

● India

PROPERTY
RIGHTS
ALLIANCE

2ND ANNUAL
INDIA
PROPERTY
RIGHTS
CONFERENCE

REPORT

Property for Prosperity

●

Annual Stocktaking of
Rule of Law & Property Rights

2016

Report of the
India Property Rights Conference 2016
on
Property for Prosperity

Wednesday, 10 August 2016, New Delhi

Executive Summary

Property rights are natural rights. Individuals have an inalienable and moral right to fully own and employ their assets, land and resources, without any external interference. When these rights are duly protected by the rule of law, they spur economic growth and lead to the creation of a just and equitable society.

In Indic philosophy, the Right to Property or Svatta was absolute. Yet, over the years, this right has been constantly eroded under the guise of “greater common good.” In 1978, it was removed from the list of Fundamental Rights and made into a Constitutional Right.

Property rights and the rule of law allow people to prosper and live peacefully. To strengthen these two pillars of a modern democracy, the India Institute formed the India Property Rights Alliance with nine (09) organizations:

1. Centre for Civil Society (CCS), Delhi
2. Centre for Public Policy Research (CPPR), Kochi
3. CUTS Institute for Regulation and Competition (CIRC), Delhi
4. Free A Billion (FAB), Mumbai
5. Good Governance India Foundation (GGIF), Kolkata
6. India Institute (II), Delhi
7. Liberty Institute, Delhi
8. South Asia Bamboo Foundation (SABF), Guwahati
9. South Asia Students for Liberty (SASFL), Delhi

The Alliance was launched with the first edition of the India Property Rights Conference (IPRC) on July 13, 2015. The second edition of the conference, ‘India Property Rights Conference 2016: Property for Prosperity,’ was held at the India Habitat Centre, New Delhi, on August 10, 2016 and saw the participation of 14 speakers and 65 delegates from across organizations.

The conference partners were:

1. Businessworld (BW), Delhi
2. Property Rights Alliance (PRA), Washington DC
3. MY Parliament, Delhi
4. Indus Information Initiatives Pvt Ltd (3i), Delhi

It was preceded by a breakfast meeting between Dr Sary Levy- Carciente, author of the IPRI 2016, and the Members of the Indian Parliament, to share the findings of the Index with respect to property rights in India.

The day long conference saw the global launch of the International Property Rights Index 2016 (IPRI 2016). Mr Lorenzo Montanari, Executive Director of the Property Rights Alliance, shared the new dimensions that had been added to the IPRI this year. In a special edition based on a region-wise analysis, the IPRI, for the first time explored property rights from an Islamic perspective.

With a score of 5.2, India ranked 59 out of 128 countries globally in IPRI 2016. While there was almost no change in its overall score compared to 2015, there has been a steady decline in India’s performance on the IPRI over the last decade.

Dr Carciente, Member of the National Academy of Economic Sciences and Professor at the Central University of Venezuela, presented the highlights of this year’s ranking. She not only explained the system of data collection and scoring, but also highlighted the trends that had emerged from grouping the countries by various geographic and economic criteria. She analyzed the co-relation between components of IPRI and the five diverse dimensions of development, namely, Economic Outcomes, Human Capabilities, Social Capital, Research and Innovation, and Ecological Performance.

In her keynote address, eminent Member of Parliament and Supreme Court lawyer, Smt Meenakshi Lekhi, acknowledged the roles played by Indices in policy-making. At the same time, she

questioned the methodology used for ranking countries. She highlighted the importance of incorporating social and developmental parameters like transparency and democratic processes into the scoring system for a more robust ranking. “The Index should not become a whipping tool used by one set of countries. For sustainable development, both the developed and the developing world need to act together. The former needs to control its consumption and the latter, its population,” she observed.

Her compelling address was followed by three panel discussions designed to trigger conversations, and facilitate interaction between the audience and the experts on the panel.

1. Rule of Law: How to create institutions that work for everyone?
2. Physical Property Rights: Is restoration of Property Rights as a Fundamental Right the need of the hour?
3. Intellectual Property Rights: Whose idea is it?

Tracing the history of property rights in the country, these panels deliberated upon their cultural and civilizational dimensions. They talked of the need to minimize the state and check governmental and judicial overreach through competition and individual action. The issue of corruption in the allocation of resources and the recognition of land rights was discussed extensively. Obstacles to the capitalization of property were recognized.

Domain experts from the academia, industry, bar and regulatory bodies unpacked the issue of ownership of ideas. The thought-provoking talks and intense deliberations at the IPRC 2016 paved the way for greater awareness about India’s position with respect to property rights and the constraints therein.

The conference ended with a call to the participants - policy makers, businesses, civil society and the NGO community - to work together to strengthen the rule of law and create an environment that fosters “property for prosperity.”

The videos of the conference are available at:
www.indiapropertyrights.org
<http://tinyurl.com/jsnvnwb>

Global Launch of the International Property Rights Index 2016 at the India Property Rights Conference, New Delhi



L-R:

Ms Bellinda Achieng Omino, Director, Kenya High Commission

Mr Lorenzo Montanari, Executive Director, Property Rights Alliance

Dr Sary Levy- Carciente, Author of the Index, Member-National Academy of Economic Sciences, Venezuela

Mrs Meenakshi Lekhi, Member of Parliament (LS), BJP National Spokesperson, Supreme Court Lawyer

Mr Baladevan Rangaraju, Founder-Director, India Institute, Co-Founder, India Property Rights Alliance

Mr Christopher Butler, Chief of Staff, Americans for Tax Reform

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India Property Rights Alliance : A Brief Note

The India Property Rights Alliance is an initiative of the India Institute to form a network of organizations and individuals dedicated to the promotion of the rule of law and the protection of property rights. It was launched with the first edition of the India Property Rights Conference 2015 on 13 July, 2015 with four overarching objectives:

1. To advocate for the restoration of the Right to Property as a Fundamental Right;
2. To work together to strengthen the rule of law and property rights in the country;
3. To create an environment that fosters “property for prosperity”;
4. To inform and transform the public discourse on property rights by creating greater awareness.

Currently, the Alliance comprises of nine organizations that are independently and collectively working to secure the individual’s Right to Property by pushing for legislative reforms and the rule of law. These are:

1. Centre for Civil Society (CCS), Delhi
2. Centre for Public Policy Research (CPPR), Kochi
3. CUTS Institute for Regulation and Competition (CIRC), Delhi
4. Free A Billion (FAB), Mumbai
5. Good Governance India Foundation (GGIF), Kolkata
6. India Institute (II), Delhi
7. Liberty Institute, Delhi
8. South Asia Bamboo Foundation (SABF), Guwahati
9. South Asia Students for Liberty (SASFL), Delhi

Among its many activities, the Alliance will organize the India Property Rights Conference every year. This conference will be an annual stocktaking event of India’s progress in strengthening the rule of law, ensuring economic freedom and private property rights.

Chapter 1 : Introduction

“Life, liberty, and property do not exist because men have made laws. On the contrary, it was the fact that life, liberty, and property existed beforehand that caused men to make laws in the first place.”

- Frederic Bastiat

Property rights are natural rights. Individuals have an inalienable and moral right over their property, regardless of whether this is recognized or adequately protected by the state. Private property rights that allow people to fully own and employ their assets, land and resources, without any external interference, predate the existence of organized forms of government. They form the bedrock of a just and equitable society and have been recognized under Article 17 of the Universal Declaration of Human Rights. Yet the definition, allocation, and protection of property rights remains one of the most complex issues faced by our society today.

Recognizing this, the Property Rights Alliance, an advocacy group based in Washington D.C, launched the International Property Rights Index (IPRI) in 2007. The IPRI is a policy tool that has been consistently measuring the performance of nations vis-a-vis this very important right for a decade now.

India’s record on property rights has been bleak. The Right to Property, once a Fundamental Right, was relegated to the position of a Constitutional Right in 1978. In a country where even the king did not enjoy eminent domain, that is, the power to take away private property, property rights are now constantly being eroded under the guise of “greater common good.” There is an urgent need to acknowledge the position of property rights in the country and to create a wider public discourse around it.

