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What Lawyers Want **IN** **2008**

A Wish List of Changes in Law

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"I like to do fun things with IP."

Pravin Anand, the leading Indian intellectual property lawyer, as well as a lively and authoritative commentator on a variety of IP topics, in a lunch time conversation with **Aalok Wadhwa**, Managing Director, LexisNexis Butterworth India

I am at Baci (pronounced Ba-chi), the much talked about Italian restaurant at Sundar Nagar. The first impression as I enter the restaurant is that of a very uncluttered and pleasant eating experience to follow.

Pravin Anand, my guest for the afternoon, arrives soon. Brisk hellos and we settle down to ordering the food we drove all the way from two ends of town to have.

Scallops followed by pork chops and accompanied with Diet Coke simultaneously get the nod. And thus starts a conversation in good taste.

"I am a diehard foodie," Pravin announces as we return our menu cards to the energetic gentleman serving us. Wow, I think to myself – finally I meet a lawyer who loves his food. He continues, "You know Jiggs Kalra, the food historian? Before he suffered a stroke, he was an expert at

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sampling food from all over the country, discovering dishes that were out of the world. He would then get the khansamas who cooked them to join his team. He had a kind of panel. So, if you ever wanted him to organise a party for you, someone from Lucknow would prepare tunda kababs, someone from Amritsar would do the tamaatar ki chutney and more. You'd want to make a meal out of the chutney, it was so good!"

And you can see the taste of those chutney-flavoured moments linger on in Pravin's memory. "This party

we'd thrown, we had been able to convince the government to give out the Railway Museum to us for its venue. What a night it was! Even four years later, guests say they had never had such food."

"What are your other interests?" I ask. The spontaneous answer is books: "Reading books, writing books, authoring articles... And I like doing things around my area of specialization, Intellectual Property (IP). I like to do fun things with IP."

Having fun with Intellectual Property? I need to know more.

"About three years ago I organised the world's first play on Intellectual Property, Brain Child, scripted by Farookh Dhondy. The cast was mainly from abroad, with Yashpal Sharma from Bollywood playing the lead. The play's story was based on a real-life case that I'd handled for a film

producer. One of the foreign technicians working for my client had been claiming more than his actual dues, and finally decided to run away with the film's rushes. The cops caught and arrested him at the Delhi Airport. Interestingly, however, the police found it very difficult to understand 'Intellectual Property' and differentiate it from 'Physical Property'. Their point was that we'd got our computer back, if somebody had copied some scenes from the film between the stealing and the getting caught, so what? A comedy, the play did very well."

And obviously encouraged, Pravin organised an international seminar on IP and spirituality last year. He recalls: "We invited spiritual guru Sri Sri Ravishankar. The idea was to discover an interface between creativity and intellectual property, and creativity and spirituality. It was fascinating. I had also set up the Indian chapter of the world's largest group for the protection of Intellectual Property, today the Indian group is really big—this was also done in fun!"

And you wouldn't think it possible, but the fun and games with Intellectual Property are to continue. "By January I'll be out with an IP board game." Amazing stuff I think, and say—not forgetting to book a set for myself in advance.

Our scallops to arrive. Cooked to the right colour and texture. We dig right in.

A satisfied pause later, Pravin tells me of the other interesting thing that he's put his mind to of late. "I have recently set up the Indian Asian Protection Association group. I have recently set up the association for the protection of inventors. I promote it as an association where inventors can

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learn not only law, in a very simplified, demystified way, but also get to know best practices. How to do things? What not to do, how can inventors help inventors. This forum was missing in India."

"In your interaction with Law colleges, do feel our students are getting adequate grounding in IP related issues?" I ask.

"In the beginning, I was very happy..... It was the first time that they were exposed to this subject. Now there's no new approach. They are getting the same thing over and over again. Lectures delivered in a style that is openly available on the internet. When the students are asked to write a dissertation, the material is nothing but a patchwork of articles downloaded from the internet."

"What you really need are really good lot of teachers. Students who're taught by Ram Jethmalani say 'Wow, I want to be a criminal lawyer'. Because he's an inspiring teacher. Our education system must approach great lawyers when they retire and insist on payback."

