

The Left's opposition to intellectual property rights: Gleaning insights from parliamentary debates in India and Portugal

Bhaduri, Saradindu (1); Francis, Deep Jyoti (2); V K, Deepa (3)

1: Jawaharlal Nehru University, India; 2: Jawaharlal Nehru University, India; 3: Jawaharlal Nehru University, India

Abstract:

Despite weakening influence in the global political landscape, during the post-Soviet era, the Left political groups have been able to shape the discourse on intellectual property rights in a significant way in many countries. There have, however, not been many studies, which analyse the “narratives” used by the Left to oppose intellectual property rights in a systematic way. An analysis of this is important given that much of it has happened at a time when their dominance, and therefore the acceptability of their traditional argument, in global politics has been on a steady decline. This paper makes an attempt in this direction analyzing the Left responses in Parliament of India and Portugal since the onset of the debates on the Trade Related Intellectual Property Rights. Besides collecting records of parliament debates, we interview many left politicians in these two countries. Our analysis focuses on patent and copyrights related debates. While in India, the patents and access to medicine has been the core issue, in Portugal the copyrights on music and open source dominated the discourse. However, in both countries, we observe that in addition to their conventional argument to oppose private property on grounds of ‘equality’ and ‘access’, the left opposition to intellectual property has quite often been based on the narratives of “individual autonomy” and “national interest”, the terms traditionally linked to the Libertarians and the Right wing groups respectively. Analyzing the usage of these terms by the Left, we argue that these narratives were essential to build a broader alliance in support of their cause in situations of declining political influence, where their traditional narrative of “equality” through “active state” have often been believed to be ‘outdated’ and, hence, counterproductive.

1. Introduction

Globalization is one of the most important issues of the day, and intellectual property the most oft-mentioned aspect of globalization, especially as the world moves toward a knowledge economy (Stiglitz, 2008). The transformation of knowledge into a commodity or a 'global public good' (Stiglitz, 1999a, 1999b) provokes a debate over appropriate means of its protection (Machlup and Penrose 1950, Machlup 1958). The last few years have witnessed a major controversies around the world on the issues pertaining to IPRs, particularly, in the light of the adverse impact the new institutional requirement of TRIPS brings to the issues of health, human development by restricting access and diverting resources from these priority areas to building up of the necessary institutional framework for IPR (Chapter 7; CIPR 2001; Bhaduri et al 2015). The global backlash forced the WTO to being unequivocal about giving priority of health care over trade interest, in case there is a conflict between the two (Drache and Jacobs 2015).

The year 2004-5 marked a watershed moment in India and Portugal with regard to IPR. In India, the sustained efforts by the Left political parties culminated in incorporation of the much debated Section 3d in Indian Patent Amendment Bill 1970, which stopped ever greening of pharmaceutical patents. They also forced the government to retain Pre and Post grant opposition by the third parties and the compulsory licensing (Purkayastha, 2014). In software, the Left compelled the government to drop the provisions of patenting, introduce flexibilities which exists till date (Purakayastha 2014; Sengupta 2013).

In Portugal, the Left parties successfully negotiated to implement a policy favouring use of Free and Open Source Software (FOSS) in public institutions and its promotion. In the context of the current policy debates around access to modern technologies, these two events bear immense significance for academic scholarship and policy discussion. Indeed, a comprehensive political economic discussion on access to technology cannot be undertaken without understanding the role the Left parties have played in shaping it, as issues around access have been a major thrust of the Left's political opposition to IPR. Incidentally, however, the debate around IPR and TRIPS took place at a juncture when the influence of Left politics was on a decline, world over. It is, therefore, an objective of

the paper to analyse the way the Left parties shaped the discourse to gain support from other parties in a parliamentary system.

Besides this, recently, Frances Hagopian (2007) argues that economic liberalization and the turn to market-oriented economics have reshaped the context in which political representation takes place in at least three ways. First, in his view, leftist, labor-based, and centrist Christian Democratic parties can no longer operate within the premise of state intervention in the economy, and need to revise their long-held ideological principles in these aspects. Second, the forces of globalization have weakened the linkages between politicians and citizens. The privatization of state-owned enterprises and social services, and the deregulation of key markets and economic activities, according to the author, has narrowed considerably the scope for the political use of jobs, benefits, and state regulation. Third, market reforms have reconfigured electorates by atomizing the society, and weakening the social foundations of organizational ties and collective identities, and, thereby, making it difficult for parties to close off the electoral marketplace by encapsulating voters or articulating clearly differentiated ideologies or programs.

Indeed, despite their aversion towards the idea of property rights, the representatives of the Left parties have accepted that “*The need of the hour is to follow a more creative and independent approach, while still remaining within the broad contours of TRIPs. That is what we had tried to do through our suggestions*”ⁱ. The paper makes an effort to analyse the way the Left parties sought to build such a “creative and independent” narrative of opposition to IPR in their policy deliberations.

The paper takes the cases of India and Portugal. Both these countries, despite differences in their economic positions, experienced similar deliberations and policy pushed with respect to IPR issues in the arenas of access to medicine and open software in the last decade. Both countries have also had powerful Left presence in the governments during this periodⁱⁱ. This paper attempts to analyze the various strategies and tactics the Left parties adopted in the debates on IPR in their respective Parliaments. The views expressed in Parliaments have been corroborated by public statements of the leaders (and some intellectuals) of the left parties made in these two countries, whenever relevant. A disclaimer, however is appropriate here. The debates in Parliament only capture a part of

the activities of the Left, which emphasizes a lot on mass mobilization and debates outside Parliament to build public opinion on important political issues, besides participating in Parliament debates. While we are mindful of this limitation, we take up Parliament debates as Parliament remains a main site of rule making in democratic countries, and confining to Parliament debates makes it possible for us to draw a better comparative picture of the way the Left dealt with the issues of IPR in the two countries we study.

The paper has been divided into four sections. In section 2 we discuss intellectual property rights. Here we discuss intellectual property rights and justification of property rights by different schools. In section 3 we discuss our methodological approach. Section 4 would elaborate on the arguments made by the Left parties on IPR related policies in the parliaments of India and Portugal. Section 5 makes concluding remarks.

2. Rights on property: the contours of the debate

Historically, property rights have been discussed and debated, mainly, from three vantage points, namely the utilitarian perspective, the libertarian perspective, and the Marxist perspective.

Among the three positions, the Marxian position is one of unequivocal opposition to private properties, because of its adverse consequences on access, and, therefore, equality. The libertarians, on the other hand, are believed to be natural supporters of property rights as they staunchly believe that humans should own any product of his/her labourⁱⁱⁱ. The utilitarian justification of property rights is more ambivalent, and their support is based on the costs and benefits of assigning such rights to individuals.

The most powerful argument supporting property rights is that people are entitled to the fruits of their labor. John Locke (a seventeenth century philosopher) has been considered the advocate of this notion. According to Locke, all people have natural right over liberty and property (Resnik, 2003). Resnik (2003), Simmons (1998) and Hettinger (1989) have interpreted Locke's theory in different ways. His theory according to these authors on one hand draws its analogy to God's creating this universe and on the other hand uses a labor

mixing theory. The labor theory of property holds that property originally comes about by the mixing of labor upon natural resources. For example, a piece of land, in its original state would be considered not owned by anyone until someone applied his labor on the land by farming it and appropriating it to make it his property. Locke proposed a 'workmanship model' which drew analogy between God's creation and creation by man (Simmons, 1998). Locke argues that a person has a 'maker's right' over the things that he creates as God has rights over his creation. Labour according to Locke legitimizes appropriation as they irretrievably mix with the object something that they already own. Locke argues that this labor is free, intentional, purposive action aimed at satisfying needs or supplying conveniences of life. According to Locke people have property rights with respect to their bodies and product of their labor (Resnik, 2003).