Towards this end, the India Institute, an award-winning, not-for-profit think tank that promotes dignity, choice and enterprise through innovative research, evidence-based policy advocacy and litigation for free market policies, partnered with the Property Rights Alliance to bring the IPRI to India. The Index was released in India, for the first time, at the inaugural India Property Rights Conference (IPRC) held in New Delhi on July 13, 2015.

The first edition of the IPRC triggered a series of important discussions on improving the ease of doing business in the country. It saw the formation of the India Property Rights Alliance (IPRA) to create an environment that fosters “property for prosperity.” Mr Baladevan Rangaraju, Founder-Director of the India Institute and Co-founder of the India Property Rights Alliance described it as, “an initiative by the India Institute to create a network of organizations and individuals committed to promoting the rule of law and strong property rights through dialogue, research and advocacy.” Among its activities, the Alliance will organize the IPRC annually to examine India’s progress in strengthening the rule of law, economic freedom and private property rights.

In the months following the first IPRC, the India Institute, through the India Property Rights Alliance sought to keep alive the conversations that had been initiated at the conference. A workshop for journalists and researchers on the Rule of Law and Property Rights was organized in partnership with the Amity School of Communication at the Amity University in Noida.

The second edition of the IPRC was organized by the India Property Rights Alliance on August 10, 2016 at the India Habitat Centre in New Delhi. The day-long event saw the participation of 14 speakers and 65 delegates. It was preceded by a breakfast meeting with the Members of Parliament to share India’s performance on the International Property Rights Index.

Objectives of the Conference



Baladevan Rangaraju

In his opening remarks, Rangaraju noted that, “it is the fundamental right of human beings to realize their aspiration for a prosperous life, without compromising their right to dignity.” This however, seems like a distant dream. Today, there are revolts, disturbances, terror attacks and wars all around the world. These recurring acts of violence, and the acute poverty in many countries is being fuelled by the failure of the state to uphold the rule of law, and protect the property rights of individuals.

Rule of law implies laws that are fair, predictable and equally applicable to all. Their interference in our personal lives is minimal. Property rights, duly protected by the rule of law, guarantee individuals the fruits of their labor and spur economic development. International experience suggests a strong co-relation between the prosperity of a country and the respect accorded to the property rights of its citizens.

“Therefore, it is only fitting that the performance of the nations of the world are ranked for rule of law and property rights,” Rangaraju said. Towards this end, the India Property Rights Alliance partnered with the Property Rights Alliance for the global launch of the International Property Rights Index 2016 at the second edition of the IPRC in New Delhi.

The objective of the Conference, Rangaraju noted, was to spark, transform and widen the public discourse on the rule of law and property rights. It seeks to examine specific barriers and obstacles that people face in exercising their Right to Property. “Property rights is a multi-faceted issue. This year, the Conference will unpackage three specific factors that have been adversely affecting the Right to Property in our country- governmental overreach, barriers to the capitalization of property and the ownership of ideas. It will explore the consequences of removing the Right to Property as a Fundamental Right, and deliberate upon the need to reinstate it,” he expounded.

The Conference also seeks to understand India’s position in IPRI 2016. Rangaraju expressed hope that this analysis and the ensuing discussions on possible solutions would enable policy makers to identify the reforms needed and fast-track them. “Understanding the factors that are adversely affecting our Right to Property, and finding collaborative ways of dealing with them is a vital step towards ensuring a robust property rights regime.” he explained.

Chapter 2 : The International Property Rights Index 2016: Highlights

Property rights are human rights linked to the principles of individual liberty. They act as catalysts for economic growth and social development. They are guaranteed under Article 19 of the Universal Declaration of Human Rights. Yet, they continue to be denied to millions of people across the globe.

The International Property Rights Index (IPRI) was launched by the Property Rights Alliance (PRA), an advocacy group based in Washington D.C., in partnership with Prof. Hernando de Soto, President of the Institute of Liberty and Democracy, Lima in 2007. Since then, the yearly IPRI has served as a barometer, measuring the strength of both physical and intellectual property rights in countries across the world.

The purpose of the IPRI is to provide a policy tool with a consistent measure of property rights among all nations. The scores and ranks of each country are based on 10 factors reflecting the state of its Legal and Political Environment (LP), Physical Property Rights (PPR) and Intellectual Property Rights (IPR).

Legal and Political Environment, comprising judicial independence, rule of law, political stability and anti-corruption, forms the first and the most important component of the Index. Physical Property Rights is the second component and includes protection of physical property rights and registration of property. Protection of IP, patent protection and copyright piracy that come under the domain of Intellectual Property Rights make up the third component of the Index. While computing the scores of a country, equal weightage is provided to all the components.



Lorenzo Montanari

“In addition to these three components, PRA also tries to examine the gender dimension of property rights. The IPRI is now used by many institutions like Forbes, Financial Times, the Economist, OECD, IMF and the World Bank as an important source for analysis,” explained **Lorenzo Montanari**, Executive Director of the Property Rights Alliance, as he launched the IPRI in India for the second time.

Nine editions of the IPRI have been released since its inception. The 2016 edition focuses on 128 countries representing 98.26 per cent of the world's Gross Domestic Product and 92.92 per cent of its population. It has been authored by **Prof. Sary Levy-Carciente**, Member of the National Academy of Economic Sciences and Professor at the Central University of Venezuela.

“This year we have only included countries that had data for at least two thirds of the factors,” explained Carciente. The data was collected from several sources including the World Economic Forum, the International Monetary Fund, the International Intellectual Property Alliance's Special 301 Reports and the World Bank's Worldwide Governance Indicators. The PRA partnered with 102 think tanks spread across 70 countries. In India, the PRA has four alliance partners: the India Institute, the Centre for Civil Society, the Centre for Policy Research and the Liberty Institute.



Sary Levy-Carciente

Montanari noted that not only is this year's Index more robust, it has also analyzed the relationship of IPRI and its components with the five different aspects of development, namely economic outcomes, human capabilities, social capital, research and innovation and ecological performance. “Six case studies covering diverse aspects like a Property Rights toolkit and the Honduran Land titles have been included. In addition to this, a special edition based on region-wise analysis has also been brought out. In this, for the first time, the IPRI has presented property rights from an Islamic perspective,” he elaborated.

IPRI 2016 Scores

On an average, the global IPRI score across the 128 countries this year was 5.45. LP was the weakest component at 5.13, followed by IPR at 5.33 and PPR at 5.87. The good news is that there was an overall improvement in the IPRI scores, not just in terms of the average global IPRI, but also in terms of the maximum and the minimum levels. However, 66 per cent of the 6.83 billion people covered in the survey continued to live in 44 countries with IPRI scores between 4.5 and 5.4. Only 19 per cent of the population lived in the 53 countries with a score of 5.5 or more. Carciente explained that when the Index was weighted by demography to observe the variation with respect to the population of different countries, it declined from 5.45 to 5.28. “Clearly there is much to be done to strengthen property rights in the most populous countries of the world,” she observed.

The detailed listing of countries by their IPRI scores and quintiles are available in Annexures 3 and 4, respectively.

Best and Worst Performers

Finland (8.38) ranked number one in the 2016 Index followed by New Zealand (8.27), Luxemburg (8.26) and Norway (8.25). New Zealand, Finland and Norway showed the highest LP scores, while Qatar, Singapore and Norway headed the PPR scores. USA followed by Japan and Finland were the best performers for IPR. Interestingly, while the positions of the top countries varied slightly between IPRI 2015 and 2016, the group of countries remained the same. This means that once a country has reached a particular position with respect to property rights, it is able to maintain it.