Sizzling hot pork chops arrive. Crisp, moist, as good as pork chops can get.

I continue on the theme – something close to my heart too. "I believe that the two important things we often ignore while focusing on higher education are the importance of case studies, and teacher credibility. Student motivation happens only if the teacher is sure about the subject she is teaching. So, IP has to be a case studies approach, taught by the most capable. Your views?"

He replies, "As an intellectual property lawyer I employ many potential Intellectual Property lawyers. In that capacity, I know that we have a problem here. What we get is a lot of fresh graduates with an unfortunate attitude and mindset. An attitude probably given to them by individuals who do not love Intellectual Property, because they are opposed to multinationals. The teachers love "open source"—so an anti-IP approach is emerging. As a result the system delivers good defense lawyers who are not very good prosecutors. It's a huge problem. Too many are coming in with a crummy attitude towards IP. So when I interview them I often talk to them about IP issues, while they go attacking the multinational pricing models. This is also the feedback from the MNC world. India needs to enhance its level of IP expertise to the point where we become the next America."

Needing caffeine, I order a Doppio, while Pravin sticks to his cola. The conversation now shifts to IP protection, and Indian academic institutions. I pose to him the publisher's dilemma. For us publishers, the academic market gives us tomor-

row's customers, but is a challenge when it comes to the present. Research suggests that each book that the publisher invests in and prints gets resold thrice, and photocopied eleven times. What protection and safeguards do the Indian IP laws offer against this?

Pravin's response, for a change, is not reassuring. "The market for publishers isn't very lucrative. Regarding photocopying, one cannot unlawfully reproduce without the copyright owner's permission. Photocopying includes reproducing, and you cannot reproduce a copyrighted material, electronically transmit it and so on. That's very clear. Now there are certain allowances made in some back-to-back situations. Using something for news reporting, for instance, would be fair use. But one has to ensure against plagiarisation. I know of books written by very well known organisations that are plagiarised works. Like kleptomania, there's copymania. Copying is a habit with some authors. If not a habit, they haven't learnt that it's wrong to copy or they actually believe that they are allowed to copy. But they can get into a lot of trouble, and get the publisher into a lot of trouble too."

"So fine, students who only photocopy to learn are not breaking any law. But is there prevention in stopping the sale of second hand books?"

"If you are talking of the sale of a book that took place in say Germany, it can be copyrighted, sold, and circulated only in Germany. If the book enters another country it will be a parallelly imported product. A Delhi High Court ruling upholds the same law in India. You cannot bring

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in a book, even if it is in the original, if the author did not permit its sale and/or the copyright owner did not consent to its sale in your country. That is infringing."

Pravin shares some more of his impressive knowledge on the issue. "Within India we have the doctrine of what is known as the national exhaustion of rights, which means that once I or the publisher sells my book

Investigative agencies are not very good in this country. The few that are there are so prohibitively expensive that most companies cannot afford to use their services on a day-to-day basis

within India then it can be resold any number of times. You can't use Intellectual Property rights to restrict the further distribution of the book. We can do nothing if the book is re-sold any number of times. So, to answer your question, in India the book can be resold, if its printing is of Indian origin."

"After getting a bachelor's degree in chemistry, what attracted you to Law?" I ask.

He smiles and replies, "My Dad probably. At college, a team came from the Duke's College, Carolina, known for its Chemistry department. They interviewed people from 30-40 colleges, and I got selected. As I was preparing for my journey, one night my dad came into my room and asked me what he should do with the family firm with its large book library after I leave for the United States. I melted and law it was to be."

The coffee over, I ask for the bill. The conversation goes back to food. He says, "Interestingly I learnt one of my first lessons in trademarks in Japan. I went into a restaurant and I had learnt the names of a couple of dishes. So I asked for Tempura. They did not understand. Then I asked for Teriyaki, they did not understand that either. So I moved on to another restaurant. I asked for these dishes and also beer, they wouldn't even understand beer! I realized we had a language problem. I asked, 'Can I have coke?' 'Oh Coke!' Everybody understood Coke. Incredible".