Locke visualized a world with common property, which is made available to all (ibid). People according to him are justified to claim ownership of the product of their labor as they have mixed their labour with the product a part or whole of the common property and that is how they remove them from the state of nature by adding value to them. According to Hettinger (1989), Locke's justification for property drives property rights in the product of labor, which is an asset of one's body. Locke gives an argument that a person owns his body and thereby its labor. When a person labors over a product it becomes inseparable from the product and that its ownership can be secured only by granting the ownership of the latter. Hence, if a person owns his body and its labor he must also own the product of the labor. As per the 'labor mixing' theory of Locke, a person can acquire property by different means through social exchange processes such as bartering, buying and selling or simply through the process of giving and receiving in the form of gift or through the process of original acquisition^{iv} (Resnik, 2003). While Locke did not pay adequate emphasis on the advantages of having property rights, his successor David Hume made more explicit connection between having property rights and reducing social conflict. He was categorical in admitting that rights on property are important to reduce social conflict, encourage cooperation^v. In this view, rights to property is important only for goods which are scarce in nature, and for which competing

claims exist. For abundant goods, property rights are not important from the society's perspective.

The next important approach for justifying property was suggested by Hegel through his self-expression theory. Hegel explains that property is a means for self-development, a space where one can express oneself and realize oneself (Hegel 1967 (1821)). He argues that a person must define him or herself in relation to the physical and social world that is separate from the self. Resnik (2003) suggests that the self-expression elaborates on how the property in question reflects a person's unique knowledge, creativity, insight, skills or genius. According to the author, Hegel suggests that a person exercises his or her freedom (or autonomy) by controlling physical objects as well as information. Denying a person control over property is one way of restricting that person's autonomy.

Hegel argues that the rationale of property right is to vent out the personality in an external property. This argument appears to be property centric where people mould a piece of property as per one's conviction. Locke argues that it is not property whose change is reflected on the moral character of human beings, but the other way round. Hegel argues hence that the existence of a man is marked by his creation while in case proposed by Locke, a man exists prior to his creation and he creates things (Thomas 2003).

Marxists object to both capitalist and private property rights. According to them, there should not be any tangible or intangible property. Marxists regard private property as immoral for the following two reasons. Firstly, that private property alienates workers from their labor and therefore allows the bourgeoisie to exploit the proletariat. Secondly, that the private property enable capitalist to accumulate wealth, it leads to inequitable distribution of social goods, hence, the richer gets richer and the poor remains poor. In the ideal Marxist state labor is not exploited, personal property right does not exist and social goods are distributed based on needs. All property belongs to the state, not to individuals.

Arguments around intellectual property rights

Arguments supporting intellectual property come from both libertarians, who often treat it as an extension of natural rights, as well as the utilitarian. According to Kinsella, Resnik, and Simmons the theory of natural right depends on the notion that one owns one's body and labour, and therefore its fruits in terms of intellectual creation. The majority in the Libratarian school argue that the creations of the mind are entitled to protection just as tangible property is. Both are the product of one's labor and one's mind. Because one owns one's labor, one has a natural law right to the fruit of one's labor. Kinsella (2001), however, argues that creation is 'neither necessary nor sufficient' to establish ownership. The author criticizes the view that one 'owns ' one's labour, as he suggests that before owning one must 'occupy^{vi}'. The author argues (p. 28) that labour is a type of action and it cannot be owned, rather, 'it is the way that some tangible things (e.g bodies) act in the world.' Kinsella (2001), indeed, remained critical to the Libertarian's attempt to extend the logic of physical property rights to justify intellectual property rights. Here he draws on Hume to argue that ideas are not scarce, and, therefore, needs no protection, as such. However, recognizing a right on ideas, one creates scarcity where none existed before. He further argues that only tangible, scarce resources are the possible object of interpersonal conflict, so it is only for them that property rules are applicable^{vii}.

On the other hand, Utilitarians defend intellectual property as selection of a law, which maximizes 'wealth' and 'utility'. In the case of IP they propose that more artistic and inventive "innovation" would correspond with, or lead to, more wealth. **Public goods** and **free-rider effects** reduce the amount of such wealth below its optimal level. Thus, wealth is optimized, or at least increased, by granting copyright and patent monopolies that encourage authors and inventors to innovate (Kinsella 2001).^{viii}

The utilitarian justification of giving intellectual property to further wealth and economic benefits run into rough water, when Gallini (2001) shows that the strengthening of the U.S. patent protection over the past two decades has not always accompanied by growth in innovations, while bearing the social costs of non-disclosure of knowledge and

restricted distribution of goods. Sell and May (2001) also testify that this debate between the *social interest* in the free dissemination of the benefits and the creation of *imposed scarcity* of particular innovation indeed shaped the global discourse on intellectual property in a major way (See also Stiglitz, 1999a, 1999b; Machlup, 1950, 1958)

According to Marxist theory, private ownership has been associated with the spirit of capitalism, which creates surplus value on the efforts of labour. This process of surplus value creation is unjust. Papaionnou (2016) argues that, according to Marxist view, individual producers must recognize the value of work of the labourer and distribute back to them the resources they invested in technological innovation regardless of the market success of their product (Papaioannou 2016).

Marx propounds the idea of a two phase society the highest phase of which is the communist society and the lower phase is socialist in nature. Marx was no friend of the market, even in its socialist form. The communist society which he envisaged proclaimed the slogan '**From each according to his ability, to each according to his needs**' (Cohen 1986). In his theory, this change to communism can only be achieved through revolutionary public action. Marx recognizes that individuals are unequal in terms of their endowments^{ix} and productive capacity^x. Therefore, he argues that the application of an equal right of fair distribution to unequal individual producers is in fact unjust. The distribution mechanism has to be progressive in nature, where the person most in need gets the most of the distributed benefits. This is achieved through a welfare state in a capitalist society^{11xi}, or through cooperation, which replaces the social the division of labour, in a socialist society. Such cooperation promotes non-exploitative social relations and therefore universality in production. Innovation depends on social cooperation of individuals with different (and/or complementary) abilities and talents. The only incentive here is achieving relationships of mutuality and universality. There is no desire/antagonism about profit. The capitalist mechanism of profit incentives no longer exists. Therefore, individuals can only be intrinsically motivated to innovate, satisfying human needs. The need in principle extends social cooperation and mutuality from production to distribution. Satisfying human needs becomes the ultimate objective of cooperative innovation. In Marx's theory, essential human needs are universalizable.

Christman (1994) argues that structuring of ownership is guided by some direct distributive policy in socialism, whereas ownership limits the scope of redistributive policies in capitalism. Indeed, in a pure capitalist society, property rights are those where the *de facto* distribution of resources, information, technology, talents, and the private preferences of individuals, are allowed to determine the resulting distribution of goods through (market) trades. At this juncture it must be noted that TRIPS has emerged as a global governance institution as a gift of liberalization and globalization which Putzel (2005) and Anderson (2012) argue, condemn and limit the role of state. In socialist societies therefore states have greater responsibilities of creating access and equality for its citizens.

3. Data and Method of analysis

~~Kymlicka (1990) argues that~~ the traditional picture of political landscape views political principles as falling somewhere on a single line, stretching from left to right. According to this traditional picture, people on the left believe in equality, and hence support some form of socialism, while those on the right believe in freedom, and hence support some form of free-market capitalism. He argues that the reason that right and left disagrees over capitalism is that the left believes in equality while the right believes in freedom. The author (1990: 2) suggests that different theories have different foundational values, and their differences in position arise out of the differences in these foundational values. Since they disagree on the fundamental values their difference are, perhaps, not rationally resolvable. The author, however, also argues that this traditional linear continuum from left to right is a narrow conceptualisation of the reality. In reality, differences can also arise due to cultural and historical predispositions. Although such complexity may not be relevant for our paper, which is restricted to the views on intellectual property rights, we would examine the importance of historical factors in analysing the intra-left differences in views expressed on IPR by the left parties in the two countries'- India and Portugal, parliaments we study^{xii}.

John Rawls identifies parliament as an important institution to create cooperation within the society. Rawls (1971:55) suggests that parliamentary institutions are defined by a certain system of rules. According to the author these rules encompass certain forms of actions ranging from holding a session in the parliament to taking a vote on a bill to raising a point of order. We understand that development of regulatory policies is one of the key vehicles through which nation states and trans-national regimes seek to channel the direction that different laws might take. Since policies are often channeled through the legislative bodies of the country we look into the parliamentary documents such as debates and questions raised by the member of the parliaments (Faulkner 2010). The paper undertakes a textual analysis of the Patent bills^{xiii} and Acts which were passed in the Indian parliament in the pre-TRIPS and post-TRIPS era.