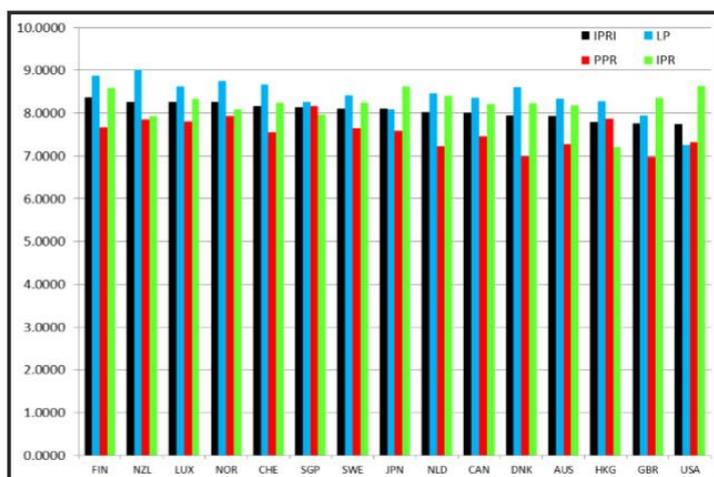
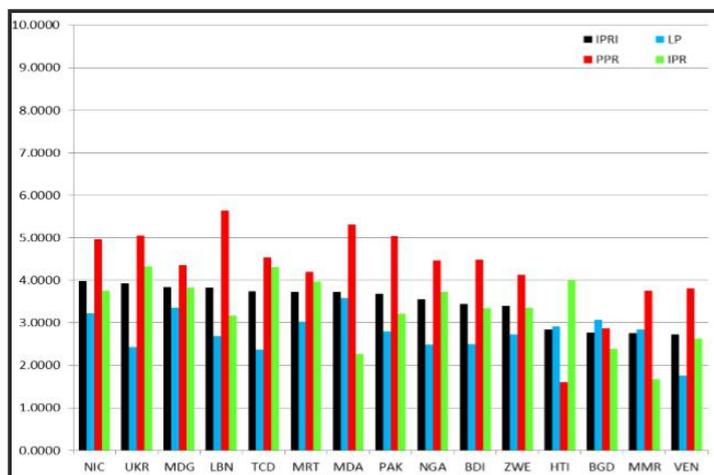


Fig. 2.1 - IPRI 2016: Best and Worst Performers

Top 15

Finland, New Zealand, Luxemburg, Norway, Switzerland, Singapore, Sweden, Japan, Netherlands, Canada, Denmark, Australia, Hong Kong (SAR of China), United Kingdom and United States.



Bottom 15

Nicaragua, Ukraine, Madagascar, Lebanon, Chad, Mauritiana, Moldova, Pakistan, Nigeria, Burundi, Zimbabwe, Haiti, Bangladesh, Myanmar and Venezuela.

*LP- Legal and Political Environment, PPR- Physical Property Rights; IPR- Intellectual Property Rights

The Bolivarian Republic of Venezuela (2.73), Myanmar (2.76), Bangladesh (2.77) and Haiti (2.84) were at the bottom of the IPRI rankings. Montanari pointed out that for most of the top ranking countries, that is, the ones in the first quintile, the LP scores were the strongest IPRI component. However, for the bottom ranking countries, LP was the weakest component. Barring Haiti and Bangladesh, most of them however, demonstrated a stronger PPR component. This may underscore the importance of a conducive legal and political environment in ensuring physical and intellectual property rights.

Group Results

In addition to looking at the performance of individual countries, the current Index also grouped the countries by different sets of criteria like geographical regions, income levels, degree of development, and the economic and regional integration agreement groups.

All groups showed an improvement in their scores compared to 2015. Oceania, North America and Europe emerged as the top regions of the world, while the group comprising of Middle-east, North Africa and Pakistan showed the highest improvement in its IPRI scores. When countries were grouped as per the International Monetary Fund criteria on region and development, Advanced economies, Middle countries and Europe were on top of the ranking. Higher levels of income coincided with a higher score on the IPRI; the group of the low income countries scored the lowest. Finally, if we look at the economic and regional integration agreement groups, then the European Free Trade Association, NAFTA and European Union scored well, while SAARC was among the bottom four.

IPRI and Gender Equality (GE)

Table 2.1 - 2016 IPRI-Gender Equality (GE) Index, ranking by quintiles

Top 20 Percent	2nd Quintile	3rd Quintile	4th Quintile	Bottom 20 Percent
FINLAND	UNITED KINGDOM (UK)	KOREA, REP	DOMINICAN REPUBLIC	BOLIVIA
NEW ZEALAND	HONG KONG (SAR of China)	URUGUAY	ECUADOR	KENYA
LUXEMBURG	FRANCE	ITALY	INDONESIA	UGANDA
NORWAY	ICELAND	HUNGARY	MOROCCO	BOSNIA AND HERZEGOVINA
SWEDEN	ESTONIA	SLOVENIA	GHANA	AZERBAIJAN
JAPAN	PORTUGAL	JAMAICA	MACEDONIA, FYR	TUNISIA
SWITZERLAND	CZECH REPUBLIC	ROMANIA	THAILAND	MALI
NETHERLANDS	CHILE	COSTA RICA	EL SALVADOR	MOZAMBIQUE
CANADA	ISRAEL	PANAMA	GUATEMALA	BENIN
DENMARK	SOUTH AFRICA	RWANDA	INDIA	GABON
AUSTRALIA	QATAR	BAHREIN	KAZAKHSTAN	PARAGUAY
UNITED STATES (USA)	CYPRUS	TURKEY	MEXICO	TANZANIA, UNITED REPUBLIC OF
GERMANY	UNITED ARAB EMIRATES	GREECE	PERU	ZAMBIA
SINGAPORE	SLOVAKIA	BULGARIA	PHILIPPINES	MADAGASCAR
AUSTRIA	LITHUANIA	TRINIDAD AND TOBAGO	SRI LANKA	ALBANIA
IRELAND	MAURITIUS	BOTSWANA	LIBERIA	ETHIOPIA
BELGIUM	POLAND	CROATIA	HONDURAS	MOLDOVA
	MALAYSIA	COLOMBIA	SENEGAL	NICARAGUA
	SPAIN	SAUDI ARABIA	VIETNAM	CAMEROON
	LATVIA	CHINA	ARMENIA	SIERRA LEONE
		BRAZIL	GEORGIA	EGYPT
		OMAN	UKRAINE	IRAN
		JORDAN	ARGENTINA	ALGERIA
		KUWAIT	SERBIA	ZIMBABWE
		RUSSIA	CÔTE D'IVOIRE	VENEZUELA, BOLIVARIAN REPUBLIC OF
			NEPAL	LEBANON
			MALAWI	PAKISTAN
			SWAZILAND	BURUNDI
				MAURITANIA
				CHAD
				HAITI
				NIGERIA
				MYANMAR
				BANGLADESH

The IPRI recognises that gender equality is not just about basic human rights and social justice, it also has a direct link to development. “So we calculated the GE score using five indicators: women's access to land, credit, property other than land, social rights and inheritance practices. This measure allowed us to develop the IPRI-GE Index, on a scale of 0-12,” Carciente explained.

Once again, Finland topped the Index followed by New Zealand, Luxemburg and Norway. Bangladesh, Myanmar, Nigeria and Haiti were the worst performers. India was in the third quintile in the IPRI Index, but moved to the fourth quintile when the GE scores were added. A notable observation here is that the high levels of gender equality (GE) in some countries of Latin and Central America notwithstanding, their IPRI-GE score was almost at par with the countries of the Middle-East, which performed very poorly on gender equality.

IPRI and Development

The IPRI analyzed the relationship of its components with various aspects of development- economic, social, technological and ecological. There was a strong and positive co-relation between IPRI and economic outcomes like GDP per capita, cross capital formation, economic complexity and entrepreneurship. “Entrepreneurship displayed the strongest co-relation. Results also demonstrated that, on an average, countries in the top quintile of IPRI scores showed 21 times the per capita income of those in the bottom quintile,” Carciente noted.

To ensure a more comprehensive and robust Index, co-relations of the IPRI with social dimensions like the Human Development Index, the Global Freedom of Education Index, inclusion, civic activism and research and development were observed. There emerged a strong and positive co-relation with human development indicators like health, education and freedom, civic activism, interpersonal safety and trust, inclusion of minorities, and intergroup cohesion. Carciente observed that when there is a strong legal and political environment, people feel secure and trust each other more easily. The link to ecological performance was also robust.

