal norms relating to IPRs, the proposed course will, *inter alia*, deal with the following:

- To examine the definition and legal basis of IPRs in its broadest sense including patents, copyrights, trademarks, geographical indications, designs and trade secrets;
- To study the evolution of IPRs as an international legal norm and its implications at the global level with specific focus on the concerns of developing countries, including South Asia.
- To study the emerging new interpretations and consequent implementation issues relating to IPRs within multilateral and regional treaty framework (SAARC) and to examine and identify the conceptual and jurisprudential aspects with specific focus on cases and case studies at the national and international level.
- To understand the implications of emerging global IPR regime on frontier research areas such as traditional knowledge, biodiversity, biotechnology (also to include environment and agriculture/plant variety), digital/computer technology, internet and domain names).

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## **Course Content**

### **WEEK – 1**

Understanding IPRs: kinds of IPRs; evolution of IPRs; international law, globalization and IP;

### **WEEK – 2**

Hierarchy and justifications for IPRs; University, Industry and IPRs; South Asian perspectives

### **WEEK – 3**

National policies on IPRs and South Asia: overlapping global institutional and legal regimes on IPRs;

### **WEEK – 4**

TRIPs Agreement and South Asia – the context, genesis and implementation issues

### **WEEK – 5**

Patents - patentability criteria, local working, remedies for infringement, term of protection

### **WEEK – 6**

Copyrights and other related rights – Definition, nature and scope (digital agenda, internet)

### **WEEK - 7**

Trademarks – Definition and scope; law of passing off

### **WEEK – 8**

Geographical Indications (GIs); undisclosed information/ trade secrets

### **WEEK – 9**

Enforcement of IPRs –civil, criminal and administrative remedies

### **WEEK – 10**

TRIPs Agreement, Public Health, Access to Medicines and Human Rights

### **WEEK – 11 & 12**

Biodiversity, farmers rights, traditional knowledge (TK) and IPRs

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## Selected Readings:

1. Christopher May and Susan K. Sell (2008) *Intellectual Property Rights : A Critical History*, (Viva Books : New Delhi) Indian Edition;
2. Commission on Intellectual Property Rights (CIPR) (2002), *Integrating Intellectual Property Rights and Development Policy*, (Government of United Kingdom : London) also see [www.iprcommission.org](http://www.iprcommission.org)
3. Correa, Carlos M. (2000) *Intellectual Property Rights, the WTO and Developing Countries: The TRIPs Agreement and Policy Options*, Third World NetWork, Penang, Malaysia;
4. Cullet, Philippe (2005), *Intellectual Property Protection and Sustainable Development*, (New Delhi:Butterworth);
5. Drahos Peter (2002), *Global Intellectual Property Rights: Knowledge, Access and Development* (Basingstoke: UK: Palgrave);
6. Jermy Phillips and Alison Firth (2001), *An Introduction to Intellectual Property Law* (London: Butterworths);
7. Juan He, "Developing Countries and Intellectual Property Rights", *Chinese Journal of International Law* (2011) 10 (4) : 827-863;
8. Mohammad Monirul Azam, *Intellectual Property Right, WTO and Bangladesh* (New Warsi Book Corporation: Dhaka: 2012).
9. Rami M. Olwan (2013), *Intellectual Property Rights and Development : Theory and Practice* (Springer);
10. South Centre (1997), *The TRIPs Agreement: A Guide for the South, The Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property Rights*, South Centre, Geneva.
11. Srividhya Ragavan, (2012), *Patent and Trade Disparities and Developing Countries* (Oxford University Press);
12. V.G. Hegde (1998) "Patenting Life Forms: National and International Perspectives", *Indian Journal of International Law*, (38)4, pp. 99-110;
13. V.G. Hegde (2007), "Intellectual Property Rights and African-Asian States" in the *Special Commemorative Volume on International Law*, Asian African Legal Consultative Organization (AALCO) see [www.aalco.org](http://www.aalco.org).
14. Wattal Jayashree, (2001) *Intellectual Property Rights in the WTO and Developing Countries*, Oxford University Press;

## Selected Cases:

1. *Association for Molecular Pathology v. Myriad Genetics Inc.* US Supreme Court, 13 June 2013
2. *Bilski v. Kappos* (June 28, 2010, US Supreme Court
3. *Canada-Patent Protection of Pharmaceutical Products-Complaint by the European Communities and their Member States*, Report of the Panel, March 17, 2000 WT/DS114/R
4. *Canada-Term of Patent Protection*, Report of the Panel, May 5 2000, WT/DS170/R; Report of the Appellate Body, September 18, 2000, WT/DS170/AB/R
5. *Diamond v. Chakravarty*, US Supreme Court, 1980
6. *Feist Publications* US Supreme Court, 1991
7. *Harvard College v. Canada* (2002, Canada Supreme Court)
8. *Harvard Mouse Case*, European Patent Office, 1990
9. *India-Patent Protection for Pharmaceutical and Agricultural Chemical Products*, Report of the Panel, September 5, 1997, WT/DS50/R; Report of the Appellate Body, December 19, 1997, WT/DS50/AB/R

10. *India-Patent Protection for Pharmaceutical and Agricultural Chemical Products – Complaint by the EC and their Member States*, Report of the Panel, August 24, 1998, WT/DS79/R
11. *Monsanto Canada Inc. v. Schmeiser* (2004, Canada Supreme Court)
12. *Novartis v. Union of India and Others*, Indian Supreme Court, 1 April 2013
13. *NATCO v. Bayer*, Indian Patent Office, 21 June 2012
14. *United States-Section 110 (5) of US Copyright Act*, Report of the Panel, June 15, 2000, WT/DS160/R