In this paper we attempt to explore the role of Left parties in IPR policy making. In India, this means studying the responses of Communist Party of India, and Communist Party of India (Marxist). These two parties were together until 1964, and got split into two parties due to ideological differences on their characterization of the Indian State, and the tactical differences on India-China War in 1962 (Wood 1965; Ray 1972). For Portugal the responses from the Left Block consist of the Portuguese Communist Party (PCP), and the Left Block (BE).^{xiv}

In order to study the viewpoint of the Left on IPR, we specifically select patents and copyrights. ~~Patents and copyrights~~ Patents and copyrights have been highly debated when it comes to access to medicines (Gewertz and Amado, 2004) and technology (Correa, 2002; Stiglitz, 2008; Kingston, 2005; Noble, 1977). While patents protect inventions, copyrights protect the expression of an idea such as an artistic work. The case of software is more complex and highly debated. If software is defined as a set of instructions to a computer that bring about a certain result, the manner in which those instructions are expressed is eligible for different intellectual property protection (Gonzalez 2006). These instructions are initially expressed as source code. Since the source code is expressed in the written form (identified as a literary work), software may logically be subject to copyright protection. However, the difficulty in protecting literal and non-literal elements of software together has led to the demand for patenting it so that the entire set of functions can be protected together. Patentability of software has been accepted in America since 1981, but has been

opposed in countries like India. Currently, in India, the Section 4.11.5 of the draft manual distinguished between three kinds of software patent claims. It directed that a “Computer program product,” a piece of pure software, is excluded from patentability. The other two kinds, namely, the “method/process” and “apparatus/system” software inventions are not explicitly excluded from patentability.

For India, we study The Indian Patents And Designs (Amendment) Bill 1939, Indian Patents And Designs (Amendment) Bill 1952, *Lok Sabha*, The Indian Patents And Designs (Amendment) Bill 1952, Patent (Amendment) Bill 1970, The Patent (Amendment) Bill 1998, The Patent (Second Amendment) Bill 1999, The Patent (Amendment) Bill 2002 *Lok Sabha*, Patent (Amendment) Bill 2005 *Lok Sabha* and Statutory Resolution: seeking disapproval of the Patents (Amendment Bill) 2005. In case of Copyright Bills, we could study the Copyright Bill 1955, The Copyright Bill 1957, The Copyright (Amendment) Bill 1955, *Lok Sabha*, the Copyright (Amendment) Bill 1982, The Copyright (Amendment) Bill 1984, the Copyright (Amendment) Bill 1992, Copyright (Amendment) Bill 2010. Table 1 shows the amendments of the Copyright Bill in India. We study the points raised by the Left Block on software patents, Seed Bill and the steps taken for securing rights of knowledge holders in the case of Kerala, Traditional Knowledge^{xv}. In addition, two co-authors of this paper have had several discussions with many left leaning intellectuals and left politicians at several points in time.

For Portugal, we studied Commission on budget and finance (2010), plenary session (2010), plenary session (1991), proposal for a council regulation on the translation arrangements applicable to patent of the union - com (2010) 350, sec (2010) 796 sec (2010) 797 Opinion of the European Affairs Committee and report of the Committee on Economic Affairs , Innovation and Energy. We also studied the opinion of the European Affairs Committee, 2011 January 14 of plenary session, proposed law no. 13 /XII (1st)^{xvi}, draft resolution no. 255 / IX^{xvii}, draft law no. 433 / XI (2nd)^{xviii}, draft law No. 433/ XI (2nd)^{xix} Draft law no. 433/XI (2nd)^{xx}, Law no. 126 / IX^{xxi}, Proposal No. 246 / XII (3rd)^{xxii}, the Parliament Resolution No 66/2004^{xxiii}. For Portugal we also interviewed a member of parliament (a minister affiliated with *Partido Comunista Português*, PCP), a lobbyist, and three academicians. Since the parliament documents are available only in Portuguese language, these interviews helped us get a direction in our search for

documents, and a historical profile of the Left's views on IPR. We also studied the Resolutions and Plenary Sessions in Portugal Parliament.

~~Portugal economy experienced a phase of recession during the years 2009 (Magalhaes~~
2014) points out that in April 2011, the socialist (minority) government was forced to admit that the country had become unable to meet debt obligations, requesting financial assistance from the European Commission, the International Monetary Fund and the European Central Bank to deal with the circumstances. As a counterpart, Portugal signed in 2011 the so-called "Memorandum of Understanding" (MoU), which consisted in a compromise to implement several reforms aimed at reducing public expenditures (Perelam et al, 2015). The year 2011 was important from this vintage point, hence we take up discussions in Portuguese Parliament around 2010. We also interview several stakeholders participating in the discourse of IPR in Portugal in the ICT industry.

4. Finding and Analysis

The issue of software patents/copyrights

A vibrant Opens Source Software movement has been experienced in India as well as in Portugal. In both the countries the Left parties has pioneered in laying the foundation of this movement. A member of CPIM raised a question in Rajya Sabha on 2007 regarding 'research in Open Software' whether the government was planning to fund research in open software. In 2009 another member of CPIM with question titled Public Domain Software' asking the government whether the government has any order for using public domain software such as open office in government offices instead of proprietary software.

In the case of Portugal the earliest question on software can be traced back to 1985 a push for use of free and open software was felt from the year 2002, during the coalition government formed by Social Democratic Party and People's Party the Report and Consideration Of Education Commission Science And Culture introduced Law no. 126 / IX. It argued that the state is dependent on its supplier in an increasingly monopolized sector to access its own information. It was argued that this puts into question the very

sovereignty of the State^{xxiv}. The proposed law mandated that all state services are obliged to use free software in their computer systems and equipment.

In an interview with Member of Parliament in Portugal we observed “Communist party has broader agenda. They have debates about the debates itself...The party is against appropriation in different areas ranging from patenting of micro organisms to creative work of art”(Emphases added). They predict that million of workers will lose power (in terms of finance) if such appropriation takes place. The MP argued “the appropriation of power by economic groups like multinationals with instrumental actors or political power overtake the principles of democracy. One of the principle on which the constitution works is that economic power subordinates the political power and the democratic power”. According to him there were two main doors through which patent entered the debates in the house a. through pharmaceuticals and generic drugs and then b. through software patents. Software patent was an issue of strong discussion in 2003-04. They wanted to have debates on virtues of OSS so as to bring it into the area of public policy. Mr. MP drafted the first resolution (Portuguese state of art) 66-04, which brought up the importance of national sovereignty for free software technology and free software users access.

It states “it is essential to ensure that these core activities for the development and sovereignty of the country are not subject to private entities monopolies and it is possible to guarantee the independence of the State against the proprietary formats and software vendors, which can shut down or discontinue software at any time”. The resolution also stated “*Free software is a source of work for the Portuguese software developers, as well as micro, small and medium-sized Portuguese IT companies, not only in terms of software development but also in monitoring and technical assistance of these and other applications which follow the same philosophy of implementation and distribution... The use of free software in education not only allows cost savings in the use of information technologies, as well as access to detailed information on how to run the software used by students in the areas of information technology, ensuring equality opportunities in access, not being required students to pay a license for their use outside the school environment. It also avoids the student becomes a mere operator of any application of any multinational company but rather a real technical, essential for the development of*”

the country.” As is evident from the passage above, equality in terms of creating access and distribution has been one of major emphasis in the case of the policy making as it evokes the issue of access three times in the text. The active involvement of the state was sought at various occasions in the Portuguese parliament. We observe, in the case of copyright it was raised twice in the resolution of 2004 and once in 2010. In the year 2010, it was recommended that the Government take the necessary measures to ensure that future initiatives on dissemination and promotion of access to ICT (Information and Communication Technologies) always included the adoption of open technologies and free software^{xxv}”

The Portuguese Communist party or *Partido Comunista Português* (PCP) advocated the adoption of software, but, as ESOP also emphasized, open standards can and should be implemented in all types of software, be it software, open source or proprietary. PCP, thereby proposed to establish the adoption of open standards - that do not depend any company - on the State's computer systems, starting with the text documents in the Public Administration and then continuing with the definition of standards and digital formats to be adopted, in a rigorous and participatory process^{xxvi}.