Cluster Analysis

Table 2.2 - IPRI - Clusters

Cluster 1	Cluster 2	Cluster 3
ALBANIA	BAHREIN	RUSSIA
ALGERIA	BOTSWANA	RWANDA
ARGENTINA	BRAZIL	SAUDI ARABIA
ARMENIA	BULGARIA	SENEGAL
AZERBAIJAN	CHINA	SLOVAKIA
BANGLADESH	COLOMBIA	SLOVENIA
BENIN	COSTA RICA	SPAIN
BOLIVIA	CÔTE D'IVOIRE	SRI. LANKA
BOSNIA AND HERZEGOVINA	CROATIA	SWAZILAND
BURUNDI	CYPRUS	THAILAND
CAMEROON	ECUADOR	TRINIDAD AND TOBAGO
CHAD	EL SALVADOR	TUNISIA
DOMINICAN REPUBLIC	GHANA	TURKEY
EGYPT	GREECE	URUGUAY
ETHIOPIA	GUATEMALA	ZAMBIA
GABON	HONDURAS	
GEORGIA	HUNGARY	
GUYANA	INDIA	
HAITI	INDONESIA	
IRAN	ISRAEL	
LEBANON	ITALY	
MADAGASCAR	JAMAICA	
MALAWI	JORDAN	
MAURITANIA	KAZAKHSTAN	
MOLDOVA	KENYA	
MONTENEGRO	KOREA, REP	
MOZAMBIQUE	KUWAIT	
MYANMAR	LATVIA	
NEPAL	LIBERIA	
NICARAGUA	LITHUANIA	
NIGERIA	MACEDONIA, FYR	
PAKISTAN	MALI	
PARAGUAY	MAURITIUS	
SERBIA	MEXICO	
SIERRA LEONE	MOROCCO	
TANZANIA, UNITED REPUBLIC OF	OMAN	
UGANDA	PANAMA	
UKRAINE	PERU	
VENEZUELA, BOLIVARIAN REPUBLIC OF	PHILIPPINES	
VIETNAM	POLAND	
ZIMBABWE	ROMANIA	
		AUSTRALIA
		AUSTRIA
		BELGIUM
		CANADA
		CHILE
		CZECH REPUBLIC
		DENMARK
		ESTONIA
		FINLAND
		FRANCE
		GERMANY
		HONG KONG (SAR of China)
		ICELAND
		IRELAND
		JAPAN
		LUXEMBURG
		MALAYSIA
		MALTA
		NETHERLANDS
		NEW ZEALAND
		NORWAY
		PORTUGAL
		QATAR
		SINGAPORE
		SOUTH AFRICA
		SWEDEN
		SWITZERLAND
		TAIWAN (China)
		UNITED ARAB EMIRATES
		UNITED KINGDOM (UK)
		UNITED STATES (USA)

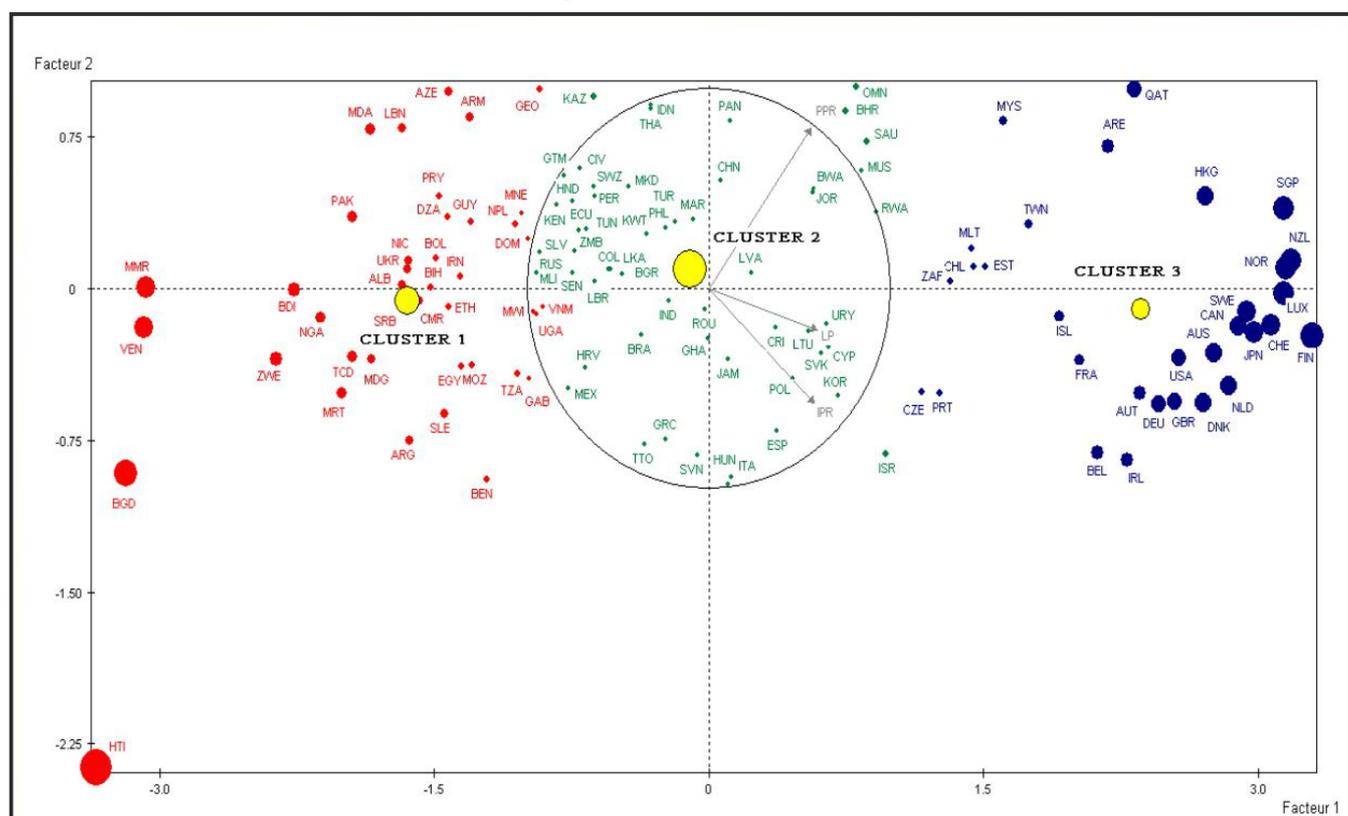
Cluster analysis classifies individuals into groups that are as homogenous as possible, based on observed variables. Carciente performed a cluster analysis of the 128 countries according to their values of LP, PPR, IPR and additional illustrative variables, to observe how the data grouped the countries. Three clusters emerged. Cluster I with a population of 1.47 billion people was made up of lower and middle income countries. With 4.28 billion people, Cluster II was the largest and comprised of upper middle income countries of Asia, Eastern Europe, Latin America and the Caribbean. Cluster III consisted of OECD countries, advanced economies and half of the European Union. Clusters I and III were diametric with I being at the lower end and III being at the higher end. Cluster II comprised of countries where big changes could be brought about through minor tweaking. "There is a need to focus on those countries in Cluster II which are on the border. With a little push, they can either move up to Cluster III or fall down into Cluster I," she advised.

Conclusion ●

The findings of the tenth edition of the IPRI were in line with the previous indices. They have once again demonstrated that the Index is a valid instrument for evaluating the performance of nations seeking the welfare of their population and for studying the inter-relationships between property rights and the diverse dimensions of development. Each country has its own set of strengths and weaknesses. By showcasing them, the IPRI can serve as an important tool for policy makers as they traverse the complex path towards property rights.

The one limitation of the Index, Carciente admitted, is that it is based on co-relation and therefore does not establish causality. However, given the complex nature of societies and systems which require different institutions including property rights to work simultaneously, the Index still holds relevance.