We have a Burma Bazaars and a Palika Bazaars. How are they allowed to survive? I think aloud.

As usual, Pravin knows, "There are many inter-related reasons. These places pirate a large number of brands, so there are several hundred firms whose rights are being violated. Burma Bazaar is very well connected to the police and politicians. They can beat up lawyers who stand to prosecute them. Cops fear them. There are leaks of information to them so that there are raids where one finds nothing. Investigative agencies are not very good in this country. The few that are there are so prohibitively expensive that

most companies cannot afford to use their services on a day-to-day basis. Then there are needed good investigative agencies to find out where the volumes are coming from. You have to reach the manufacturers' warehouses, the distribution, the retailing. All this is too scattered and disorganized".

To give you an example, I took a case for Levis. I took a good investigative agency who gave us the elements of the distribution. There is one person who makes rivets and buttons for jeans, on a machine that is 2-feet tall. That machine is kept in a shanty area, it has no labels, no names, and an address which you can barely find. On a particular day he does a particular brand. So if he's doing Wrangler today, tomorrow he'll do Levis. If you are lucky you'll catch him on the day he's doing Levis. Also, he looks poor, he doesn't have a car and a house, he doesn't have assets. He goes to the court, just folds his hands and court says 'he is too small a cog' and sets him free. But he doesn't learn a lesson, he repeats".

"The next entity is the tailor, who's got 10 people working on the floor making jeans. He goes to the rivet guy and picks up 100 kits. The 100 kits will make Wrangler jeans, Pepe jeans into Levis. Then comes the Seth (Boss) who sits in the wholesale market. He has sacks and sacks of Pepe, and Wranglers and Levis, Bill Clinton jeans, every thing he has. That's the guy to really catch. But that guy takes all the precautions. Goons, bribes he does, and his lawyers who will throw you out of Court before you enter or beat the hell out of you should you get in there.



You go to places like Bangalore, Pune, Indore, Ahmadabad, where the knowledge of IP practices is so low that if matters go to the courts, God help you. So that's why right holders, writers, innovators need to know their rights of intellectual property. That's how they can speak to the courts, speak the language, and understand them

The last are the likes of the small retailer in Colaba who's got a 4x4 ft shop and where he stocks only 5 pieces. So when you raid him you get only 5 pieces, whereas he keeps his large stock in a warehouse. You need to catch up all the four elements in the chain to dry up the chain. And ultimately should you succeed in a court, implementation is another matter altogether – more often than not they get away with it".

"Any reason to hope for better times", I ask somewhat naively?

"Oh yes" is Pravin's reply, "but it's going to be long process. The first step in the change process has happened - in 2002 the CPC got amended. So what used to take 5-10 years in litigation now takes 2-3 years.

Second change, They started saying I'm going to take this case to mediation, I'm going to try this, why don't you try and settle? Most importantly, courts have started to grant punitive damages. Also mediation is starting to catch up as a resolution means. How does he find the courts?

"I know Delhi High Court has developed this great expertise in IP as an island of excellence. Other courts like Bombay, Chennai and Calcutta have developed a good court for IP cases. But beyond that you go to cities where there are other practices, you go to places like Bangalore, Pune, Indore, Ahmadabad, where the knowledge of IP practices is so low that if matters go to the courts, God help you. So that's why right holders, writers, innovators need to know their rights of intellectual property. That's how they can speak to the courts, speak the language, and understand them.

"Do you think there should be some specialized courts?" I ask

Pravin disagrees. "Specialized courts may not be the right thing for us to do. The judges here may become monarchs of all they survey. Take the case of the intellectual property tribunal. Some of the decisions of IPAB have been quite incorrect and they have a large number of cases of appeal against them. What will work is having specialized judges in the High court, trained in IP matters - but not a separate tribunal".

As I settle the bill, the conversation meanders towards one of India's prime intellectual properties – the Butter Chicken. We decide to meet at the earliest, this time to seek out the most original recipe, worthy of carrying the name.