The Academician we interviewed suggested that the Free and Open Source Software (FOSS) has been greatly supported by the Left political parties. It is because it involves the issue of property rights and it reflects their ideology. The people from other political parties especially the socialist party (Socialist Democratic Party or SDP) give more emphasis to easy communication using OS. The perspective of the left is more important since they claim themselves to be champions in initiating and successfully carrying out the OSS campaign. According to ANSOL^{xxvii} the free software philosophy is rooted in the free exchange of knowledge and thoughts that can traditionally be found in the scientific field. As ideas, computer programs are not tangible and can be copied without loss. According to the organization- “distribution is the basis of a process of evolution that feeds the development of thought”.

We also observe the representatives of Left use the phrase national interest in the context of copyright in when during COMMISSION ON BUDGET AND FINANCE, Meeting of 9 November 2010, Mr. Bruno Dias (PCP) perceived a threat from Anti-Counterfeiting Trade Agreement (ACTA). It is a process which, according to the member of parliament

~~“led to dangerous developments, which even threaten technology, innovation, free software, peer-to-peer networks”~~, the member of parliament raised question regarding securing and liberating the national interest. In the same discussion a member of PCP argued that European Union’s trade policies are appropriate to Portuguese national interest, keeping in mind the increasing labour cost in Portugal in between 1990 and 2004.

On the other hand, in case of India, the promotion of open source software made a visible appearance in Kerala. Kerala government under the CPIM had announced their support of FOSS (Free and Open Source Software) in the year of 2009 in their Election Manifesto^{xxviii} (Kasinathan 2009). In Kerala, the government employs FOSS as a comprehensive policy across all the public enterprises. They also admitted that FOSS has saved Kerala crores of rupees and helped ICT in the state. Mainly, CPM’s election manifesto supports the promotion of FOSS and other new technologies which are free from monopoly ownership. Mainly their Policy highlights these points. a) Promoting FOSS and other such new technologies, which are free from monopoly ownership through copyrights or patents; b) Revamping the functioning of the Patent offices to ensure strict adherence to the Indian Patent Act; Stop training and orientation of Indian Patent office personnel by the US and European Patent offices. The main aim of the adoption of this policy was to criticize the public education system, local economy and knowledge commons and also to criticize neo liberal agenda to privatize the public information/ knowledge domain. The demand for not allowing the US and the EU patent official to train the Indian officials perhaps demonstrate an anti-imperialist stand of the communist parties in India.

In the case of Indian copyright, the discussion on equality, in terms of access emerged at several occasions. The earliest discussions occurred in the year 1957 when the Left parties came into fore. While discussing the copyright bill in Lok Sabha 1957, An MP representing the then CPI^{xxix} stated *“this is a bill which seeks to encourage the fruition and the flowering of culture in our country...it must also be guaranteed that it comes to the public as freely as possible... therefore, we must ensure that the author must be in a position to exploit his work for his own benefit and for the benefit of his children”*. We observe that while arguing for making knowledge accessible to all, the Left also

supported copyrights in the interest of the individual author as well as “our culture”. There is, therefore, a combination of the usual Left argument seeking equality, with the more Libertarian argument of individual rights, along with the argument of “national interest” (our culture). The subsequent deliberations on this issue in the year 1982, 1984, 1992, and the two debates in the year 2010 saw these positions getting repeated, which are reflected in the excerpts below:

In the year 1982, an MP CPIM the Indian state of West Bengal (a left bastion until then) stated *“it is painful that we are living in a society that even this intellectual production is treated as private property and a capitalist mode of trade is allowed in intellectual property also, in intellectual production also. Writing and publishing books are only based on the consideration and motive of dissemination of knowledge among people. Without going to copyright aspect soviet Russia is able to produce large number of books in the country and disseminating knowledge not only in their country but throughout the world, without any profit motive”*.

In the year 1984 a representative of CPIM (West Bengal) argued that *“a disease and malady of the capitalist world. And India being a part of the decadent and stinking capitalist society, is also faced with this malady of piracy”* The representative offered a view that by entering into the copyright regime is similar to turning to capitalism as it leads to private ownership and excludes others from making use of it. This became more clear by the argument made in the year 1992 by a CPI representative, who argued – *“some body wanted to make money by commercializing some of the best creation of the cultural life. They should not be exploited by the business world.”* On the same occasion a CPIM representative argued – *“there are so many eminent writers in our country who have contributed to the cultural heritage of our nation. We want to preserve them”*.

In the year 2010 a CPIM member from Kerala raised objections to the bill. He argued that *“..we are living in a digital era. At the same time, it is an era of knowledge based economy and a knowledge-based society. Sir, one of the main slogans of this era is*

enclosure of treasure by enclosure of knowledge. It means creating more fences and walls for getting more and more profit. He highlighted the emergence of the Copyleft and Open Source. Which confers the right to transfer, the right to modify, according to our needs". He argued that the "The State has the responsibility to ensure the right of the creator, at the same time, to avoid eyeless commercialization. The State should try to create an equilibrium to ensure the right of the creator, while at the same time, protect the right of the user to get the product at an affordable price".^{xxx}

We observe that while discussing the bill the member wanted to argue on free dissemination of knowledge and promoting the idea of equality in access. However, we also observe them showing concerns for "protecting cultural heritage", denouncing monopolies, and protecting author's rights. However, no clear roadmap was given about the way cultural heritage should be protected. One may conjecture that the intervention of the State other than the capitalist mode of appropriation in the form of patent or copyright is preferred here. The argument in favour of author's rights is somewhat in contradiction to the redistribution argument where individual reward and ownership is being promoted by the left parities. However, one may find a justification to such arguments on grounds of their distinction between the "cultural world" and the "business world", where the so-called "cultural world" seems to be outside the operational principles of capitalism. This, however, brings us to another debate whether the cultural world is necessarily more 'socialistic in nature! In Portuguese deliberations this issue is sought to be resolved by identifying the authors as small players in the system, with limited or no monopoly power, a right to whom would not aggravate the danger of monopoly.^{xxxii}

However, the conflict between redistribution and individual autonomy remains relevant. In 2010, a member of CPI pointed out that need to protect the share of Directors in a film, who, according to him, is the "main creative artist". He goes on to suggest that piracy needs to be checked, in the interest of the artists. "Another point is that you have made a proposal to delete section 17(f), that is, share to principal director. While piloting the Bill, you said that the Director is the main creative artist, and, he has to get the due share, but, at the same time, you are deleting that provision. My request is that this should be included. Sir, I support most of the provisions, and, in the end, I would like to say that along with this you must seriously think of bringing a comprehensive Bill to

protect the film and music industry from piracy. It must be coupled with IT industry so that it protects the interests of the artists covered under this Act and also artists in other sections”.

In the above statement as well we observe that the Left parties arguing for the individual ownership, in line with the labour theory proposed by John Lock the propagator of the Libratarian theory. The member argues for due share of the artist as well along with protection of the interest of the artist.

If we compare the case of Indian and Portugal on copyright related debates we observe that the highest emphasis has been on Equality (in Portugal, it occurs 3 times and in case of India it occurs 7 times. We observe the Left parties evoking the active role of State in both India (twice) and Portugal (thrice). That privatization would weaken the State is cautioned in both countries (as is eminent from the discussion by CPIM in 1992 in case of India and in case of Portugal, 2010 by PCP member).