Fig. 2.2 - IPRI - Clusters



Chapter 3 : International Property Rights Index: The India Story

India and IPRI 2016:

Dr Sary Levy-Carciente, author of the International Property Rights Index 2016

Keynote Address:

Smt Meenakshi Lekhi, Member of the Lok Sabha, National Spokesperson of the BJP and Lawyer, Supreme Court

Highlights:

- IPRI Score: 5.2 (Ranked 59th out of 128 and 10th in the region out of 20)
- Legal & Political Environment: 4.3
- Physical Property Rights: 5.8
- Intellectual Property Rights: 5.6
- Almost no change in scores compared to 2015 but steady decline in Physical Property Rights since 2007.
- India has been undertaking reforms in the last few years and the results will soon become visible.
- Given the country's population, even a small statistical change implies large numbers and therefore takes time.
- There is a need to include social and developmental parameters like transparency and democratic processes in the scoring system for IPRI for a more robust ranking.
- For a sustainable world, the developed countries need to control their consumption and the developing and under-developed countries, their population.
- The IPRI is not a system of grading but a tool to provide policy makers with information on the different factors that assist in the strengthening of property rights.

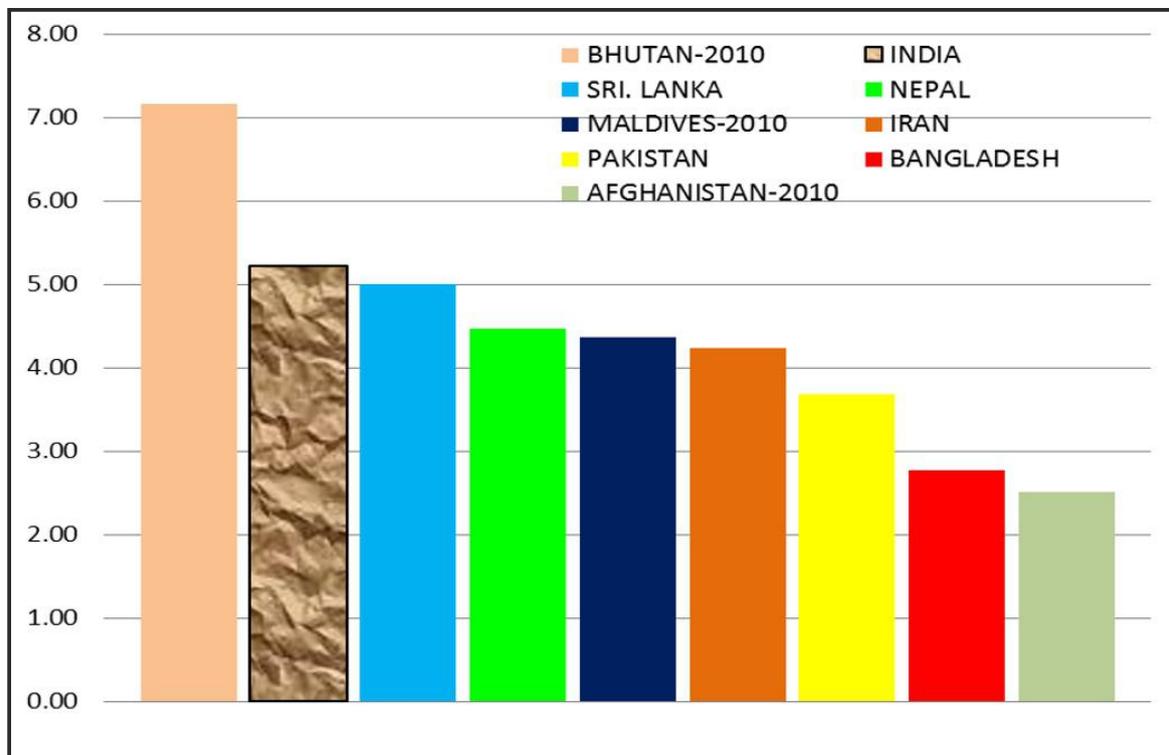
India ranked a dismal 59 out of 128 countries globally in the International Property Rights Index 2016. Within the 20 countries of Asia and Oceania included in the Index, it stood at number 10.

Table 3.1 - IPRI 2016 Scores for India in comparison to other countries

S.No	Country	Global Ranking (of 128)	IPRI Score	LP Score	PPR Score	IPR Score
1.	India	59	5.2	4.3	5.8	5.6
BRICS Countries						
2.	Russia	91	4.6	3.3	5.6	4.8
3.	China	55	5.4	4.4	6.5	5.3
4.	Brazil	64	5.1	4.5	5.5	5.4
5.	South Africa	30	6.6	5.6	6.9	7.2
Neighbouring Countries						
6.	Pakistan	121	3.7	2.8	5.0	3.2
7.	Sri Lanka	69	5.0	4.7	5.6	4.6
8.	Bangladesh	126	2.8	3.1	2.9	2.4
9.	Nepal	97	4.5	3.9	5.5	4.0
Others						
10.	Iran	101	4.2	3.6	5.1	4.0
11.	Greece	57	5.4	5.0	5.1	5.9
12.	Panama	56	5.4	4.3	6.8	5.1
13.	Finland	01	8.4	8.9	7.7	8.6
14.	New Zealand	02	8.3	9.0	7.9	7.9

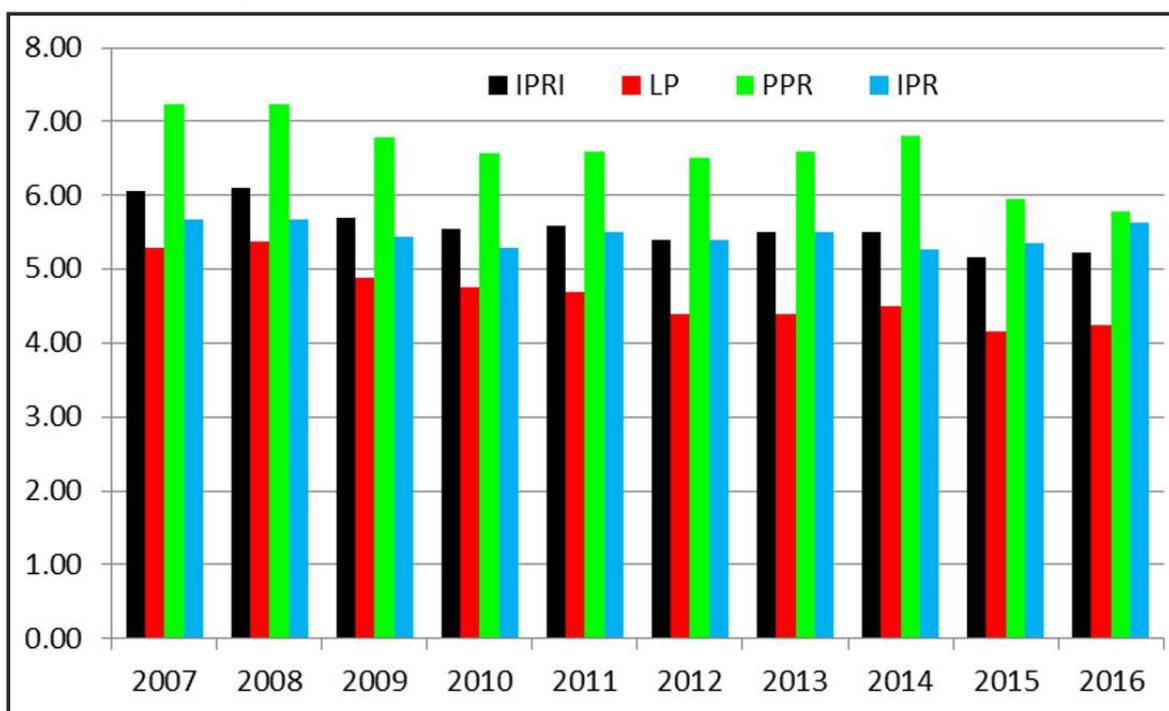
Dr Sary Levy-Carciente pointed out that within the South Asia region, India's performance has been much better than its neighbours and well above the regional average, particularly on Intellectual Property Rights. However, we are well behind the BRICS countries when it comes to ensuring property rights. A cluster analysis of the IPRI 2016 scores shows that India is almost at the centre.

Fig. 3.1 - IPRI 2016: Scores for India in comparison to South Asian countries



Note: Showing last country IPRI score. (Bhutan, Maldives and Afghanistan are from 2010)

Fig. 3.2 - India's performance on IPRI over the last decade



India's overall IPRI score for 2016 was 5.2. While this was the same as in 2015, over the last decade there has been a consistent decline in the country's performance. This has primarily been on account of a dip in the Legal and Political Environment and the Physical Property Rights. On the latter, in particular, there has been a steady drop, from over 7 in 2007 to just 5.8 in 2016.

However, India has shown a steady improvement in Intellectual Property Rights in the last decade. An analysis of the 10 sub-components of IPRI shows that India scored most on Registered Property (8.4) and Patent Protection (7.5) and worst on Political Stability (3.1).



Meenakshi Lekhi

In her keynote address, **Smt Meenakshi Lekhi**, an eminent lawyer with the Supreme Court of India and the National spokesperson for the BJP, delved into the India story told by IPRI 2016. As a Member of Parliament and a policy-maker, Lekhi underscored the importance of indices in framing policies. She acknowledged that India still had a lot to achieve when it came to property rights, but expressed hope that things would soon improve in view of the measures that had been initiated by the government in the recent past, particularly the Goods and Services Tax, the rules for ease of doing business, and the Jan Dhan Yojana.

“We are among the brightest people on this planet. Despite centuries of exploitation, we have emerged as a remarkable nation. Yes, we need to set our house in order on many fronts, including law and order, policy, polity and corruption. We have already taken many policy decisions to this effect. Given our population, even a small change requires time but the results will soon be visible,” she promised. She voiced full confidence in the country's intellectual potential and blamed its limited performance on economic restraints. India's score on the Legal and Political Environment notwithstanding, Lekhi asserted that the system of law and order in the country is good. What is needed is a focus on activities that lead to economic spurts. This will generate more employment and GDP and bring us closer to achieving the sustainable goals.

Analyzing the results of IPRI 2016 and India's performance in it, Lekhi expressed concern at the current system of ranking. “When it comes to statistics, it is important to understand what data is considered and how it is presented. Else there is a danger that the picture that emerges will be lopsided and rejected by policy makers,” she cautioned. To illustrate her point, she flagged some anomalies in the current Index. Not only are countries like Lithuania, Oman, Slovakia, Costa Rica and Latvia ahead of India but even Greece, which was responsible for the crisis in the European Union and received economic assistance from India, fares better. This is also true of Panama of the infamous Panama Leaks fame. Lekhi asserted that the commonality in all these countries is that the rules of investment are not fair. Transparency, democratic framework and a right to privacy are important elements of the rule of law and property rights. “Yet China, which has serious issues when it comes to democratic processes and transparency, which gives no access to anyone on its systems of production and wages, is ahead of India. Given that its consumption patterns are heavily dependent on China, the world may not question these practices but they need to be taken into account while developing such indices,” she opined.

“When it comes to statistics, it is important to understand what data is considered and how it is presented.”

While discussing the importance and relevance of global indices, Lekhi raised an important point. The countries in the Cluster III are the biggest consumers of the world's resources, while the ones in Cluster I are the most populous. She highlighted the need for the Cluster III countries, that is, those that top the IPRI, to work on their consumption patterns. “When we talk of sustainable development goals, nobody talks of the consumption patterns of the developed world. For the earth to be sustainable, the wrongs need to be corrected. Wrongs do not exist only in the under-developed or developing countries; they exist in the developed world as well,” she explained.¹

¹ For details, see Table 2.2 - IPRI-Clusters on page no.12

The **countries in Clusters I and II** represent the developing world. The burgeoning population in these countries creates severe social and economic constraints for them. In India, for instance, even a small improvement takes time to become visible due to the size of its population. These countries need to check their population growth. If either the consumption patterns of the developed world or the population pressures of the developing world remain unchecked, there will be a lack of balance that will hamper the development of a sustainable world, and result in the collapse of every system, including the IPRI, Lekhi warned.

In conclusion, Lekhi reiterated the importance of ensuring that the data collected for the preparation of the Index is more inclusive and is presented in a more nuanced manner. “Sociological depth is needed to generate an index because statistics alone tend to present a skewed picture. It is important to ensure that such indices do not become tools used by one country to whip another. Instead they should become enablers for effective policy making,” she noted.

In the discussion following the keynote address and the presentation on India's position in the IPRI, the purpose of the Index was once again recounted. “The Index is a means of comparing countries based on a methodology; not a system of grading. It highlights the different factors that play a role in strengthening the institution of property rights so as to provide indicators for policy-makers to develop a stronger system of property rights,” Carciente explained.



L-R:

Mr Lorenzo Montanari, Executive Director, Property Rights Alliance

Dr Sary Levy- Carciente, Author of the Index, Member-National Academy of Economic Sciences, Venezuela

Mrs Meenakshi Lekhi, Member of Parliament (LS), BJP National Spokesperson, Supreme Court Lawyer

Mr Baladevan Rangaraju, Founder-Director, India Institute, Co-Founder, India Property Rights Alliance

Mr Christopher Butler, Chief of Staff, Americans for Tax Reform

Chapter 4 : Rule of Law: How to create institutions that work for everyone?

Moderator:

Dr Amit Kapoor, President and CEO, India Council on Competitiveness

Panelists:

- i. Dr Arghya Sengupta, Founder and Research Director, Vidhi Centre for Legal Policy
- ii. Ms Seetha, Author and Senior Journalist, Writer at Swarajya and Firstpost

Key Questions:

- How do we push back the state and ensure minimum government?
- What is judicial independence and how can it be achieved?
- How do we tackle corruption?

Salient Points:

- Demanding more from the government will mean allowing the government into our lives.
- Pushing back the state has to start with each of us. Civil society organizations have an important role to play, particularly in challenging governmental overreach legally.
- Competition is necessary for minimum government and for checking corruption.
- In India, the “rule by law” is well established, but the “rule of law” is still aspirational.
- Judicial independence implies independence of judges as individuals and of the judiciary as an institution.
- There is a need for instituting a robust judicial performance evaluation mechanism for the lower courts.
- To fight corruption, salaries of public functionaries, be they in the lower courts or in service provision, need to be rationalized.
- Freedom from the bureaucracy and greater competition are the key to innovation, growth and better solutions to social problems.

The IPRI 2016 clearly shows that while India marginally improved its performance with respect to the legal and political environment, this was still the weakest component for the country.

Table 4.1 - India's performance on IPRI 2016

	India (Score)	Global Rank (of 128)	Regional Rank (of 20)
1. Legal and Political Environment	4.3	78	15
1.1 Judicial Independence	5.0	58	11
1.2 Rule of Law	4.8	65	9
1.3 Political Stability	3.1	113	18
1.4 Control of Corruption	4.1	81	13
2. Physical Property Rights	5.8	67	14
3. Intellectual Property Rights	5.6	47	9
Overall	5.2	59	10

The first thematic session of the conference sought to address this by exploring ways of minimizing state control, strengthening judicial independence and tackling corruption.

Minimum State ●

Minimum government, maximum governance, is the key to strengthening the institution of rule of law. Author and Senior Journalist, **Ms Seetha** opened the discussion on the need for a minimum state with a few key questions.



Seetha

“How many of us live in gated communities with their own private security guards? How many have inverters, gensets or live in private societies with their own power backup? How many have water purifiers, ROs or order jars of Bisleri? How many would go to the police for a general complaint like losing something? How many would go to the police or the court for a serious problem?” she asked.

“Demanding more from the government will mean allowing the government into our lives. Pushing back from the state has to start with each of us.”

The fact is that today people are already arranging for their own security, power and water supply. Seventy years after Independence, we continue to have 19,000 un-electrified villages in India. Over half the population does not have access to latrines, piped water supply is a dream for many and sewage continues to remain a problem. By the classic liberal definition wherein a state provides defense from external aggression, maintains law and order, ensures justice and physical infrastructure, we already seem to be in a state of minimum government. The problem, Seetha

asserted, is that the politicians and bureaucrats are only delivering on the first responsibility of the state—defense. Instead of focusing on the maintenance of law and order or the provision of justice and social infrastructure, the government is increasingly interfering in our personal lives. It wants to control what we read, what we eat, whom we sleep with, how and who we worship.