The issue of pharmaceutical patents

In case of Portugal, while discussing the DRAFT LAW No. 433 / XI (2^a) 2010, which establishes the Obligation of The Presence by International Common Name (INN) And The Possibility Of The User To Freely Open For A Generic Or Trademark Medicinal Product^{xxxiii}, it was argued that price is an important factor to take into account, and the lowest priced medicine should always be prescribed. It was argued that there is a need to eliminate the ‘labyrinth’ of *vested interests* and to overcome entrenched habits which are only prejudicial to the public interest and do not bring any benefit to the citizens. Nowadays, even when there is a generic of a drug, it is often the doctor who does not authorize his dispensation by the pharmacy, so the user has to buy the prescribed drug, even if it means spending significantly more than if he purchased the generic. In some situations, this implies that the user no longer acquires the medicine that he needs or that to acquire it has to do without meeting other needs. With the recent changes to the system of reimbursement of medicines, this situation is expected to worsen. Indeed, the rep[resentatives of the Left parties perceived threat of exploitation by private firms,

which they flagged in their representations during the discussions in the year 2004 (in resolution), 2010, and in the year 2011.

In the year 1991,^{xxxiv}, the Left Bloc (BE) took the initiative to present Bill No. 433 / XI (2nd)^{xxxv} with the aim of making it mandatory to prescribe drugs by International Denomination (INN) and the possibility of the user Free choice for a generic or brand name drug. Although the prescription of generics, prima facie, gives emphasis on equality through lowered price, we observe an emphasis also on “freedom of choice” by the users of medicines. This is another aspect of individual autonomy, being flagged by the least parties, along with the usual emphasis on equality. The same issue gets flagged twice in the discussion of 2010 and once in the Resolution of 2004.

Members of the PCP Parliamentary Group recently presented the draft law which aimed at rationalizing public spending in the area of medicine, while ensuring the improvement of users' access to medical care^{xxxvi}. We observe that the Left party has been emphasizing on equality by creating access. The emphasis on access has been given at several occasions ranging from discussions on science and technology to generic medicines. We observe that issue of Equality was raised eight times in the year of 2010, three times in the year 2011 and three times in the year 1991. To summarize, we can argue that the Left parties in Portugal valued equity, freedom (individual autonomy) and an active role of State in the economy.

In the case of India, the participation of the Left in the discussion on patents can be traced back to the year 1952 in the INDIAN PATENTS AND DESIGNS (AMENDMENT BILL) in Lok Sabha during the first government formed by Indian National Congress. In the session of 1952 a Member of CPI (from Kerela) highlights the issue of foreign patents in India arguing that “*Indian skills and genius has not been given even space to thrive*”. Subsequently, during the discussion on Patent Amendment bill (1970) an MP from CPI argued “*some of the capitalist countries have abolished or are abolishing patents...the experts, as I have said on many occasions, must be put at the top and not at the tag, otherwise the whole thing will be regimentation of capitalists, regimentation of monopolies, regimentation of research and intellectual pursuits*”. The CPI member highlighted the threat of monopolies and capitalists. Exploitation by monopolies and by

foreign multinational corporations was highlighted by CPI in the year 1952 LS, 1998, 1999, 2002, 2005LS and by CPIM in 1998, 2005 and 1992.

In order to conform to the TRIPs agreements, the BJP-led NDA government in India brought in two sets of amendments to the 1970 Act in 1999 and 2000. It brought in another Bill in December 2003 to make further amendments. In 1999, the first amendment of the Patent Act, 1970 introduced the requirements under the "transitional arrangements through Section 5(2), which allowed product patent applications to be filed through a 'mailbox', while Chapter IVA provided for the grant of Exclusive Marketing Rights (EMRs) if certain conditions were fulfilled (Ram 2006, Chaudhuri 2002).

Post-liberalization, active debates took place on the Patent Law in India. The most pressing issues revolve around amending the provisions for compulsory licensing and exclusive marketing rights before the implementation of the TRIPS in 2005 (Ganguli 1999, Ram 2006). These concerns were clearly highlighted in the discussions that followed in the amendments of the bills.

In the year 1998, a representative from CPIM argued "*the mailbox is direct infringement on the national sovereignty*". He argued that "*bill was being passed in 1998 only bill on the assumption that another bill will be passed in the year 2005 which will change the patent act*". He apprehended that assumptions that were being made for the law where that mail box be opened. Such a step was considered to be a direct infringement on the economic sovereignty of our country. Another MP (Indian Marxist economist and politician) in the very session argued "*the bill affects the sovereignty of this nation*". He highlighted the fact "*what is important is to insure national security; including the national economic security*"; he argued that "*such a policy was similar to letting in imperialism through the back doors*". Another MP representing CPI-M argued "*the bill is encroach upon the provincial autonomy of the state*". A member representing CPI argued "*if this bill is passed, it gives the exclusive marketing rights in respect of some trade to the monopoly concerns to the foreign firms*". He opposed this bill on the ground of "infringement of fundamental rights of the citizens of the country". Post liberalization, therefore, we observe that the left parties time and again repeat the need for active role of the State's decision making power, long with national and provincial autonomy. As discussed earlier, the threat perception of imperialism is again flagged in the discussion.

Also we observe that threat of monopoly here is perceived specifically from the foreign firms. Note that the members of the CPI are apparently emphasizing more on the distinction between foreign and Indian monopolies. The members of the CPI emphasised on this point in the discussions in the Lok Sabha in 1999 and 2002. In 2005 in the UPA government^{37xxxvii} another MP representing CPI argued “*...trans-national corporations are the modern instruments of neo-colonialism. There are a number of experiences available in our history about these transnational corporations. They try to subvert the regime and to try to discipline them. It happened in Chile, it happened in many other countries*”.

In a debate in 2002, another member from CPI argued “*in the name of intellectual property rights, MNCS are looting. They are looting the people of our country...we should also keep the interest of the country, interest to the masses, and interest of the common and poor people in our mind...there should be a stringent provision to control the price hike of medicines which is consumed by the common people of our country.*”

We must note, once again, that the emphasis on foreign capital was given more by the representatives of the CPI. The position of CPIM is relatively less clear. We observe that national interest emerges as a central issue in the debates relating Intellectual property rights. CPI members have used the term national interest once in 1998, twice in 1999 and once again in the year 2002. The use of national interest is less frequent in the deliberations of the other Left party-the CPIM. Their members make use of the term only twice, in the year 1970 and 2002. To an extent this difference points to the historical differences in the ideological and tactical lines of these two parties. As argued by Woods (1965), while it was a general aspiration of the Communist Party of India to achieve “Indian-ness”, the dominant group in the CPI “in attaining "Indian-ness" became submerged in the national bourgeoisie” (p. 47). The China War seems to have aggravated the pressure on CPI to abandon its regional aspirations in favour of a nationalistic approach, giving rise to a tension within the party, and ultimately resulting in a split, and the formation of the CPIM. Note that the only reference to regional sovereignty mentioned in the debates on IPR comes from a member of the CPIM! It is also important to note that the emphasis on imperialism and neo-colonialism find place in the

deliberations by the Left parties in India only. This emphasis perhaps reflects the same desire of the Communist Parties in India, especially CPI, to show case their Indian-ness. In Portugal, the emphasis has been on monopoly power without distinguishing between the foreign and the Portuguese industries, when it came to big capital.

Note that the threat to the role of active State (in the form of neo colonialism and foreign monopolies) is being mentioned even as late as 2005, much to the contrary of the expectation of Hagopian (2007), mentioned earlier, who thought that post-liberalization, the left parties need to reinvent their ideological position. The members of the CPIM invoke the importance of active State since the very first debate in the year 1952 (in Lok Sabha). CPIM members highlighted State responsibility four times in the debate of 2002. Active State is still being relied upon to facilitate redistribution and ensure equality. In the NDA government, in the year 2002 while debating over the Patent amendment bill 2002 a member from CPIM argued *“it is only through a compulsory licensing system, the interests of the general public in the developing countries can be protected...the worldwide debate in the recent path has been concentrated on exploring ways to ensure common man's access to medicines through compulsory licensing”*. In the year 2002 Another MP representing left party apprehended the dangers inherited in the Dunkel proposal. He points out *“the WTO as also the trips are heavily biased against the developing countries and the poorer countries of the world”*. The MP argued for *“more freedom, **more authority at the hands of the government** because in the TRIPS agreement, there is mention everywhere that the policies have to be determined by the sovereign parliament of that particular country. Hence our sovereign parliament needs to come to a particular decision in the national interest with regard to unsuccessful attempt to obtain compulsory license.”*

In the amendments of 2005, the Left had expressed their concerns in seven areas; no software patenting; restoration of pre-grant opposition to patents, export to countries without manufacturing ability, continued manufacture of drugs with application in mailbox; time bound decision on compulsory license application and export by Indian companies of patented drugs. (The Hindu, 2005; 24 March) The amendments proposed by the Left Parties were an attempt to provide for the maximum safeguards in the new

Act making use of flexibilities available in the TRIPS agreement. Here too, we observe the member of Left parties highlighting the point of ‘safeguarding national interest’.