The burning issue, Seetha asked, is, “should the state be doing what it is actually doing?” Since 1991, there has been a significant pushing back of the state especially in the economic sphere. Yet the state is all pervasive in our personal, that is, our non-economic lives. Talk of minimum government today is limited to disbanding Public Sector Units (PSUs), abolishing the Ministry of Culture and Information & Broadcasting (I&B), increasing devolution, disinvestment and separation of policy formulation from implementation. Yet these are questions of effective governance not minimum government.

The fact is that people have tremendous expectations from the state and often do not care when it tries to enforce Article 377 or funds pilgrimages. In actuality, few want a libertarian state with minimum government. They fail to realize that if we expect the government to do everything, it will get into our lives. Seetha emphasized the importance of taking this knowledge to the public through the vernacular media and through forums and think tanks like the India Property Rights Alliance.

She asserted that pushing back the state has to start with each one of us. It can be done by:

1. **Increasing competition:** Challenging the monopoly of the state and dominance in economic spheres is one way of minimizing government. We have seen it happen in sectors like communications and postal services.
2. **Reforms by Stealth:** David Friedman has talked about tapping into regulatory grey areas to push back the state. The privatization of agriculture in China is one such example of privatization by stealth. In India, this is already happening with the water purifiers and the gensets. We also saw it happen with the smoke and noise free e-rickshaws in Delhi. When grey areas reach a critical mass, the government has no choice but to stop regulating them.

3. **Checking government intrusion and challenging judicial overreach:** We have to legally challenge the government's encroachment in diverse areas, be they personal or societal. Whether it is Article 377, fixing of school fees, cab fares or environmental regulation, there will always be a court ruling that allows the state to interfere. The biggest protector of state overreach is the judiciary. It is important that the civil society legally challenge this overreach because the public finance imperative will not lead to a minimum state. If the state finds that its responsibilities are becoming too expensive, it will cut down on essentials like money for policing, but will continue to regulate our lives. Further, civil society organizations (CSOs) have to sensitise the people on rethinking the role of the state and reframing their expectations from it. Unfortunately, not many CSOs believe in a minimal state.

“Demanding more from the government will mean allowing the government into our lives,” Seetha cautioned.

Judicial Independence ●



Dr Arghya Sengupta, Founder and Research Director of the Vidhi Centre for Legal Policy, carried forward Seetha's point about judicial overreach and the need for judicial independence. “It is an interesting paradox that while no one here wants to go to a court to resolve a dispute, the biggest governance reform that has been dominating the public discourse in the last fortnight has been the Goods and Services Tax (GST) which requires a constitutional amendment. In some sense, we are wedded to the law, but when it comes to the enforcement of law, as citizens we seem uncomfortable with the way in which the courts function,” he pointed out.

Arghya Sengupta

India is now a state where 'rule by law' is well established, but the 'rule of law' is still aspirational. With some exception, our judiciary is not of high quality, is most certainly not quick and the processes of selection and retention are not based on meritocracy. Little wonder then that India fares poorly on the Legal and Political environment in the International Property Rights Index 2016. Yet, the country seems to be doing well on one sub-aspect of the field - judicial independence.

The institutional separation between the judiciary and the executive is well established in our country. But is this sufficient for judicial independence? Having an independent judiciary implies an impartial and effective judiciary. Both these factors are in turn dependent on the system of accountability and quality of judges. Therefore, when we speak of judicial independence, we have to address a set of 5 basic questions:

1. Whose independence are we talking about?

An independent judiciary implies both the independence of judges as individuals and of the judiciary as an institution. In India, while the structural separation between the judiciary and the executive reduces political interference, the judges enjoy little independence. As on 31 December, 2015, there are approximately 20 million disputes pending in the lower judiciary, of which more than 51 per cent have been pending for over 2 years. Thus, it is imperative to look at the independence and the functioning of all levels of judiciary, particularly the lower ones.

2. From whom should the judiciary be independent?

Though most conversations on judicial independence centre around independence from the government, Sengupta argued that this is not the biggest problem facing the institution. A whole range of extraneous pressures impact decision-making at the level of the lower judiciary. Salary is a key issue. While the judges in the higher judiciary get salaries at par with the Secretaries of the Government of India, the salaries for the lower judiciary are not even at par with the Under-secretaries. This needs to be addressed.

3. What do we want independence regarding?

Judges should have independence in decision-making, in their behavioural aspects and administration.

4. How is independence to be achieved and how is it to be maintained?

There are constitutional and statutory ways to achieve this independence.

5. Why do we want independence?

Judicial independence is instrumental in bringing about a just and egalitarian society and in establishing the rule of law that we aspire towards. An independent judiciary will ensure impartiality in decision-making and will be more effective. It will also address a number of issues related to the accountability of judges, quality of judges and the ways in which judicial discussions are enforced.

Sengupta went on to suggest some reforms for judicial independence. There is a need to establish a merit based appointment system for the higher judiciary. Though the proposal to replace the current collegium with a National Judicial Appointments Commission was struck down as unconstitutional by the Supreme Court, he reiterated the need to look at a diverse selection panel so that the judiciary does not become an “old boys club.”

“The real test is whether people would want to approach the judiciary. That's where the real hallmark of an independent and well-functioning judiciary lies.”

The Judicial Standards and Accountability Bill floated in 2010 should be implemented to improve the quality of judges. The Bill should primarily propose a more transparent and disciplinary system. The judges had opposed a clause in the Right to Information (RTI) Act that mandated them to display their assets. It is imperative that the judiciary be brought within the ambit of the RTI Act and Information on the wealth of judges be made available in the public domain.

Sengupta explained that while minimum government is important, there cannot be a libertarian way or a market based solution for the justice system. Private dispute resolution as judicial arbitration is floundering in India. If the judiciary fails, the government fails. Therefore, a robust judicial performance evaluation mechanism for the district and lower courts has to be instituted. This needs to be matched with a salary hike for the lower court judges.

The principal problem is that the judicial system is extremely slow. The High Courts currently have 2.7 crore pending cases and the Supreme Court 60,000. Tribunals were created to reduce the problem of backlog in the judiciary through a specialized cadre of officials. Currently there are 36 tribunals in the country, many of them defunct. These tribunals serve as post-retirement jobs for existing members of the judiciary and are compounding the problem. “Their functioning needs to be overhauled completely and a specialized cadre of tribunal officers needs to be instituted,” Sengupta suggested.

He added that in order to tackle delays in the judicial system, we need to look beyond the judge-population ratio at data driven solutions. Even if we increase the number of judges, the problem of pendency and delays in justice delivery will persist due to systemic issues. “The delay is primarily due to procedures, and not because our judges are incompetent or slow,” he said.

Corruption and Competition ●

Dr Amit Kapoor, President and CEO of the India Council on Competitiveness, dealt with yet another arm of the government that stymies growth and development- the bureaucracy. Freedom from the bureaucracy and greater competition are the key to innovation, growth and better solutions to social problems.

Corruption, he explained, occurs at two levels - individual and institutional. It exists because people see a



Amit Kapoor

win-win situation. The bribe is seen as a mere transaction cost for convenience and business gains. “Historical data shows that in the first 15 years post liberalization, businesses and people benefit from corruption. So there is little opposition to it. In India itself, the noise about corruption only started in the last 5-6 years because the transaction costs became too high,” he said. The bureaucracy realized that there was an opportunity in the allocation of resources and began using this for economic gains, be it in land deals or the allocation of the telecom spectrum.

One of the chief problems in India today is the lack of freedom. Kapoor lamented that almost 70 years after Independence, we continue to be Macaulay's children; our lives and choices controlled by a mere 6000 people who constitute the great Indian bureaucracy – an institution that has remained unchanged and unquestioned since the 1850s.

“Unique and innovative solutions to social problems come from enterprises, when there is no interference from the government. The barriers to entry created by a few vested interests have to be removed and perfect competition allowed.”