In the context of the amendments under the TRIPS, Kerala state also came up with some concerns within the parameters of the central legislation, such as the protection of Traditional Knowledge, Biological Diversity Act 2002 and the property rights over state government funded and state government aided research. Even in this endeavor the Left parties took up major role in the protection of the interests of the knowledge holders.

In the year 2008, Kerala introduced its own IPR policy. Its main aim was to address the following issues relating to Traditional Knowledge in Kerala. These are mainly in fact that: (a) TK is not codified properly (b) no formal mode of transmission with in TK, (c) it is not covered under any legally defined IPR and (d) it is in the public domain. It was initiated with a broader aim that all TK, including TMK should come under the realm of “Knowledge Commons”^{xxxviii} and not to the “public domain”^{xxxix}. Under this policy all the right holders had to come under a “common license” and they shall permit others to use it for non-commercial purposes. Any violation will put back the license in the control of “knowledge Commons” and it may deny the scope of patenting further. Under this policy the right holders have the right for “brand name” associated with community, family or institution and they can use it for both commercial and non-commercial purposes. Other than the right holder if anybody else used this knowledge for commercial purposes, that license should be negotiated between the right holder and the user. In such case, any violation of rules under “common license” inside or outside the state will be considered as violation of rights (Basheer, 2008).

The Policy advisors had planned to set up a body called Kerala Traditional Knowledge Authority (KTKA) for acknowledging the right holders, enforcing the rights and proposing legal action against the violators of the license under the “Common License”. All the traditional knowledge practitioners should register under KTKA, and they have to specify the uniqueness about their traditional practice, details of the nature of their practice and details of the community/group/individual they belong to. Then they will publicise the details for the public and if any conflict arose regarding any details they resolved all the issues regarding ownership and KTKA would finally register all of the

practitioners under certain community/group/individual according to their unique set of practices (Basheer, 2008).

Secondly, a separate mechanism was introduced for the use of any biological resources by foreigners and Indians. It emphasized that foreigners must get approval of the National Biodiversity Authority (NBA) to obtain any biological resources or knowledge for the commercial utilization or bio-utilisation. The state may further ask the State Biodiversity Board (SBB) to ensure that any innovation based on TK of the state is put into the realm of “Knowledge Commons”. It is applicable to the use of biological resources by the Indian Corporates also. According to the Biodiversity Act, the permission of SBB is mandatory and SBB shall give its permission only after consultations with the KTKA. Apart from this the policy proposed to set up a body called Supervisory Council on Intellectual Property (SCIP) to oversee the activities of KTKA and SBB with regard to the protection of TK, and to give overall supervision in IPR and to follow recommendations with regard to prosecutions for violation of Knowledge User’s rights (Basheer, 2008, The Hindu Business Line Feb 13, 2010)^{xl}. Unfortunately, however, the efforts to make State Policy for Kerala on TK and IPR failed to reach its final implementation due to some disagreements on its practicality from policy makers and also due to lack of proper administrative set up (Basheer, 2008). Thirdly, the concern on property rights over research in the state government funded and state government aided institutions. They have taken the approach to demarcate between different sources of funding of such research. Here all the research funded or state government institutions should be the state government property, so the government can put the research out put in the “commons” that will help the researchers to get suitable rewards.

From the various discussion in the Indian parliament and Portuguese parliament and on the basis of interviews we observe several common positions of the Left. In both the countries we observe that in the case of Pharmaceutical, and Copyright, the parties have pushed for equality in access. We also observe that in both the countries, the Left oppose intellectual property rights on grounds of monopoly creation effect. However, in Portugal the threats were expressed against privatization as a whole, and no clear distinction was made between Portuguese and foreign capital. In India, however, the threats from the foreign multinationals occupied a central position in the deliberations of the Left parties,

especially the CPI. We observe the Left parties in India repeatedly associating imperialism to the Patent bill/ law whereas in case of Portugal such a connection remains largely absent. There is high degree of emphasis also on provincial autonomy in the deliberations in India. All this perhaps reflects the importance of historical contingencies of the country, where colonialism and the emergence of ‘Provincial Politics’ have always been a crucial part of India’s political process during the last couple of centuries (see Tyabji 1955)^{xii}. The recourse to such terms by the Left remain largely absent in Portugal.^{xlii} Also we observe the Left parties, especially CPI in India pressing on national interest at various occasions. In Portugal we observe recourse to national interest to overlap with public interest, only in the case of copyrights. Here the dominant logic is to reduce the expenditure of the State and promote software related employment. In Portugal, the Left also puts emphasis on individual autonomy of the patients to choose. In India, the emphasis on Individual autonomy has been laid in the case of copyrights (rights of the creator and author), but the freedom of choice for patients have not formed the part of any dominant Left narrative. While the discussions in Portugal have most commonly revolved around Private and Public interests, in India, the discourse has largely been around national and foreign interest, imperialism and neo-colonialism. This is despite the assertion even by the left intellectuals about the shifts in state-capital relationship in the neoliberal era, where the state has become much closely involved with capital (Patnaik 2012). Patnaik, in fact, highlights how, post-liberalization, the distance between domestic and international capital has also narrowed down, with big Indian firms abandoning the objective of building autonomous capital to become integrated with the global capital. Such a scenario where domestic and foreign capital becomes integrated with each other, makes it difficult to interpret the Left’s opposition to IPR on grounds of imperialism and foreign capital. However, in both the countries, the Left has harped on the role of an active state in regulation making and control of property rights.

5. Conclusion

The main objective of the Left has been to ensure equality in access, through active State intervention in controlling monopoly power in production and distribution. The left

parties have preserved the core value of equality and granting state the highest position even after globalization, in both the countries. The Left parties here took up a pioneering role towards the Open Source Software movement and even towards making generic medicines accessible to all. In addition, however, we observe that in the post liberalization period, the Left attempting to modify and upgrade its focus to emphasise also on conventional Libertarian principles of individual rights and freedom of choice, especially in taking up issues related to copyrights. The Left's deliberations in Portugal treated the threats of monopoly arising out of large domestic and foreign private capital equally. In India, however, the tension between the two forms of 'big capital' has been emphatically noted, and pointed out. Indeed, the arguments of imperialism and neo-colonialism find more favour in the deliberations of the Indian Left, compared to their Portuguese counterparts. What is the reason for this emphasis on terms like "imperialism", colonialism" and "national interest" by the Indian Left, the intra-left differences notwithstanding, is a matter of conjecture and further research. While historical experiences of India with colonialism may explain such an emphasis to an extent, one may wonder if the electoral compulsion of the Left parties in India, where they had to persuade the centrists, and the right wing nationalist parties to build a consensus against the IPR, might have enthused them to take refuge to the nationalism rhetoric so frequently. This conjecture holds ground in light of the fact that liberalization has considerably weakened the differences in the characters of domestic and international capital.

ⁱ http://www.cpim.org/upa/2004_patents.pdf

ⁱⁱ While in Portugal the Left has joined the coalition government led by the centrist Socialist Party, in India the left parties decided to provide "outside support" to the centrist government led by the Indian National Congress.

ⁱⁱⁱ Here, broadly speaking, one might observe a convergence of position with the Marxists, who also insist on proper valuation of work of labour, as reflected in Labour theory of Value.

^{iv} The original acquisition occurs when a person mixes his labour to something found in nature

^v For this reason, his theory is often criticized as being supportive of slavery.

^{vi} Homestead

^{vii} Kinsella (2001), in fact, goes further, by stating that giving intellectual property rights can, at times, undermine one's right to physical property by restricting its use by the owner. This view, quite radical in spirit, unfortunately, has not been taken up for further examination by scholars on intellectual property. See...ppp...for detail.

^{viii} Kinsella (2001), however remained unconvinced by the utilitarian approach to law, and emphasises that Law's goal should be to ensure justice, and not encourage wealth maximization, which can lead to illegitimate interpersonal utility comparison.

^{ix} Egalitarianism argue that political institutions operate so as to treat everyone in society equally. More precisely, this equal regard must be manifested independently of arbitrary facts about the individuals, such as their race, gender, or natural talents (pg 1470).

^x According to Christman (1994) capitalist property rights are those where the *de facto* distribution of resources, information, technology, and talents, and the private, non-altruistic preferences of individuals, are allowed to determine the resulting distribution of goods through (market) trades.

^{xi} This is a point of contention between the Marxists and the Libertarians. As Cohen (1986, 108) argues libertarians propose the removal of welfare redistribution programs. Kymlicka (1990) explains that Libertarians perceive redistribution an assault on dignity because they believe it is morally wrong.

^{xii} Portuguese Parliament is known as Assembly of the Republic. Indian Parliament has two houses. The upper house is called Rajya Sabha, and the lower house is called Lok Sabha

^{xiii} A Bill is the draft of a legislative proposal. It has to pass through various stages before it becomes an Act of Parliament. The legislative process starts with the introduction of a Bill in either House of Parliament-- Lok Sabha or Rajya Sabha

^{xiv} The other party within the left is "The Greens". In addition, Portugal and India both have various, so called "far left parties" without much representation in parliament."

^{xv} Kerala is one state in India, where Left has been a powerful political group and the ruling party many years.

^{xvi} It creates one of composition scheme disputes property rights of emerging industrial when are concerned reference and medicines generic by taking fifth amendment to decree - law No. 176/2006, of 30 August , and the second amendment to the general regime of state Reimbursements the price of medicines , attached to decree - law no. 48 -a / 2010

^{15 xvii} it recommends the government to take measures aimed to software development free in Portugal committee on parliamentary survey on government's action in respect of foundation for mobile communications proposed law no.

246 / XII (3rd)

^{xviii} it establishes the obligation of the presence by International Common Denomination (INN) and the possibility of the user to freely open for a generic or trademark medicinal product

^{xix} It establishes the obligation to specify by common denomination (INN) and the possibility of the user to opt free generic or mark medicinal product.

^{xx} It establishes the obligation of the presence by international common name (INN) and the possibility of the user to freely open for a generic or trademark medicinal product petition No. 427 / XII (4th) presented by Rui Miguel Silva and Seabra, requesting to the assembly republic to prevent the approval of the law.

^{xxi} It proposed use of free software in the public administration.

^{xxii} for governing the requirements of article 82 of the code of copyright and related rights, on equitable compensation on the private copying.

^{xxiii} It urges the Government to take measures for the development of free software in Portugal.

^{xxiv} The constant modifications and upgrade agreements made with suppliers accentuate and perpetuate the technological dependence on the manufacturer. The way for the State to regain control of the technology of its information is to use, at each level of products, operating systems and applications that have the possibility of inspecting its operation in detail and that they can be modified by themselves And distributed.

^{xxv} **PÁGINA INICIAL 3ª REPÚBLICA ASSEMBLEIA DA REPÚBLICA, SÉRIE II-B, XI LEGISLATURA, SESSÃO LEGISLATIVA, 01 NÚMERO 162, 2010-07-07, PÁGINA 62**

^{xxvi} **PÁGINA INICIAL 3ª REPÚBLICA ASSEMBLEIA DA REPÚBLICA SÉRIE IXI LEGISLATURA SESSÃO LEGISLATIVA 02 NÚMERO 028 2010-12-09 PÁGINA 46**

^{xxvii} a Portuguese non Profit organization, <https://ansol.org/filosofia>, last accessed on 24. 6. 2016.

^{xxviii} Interestingly, this was also the position adopted by the rightwing nationalist party-the Bharatiya Janta Party in Kerala.

^{xxix} Note that the CPI split in 1964 and the CPIM was formed.

^{xxx} He also raised question on parallel import. He argued "*Parallel import' means importation of legitimate goods from cheaper market to countries having higher price to protect goods. That means, if that right is not there, I have shown authority to fix the price at any level. If that mechanism is there, it acts as a balancing mechanism. Sir, this would act as a pressure tactics or balancing mechanism to ensure affordable price. Sir, if a copyright holder fixes the price at a higher level then the public has the right to*

import it from any other country because the provision for 'parallel import' is compelled to fix at a reasonable price. This is a very important thing."

^{xxxix} Interview with Bruno Dias, the member in charge of writing several drafts on copyrights laws.

^{xxxix} In line with the argument of Kymlicka, we find complex social positions (*other than equality and autonomy) being articulated by a centre left party representative who argued for the rights of the disabled in the society "Sir, this is a very important thing. It has been noted that a number of print disabled people don't use Braille. A copyright lawyer with Inclusive Planet, an organisation working with the disabled, says, 'They scan and convert printed material into electronic formats and use screen reading softwares like NVDA or JAWS to listen to it.'"

^{xxxix} PÁGINA INICIAL3ª REPÚBLICAASSEMBLEIA DA REPÚBLICASÉRIE II-AXI
LEGISLATURASESSÃO LEGISLATIVA 02NÚMERO 0182010-10-18PÁGINA 3

^{xxxix} PÁGINA INICIAL3ª REPÚBLICAASSEMBLEIA DA REPÚBLICASÉRIE II-AXI
LEGISLATURASESSÃO LEGISLATIVA 02NÚMERO 0522010-12-17PÁGINA 4

^{xxxix} which intends to establish mandatory prescription of medicines by International Denomination (INN))
And the possibility for the user to freely opt for a generic or branded drug.

^{xxxix} PÁGINA INICIAL3ª REPÚBLICAASSEMBLEIA DA REPÚBLICASÉRIE II-AXI
LEGISLATURASESSÃO LEGISLATIVA 02NÚMERO 0522010-12-17PÁGINA 23

^{xxxix} The United Progressive Alliance government by the Indian National Congress, with the outside support from the Left parties.

^{xxxix} "Knowledge Commons refer to the knowledge, which is collectively produced sphere of ideas and which is left unencumbered for the greater benefit of all (Basheer, 2008)"

^{xxxix} Public domain is the term use for the knowledge freely available in the public. The main difference between knowledge commons and public domain is that while the use of knowledge getting controlled in knowledge commons, there is no restriction for the use of knowledge in public domain (Abrell, 2009)

^{xl} www.businessline.in/States Accessed on 9th September 2017

^{xli} India experienced developments in capital accumulation and industrialization within distinct regions. Industrialization here meant the growth of capitalist interests, and Tyabji (1955) argues IIC had somewhat stated that 'there should be no limitation on government aid to a new enterprises on the ground of its competing with an established external trade.

^{xlii} The phrase *imperialism* has however been used by European United Left/Nordic Green Left in European Parliamentary Group. A member representing the group from Greece in 2005 argued "The decisions by the EU for the Ministerial Conference of the WTO are characterized by the ambition of the imperialists, especially the USA and the EU, to use the rules of international trade in order to plunder the markets of the developed and developing countries, to the detriment of the peoples and with catastrophic consequences on the environment. The drastic cuts in subsidies for agricultural products, on the basis of the review of the EU CAP and the general restructuring of agricultural production for the benefit of the monopolies, are intended to wipe out small and medium-sized farms. At the same time, the dominion of the pharmaceutical group monopolies continues. The WTO is an imperialist international body which serves to ensure that the dominion of big business and its profitability are perpetuated. It is for these reasons that the MEPs of the Communist Party of Greece voted against the motion for a resolution on the WTO, thereby contributing to the development of the fight of the workers and strengthening the anti-imperialist and anti-monopoly fight for the peoples themselves to decide on their own future by drawing up agreements on the basis of mutual benefit."

References:

- Agitha T. G. (2011) International Norms for Compulsory Licensing and the Indian Copyright Law, *Journal of World Intellectual Property*, 15(1): 26–50
- Basheer S(2005) INDIA’S TRYST WITH TRIPS: THE PATENTS (AMENDMENT) ACT, 2005, *THE INDIAN JOURNAL OF LAW AND TECHNOLOGY*, 1
- Chaudhuri S (2002) TRIPS Agreement and Amendment of Patents Act in India, *Economic and Political Weekly*, 37(32), 3354-3360.
- Christman J (1994) *The Myth of Property: Toward an Egalitarian Theory of Ownership*, Oxford University Press.
- Cohen G A(1995). *Self-ownership, freedom, and equality*, Cambridge University Press, New York.
- Commission on Intellectual Property Rights [CIPR (2001)], *Integrating Intellectual Property Rights and Development Policy*. Chapter 7.
- Correa CM (2000). *Intellectual Property Rights, the WTO and Developing Countries: The TRIPS Agreement and Policy Option*, Zed Books, Third World Network.
- Drache, D. and Jacobs, A. (2014). *Linking global trade and human rights: new policy space in Hard Economics Times*, Cambridge University Press.
- Drahos, P. (2002). *Developing Countries and International Intellectual Property Standard-Setting*, *The Journal of World Intellectual Property*, 5(5):765–789
- farmer'+Seeds+Bill+has+the+Left+up+in+arms+against+govt/1/93642.html,
- Gallini, N. T. (2002). ‘The Economics of Patents: Lessons from Recent U.S. Patent Reform’, *Journal of Economic Perspectives*, 16(2), 131–154.
- Ganguli, P. (1999). *Towards TRIPs compliance in India: The Patents Amendment Act 1999 and implications*, *World Patent Information*, 21,279-287
- George, J. (2005) *Patent (Amendment) Act 2002 and Technological Innovation*, *Economic and Political Weekly*, 40(9), 850-855
- Gopakumar, K. M. and Tahir Amin (2005) *Patents (Amendment) Bill 2005: A Critique*, *Economic and Political Weekly*, 40(15), 1503-1505.

- Gracz, K. (2013) Bridging the Gaps Between Social and Legal Norms Concerning Protection of Intellectual and Artistic Creations: On the Crisis of Copyright Law in the Digital Era, *Journal of World Intellectual Property*, 16(1-2): 39–57.
- Hagopian, F. (2007). Parties and Voters in Emerging Democracies, in *THE OXFORD HANDBOOK OF COMPARATIVE POLITICS*, Ed. Carles Boix and Susanc . Stokes, Oxford UNIVERSITY PRESS, New York.
- Halewood, M. (1999). Indigenous and Local Knowledge in International Law: A Preface to Sui Generis Intellectual Property Protection. *McGill Law Journal*, 44:953-996.
- Hegel, G.W. F. (1967), *The Philosophy of Right [1821]*, T.M. Knox (trans.), Cambridge: Cambridge University Press.
- Hettinger, E. C. (1989). Justifying Intellectual Property. *Philosophy and Public Affairs*, 18(1):
- Jigeesh, A M, (2010), ‘Anti- farmer’ Seeds Bill has the Left up in arms against govt, <http://indiatoday.intoday.in/story/'Anti-Farmer'+Seeds+Bill+has+the+Left+up+in+arms+against+govt/1/93642.html>,
- Jishnu, Latha (2010), Seeds of Strife, <http://www.downtoearth.org.in/news/seeds-of-strife-1737>,
- Kasinathan, Gurumurthy (2009). Info-change India- FOSS for the people, <http://www.infochangeindia.org/wfmenucpanel/technology/122-technology/analysis/8011-foss-for-the-people> (Last accessed on 15th September 2017)
- Kinsella N S (2001) AGAINST INTELLECTUAL PROPERTY, *Journal of Libertarian Studies*, 15(2): 1–53
- Kumara, Kranti (2005) India adopts WTO patent law with left Front Support, *World Socialist Web Site*, 16 April, <http://www.wsws.org/en/articles/2005/04/india16.html>, Last Accessed on 22nd March 2016
- Kymlicka (1990), *Contemporary political Philosophy*, Blackwell Publishing
- Machlup, F. & Penrose, E. (1950). The Patent Controversy in the Nineteenth Century. *The Journal of Economic History*, 10(1): 1-29.
- Machlup, F. (1958). *An Economic Review of the Patent System*. Study of the Subcommittee on Patents, Trademarks and Copyrights of the Committee on the

Judiciary, United States Senate, 85th Congress, Second Session, Study No. 15. Washington DC.

Magalhães, Pedro C. (2014) The Elections of the Great Recession in Portugal: Performance Voting under a Blurred Responsibility for the Economy, *Journal of Elections, Public Opinion and Parties*, 24(2), 180-202, DOI: 10.1080/17457289.2013.874352

Magic, P. (2003). *International Technology Transfer and Intellectual Property Rights*. Retrieved from < www.cs.utexas.edu >.

Murray, D. F. (2007). *Nozick, Autonomy and Compensation, Continuum International Publishing group*, London.

Papaioannou, T., (2016) Marx and Sen on incentives and justice: Implications for innovation and development, *Progress in Development Studies*, 16(4): 1–17.

Patnayak, P. (2012). In the service of capital, *Frontline*, cover story, 29(19).

Perelman, J., Sónia, Felix S. and Santana R. (2015). The Great Recession in Portugal: Impact on hospital care use, *Health Policy*, 119(3), 307–315.

Polanyi, K. (1957). *The Great Transformation: The Political and Economic Origins of Our Time*. Beacon Press.

Prabhu, Ram (2006) India's New "TRIPs-Compliant" Patent Regime: Between Drug Patents and the Right to Health, *Chicago-Kent Journal of Intellectual Property*, 5 (2).

Purkayastha, Prabir (2014). Modi's U S visit: Introducing Bad Patents and Removing Liability for Suppliers, October, <http://newslick.in/international/modis-us-visit-introducing-bad-patents-and-removing-liability-us-suppliers>, Last Accessed on 22nd March 2016.

Rawls, J. (1971). *A theory of Justice*, The Belknap Press of Harvard University Press, Cambridge.

Ray, S. (1972). Communism in India: ideological and tactical differences among four parties. *Studies in Comparative Communism*, 5 (2), 163-80.

- Resnik, D. B. (2003). A Pluralistic Account of Intellectual Property. *Journal of Business Ethics*, 46(4), 319-335.
- Sell S & Christopher May (2001) Moments in law: contestation and settlement in the history of intellectual property, *Review of International Political Economy*, 8(3): 467-500.
- Sengupta, Amit (2013). Supreme Court Judgement on Novartis Case Vindication of Left's Principled Position in 2005, april, <http://newsclick.in/india/supreme-court-judgment-novartis-case-vindication-left%E2%80%99s-principled-position-2005>, Last Accessed on 22nd March 2016.
- Simmons, A. J. (1998). Maker's Rights. *The Journal of Ethics*, 2(3), 197-218.
- Sood, Jyotika (2011). Dissent on Seeds Bill, <http://www.downtoearth.org.in/news/dissent-on-seeds-bill-33237>.
- Stiglitz, J. E. (1998). Towards a New Paradigm of Development, 9th Raul Prebisch Lecture, UNCTAD, Geneva.
- Stiglitz, J. E. (1999b). Knowledge as a Global Public Good. In I. Kaul, I. Grunberg, & M.A., Stern (Eds.) *Global Public Goods: International Cooperation In The 21st Century*. Oxford: Oxford University Press.
- Stiglitz, J.E. (1999a). *Public Policy for a Knowledge Economy*, Department for Trade and Industry. Washington D C: The World Bank.
- Thakur R (1995). *The Government and Politics of India, COMPARATIVE GOVERNMENT AND POLITICS*, MACMILLAN PRESS LTD, London.
- The Hindu (2005). Patent Amendments- A small battle won: Left' March 24, <http://www.thehindu.com/2005/03/24/stories/2005032409211100.htm>, Last Accessed on 22nd March 2016.
- Wood, JB (1965). Observations on the Indian Communist Party Split. *Pacific Affairs* 38 (1), 47-63.