Yet it is important to remember that corruption occurs not just in the government, but in the private sector as well. There is cartelization all around. “Look at the aviation sector in India and the prices of flight tickets. To tackle corruption we need to widen the field and allow in competition, despite opposition from vested interests. The barriers to entry have to be removed,” Kapoor asserted. He described how this has happened in the media industry. “Today anyone can become a journalist, tweet a story and be heard. This is the kind of opening up that is needed.”

Unique and innovative solutions to social problems come from enterprises. For example, Telenor, a voice communications company has launched one of the most innovative and successful insurance programmes. However, this can only happen when there is no interference from the government. Sectors like education need to be freed from government control. People should have a right to decide what they want to study. Moreover, in sectors like health that are deeply mired in corruption, it is paramount to separate greed from service provision. This again requires an adherence to principles of the free market. Only when the economic value of work is recognized and people are paid for it, will they cease to seek gains through other means. Singapore saw a dramatic decline in corruption, when it decided to pay its government officials well. “Are we willing to walk this path in India?” he asked.



L-R:

Ms Seetha, Author and Senior Journalist

Dr Amit Kapoor, President and CEO, India Council on Competitiveness

Dr Arghya Sengupta, Founder and Research Director, Vidhi Centre for Legal Policy

Chapter 5 : Property Rights: Is restoration of Property Rights as a Fundamental Right the need of the hour?

Moderator:

Mr Anurag Batra, Chairman and Editor-in-Chief, Businessworld

Panelists:

- i. Mr Vikramjit Banerjee, Counsel, Supreme Court of India
- ii. Mr Barun Mitra, Founder-Director, Liberty Institute
- iii. Mr Anupam Srivastava, Founder Member and Partner, The Chamber of Law

Key Questions:

- What happened to the Fundamental Right to Property under Article 300A? Given the immense politics over land and acquisition of property, where does it go from here?
- What has been the position of the Judiciary and the Legislature on the Right to Property?
- What are the main hurdles to the capitalization of property?
- What are the possible solutions to ensure the capitalization of property and prevent land use abuse in India?

Salient Points:

- Removing the Right to Property as a Fundamental Right was a huge mistake.
- Property rights have come a full circle – from being an instrument of resistance for the poor to being regarded as a benefit of the rich to once again becoming a tool of the little one.
- Property rights are both a cultural and a civilizational issue. It is important to recognize the traditional methods of property ownership and the multiple claims on land.
- Restrictions on the use of land, land ceiling, lack of uniformity in land records, mandatory use of registered instruments for mortgaging agricultural land and the long period of due diligence for the purchase of land are the primary hurdles to the capitalization of property in India.
- Technology offers viable solutions to the problem of land records- both their verification and maintenance- in an easy-to-access manner.

After Independence, the Constitution of India recognized the Right to Property as a Fundamental Right and guaranteed it under Articles 19 (1) f and 31. In 1978, the Janta government brought in the 44th Amendment which removed the Right to Property as a Fundamental Right and made it into a Constitutional Right under Article 300A.

Article 19(1)(f): All citizens shall have the right to acquire, hold and dispose of property.

Article 31(1): All citizens shall have the right not to be deprived of property save by authority of law. This provision was repealed by the 44th Amendment. It now appears as **Article 300 A**.

Article 31(2): Property can be acquired for public purpose save by authority of law and that law will have to provide for compensation or a mechanism to calculate it (as it stood before its abrogation).

The IPRI 2016 clearly shows that while India scores better on Physical Property Rights than on the other two components of the Index, the country's performance in this respect has worsened from last year. The score has gone down from 6 to 5.8. India scored 4.6 in Property Rights, 8.4 in Registering property and 4.3 in Ease of access to loans in IPRI 2016. Against this backdrop, this panel sought to explore the current status of property rights in the country and the reforms needed. It examined whether there was a need to once again make Property Rights a Fundamental Right.

History of Property Rights



Vikramjit Banerjee

Mr Vikramjit Banerjee, Counsel at the Supreme Court of India, traced the history of property rights globally and in India. Internationally, the Right to Property is traced to the Magna Carta that recognized the rights of the British aristocracy to land. However, property rights as we know them today emerged from the American Revolution which sought to replace feudalism with republicanism and recognized the individual's Right to Property. Meanwhile, the French Revolution took a stand against the Right to Property labeling it as a privilege of the rich. Colonialism overturned the existing property rights structures in many countries to allow for maximum exploitation by the colonial masters. From the 1950s to the 1980s, many Third World countries witnessed a wave of nationalization. With the collapse of Communism in the 1990s, the Right to Property came to be recognized as the touchstone of democracy and free markets. This posed a problem for mixed economies like India that needed land, a scarce resource, for development and industrialization.

Banerjee explained that property rights have come a full circle. “They started out as an instrument of resistance for the poor, were later denounced as a privilege of the rich and are now once again seen as a the tool of the little person.”

Property Rights in India

Banerjee accentuated the importance of understanding the civilizational context of property rights as it continues to impact how property is recognized today. In India, property rights can be traced to the Vedas. *Svatta*, or claim over property was absolute but subject to interlocking rights and the independent claims of the *Raja* (king), *Guru* (teacher), *Jati* (caste) and *Kula* (clan). Unlike in the West, where the state recognized property, in India the king did not have “eminent domain”, that is, the power to take away private property. This changed with the coming of the British. A person could now be deprived of his property “by authority of law” in public interest. Today, just three Indic landholding rules have been retained: the Hindu Undivided Family, Devottur or the right of the deity to hold land and land to the tiller. The law does not recognize claims on common land, lands held by villages and by tribes though the last has been remedied, to some extent, by the Forest Rights Act, 2006.

There has been a lot of politics surrounding property rights in the country. The conservative trio of Gandhi, Patel and Rajaji supported the right to property while Nehru, Bose and Jaya Prakash Narayan favoured collectivization. Indira Gandhi undertook nationalization and the Janta government removed the Right to Property from the list of Fundamental Rights.

“Land is a cultural and civilizational issue. The current problems arise because we have failed to recognize the traditional claims on land, which predate our current laws.”

Against this backdrop, Banerjee raised two fundamental questions: What happened to the Fundamental Right to Property under Article 300A? Given the immense politics over land and acquisition of property, where does it go from here?

Charting the position of the judiciary vis-à-vis property rights, Banerjee outlined three distinct phases:

- a) **The Conflict Phase** wherein a liberal Supreme Court was pitted against a socialist Legislature and stood up against compulsory acquisition as in the case of the Sholapur Spinning and Weaving Company.
- b) **The Compromise Phase** whence the Supreme Court accepted nationalization, allowed the abolition of privy purses but sought to ensure compensation.
- c) **The Post Liberalization Phase** where the Court is trying to treat Property Rights as Human Rights and more specifically, the Right of the Poor. These, together with the historical and cultural context have resulted in an all-pervasive, ever-expanding and conflicting notion of property rights in India. Today, there is pressure on land from both agriculture and industry. Lease and redevelopment of land can be possible solutions. The truth is that property rights are not just important, they are the key to economic growth and development. Yet, civilizationally and for the rule of law to prevail, they cannot be absolute, Banerjee asserted. Recalcitrant industrialists use the premise of property rights to avoid the payment of legitimate dues, forcing banks and financial institutions to impinge on the Right to Property.

“Obliterating the Right to Property as a Fundamental Right was a mistake because no one, including the court, knows what a Constitutional Right is. Land is a cultural and civilizational issue. The current problems arise because we have failed to recognize the traditional claims on land, which predate our current laws. There is a need to understand the rules of Indic property holdings like Svatta (ownership) and non-recognition of eminent domain to have a society with less of “rights and entitlements” and more of recognition of claims based on the traditionalisation of constitutionalism and property rights,” he concluded.

Land Use Abuse ●

Expounding on one aspect of the property rights conundrum, **Mr Anurag Batra**, Chairman and Editor-in-Chief of Businessworld, talked about land use abuse through a collusion between policy makers, land mafia, intermediaries and a set of land owners. Property owners are duped into selling their property at low prices to developers. Thereafter, the government includes the area in the Master Plan, announces developmental activities and promises the creation of infrastructure. Property prices shoot up and the builder beneficiary begins selling plots and flats. When the original landowners realize what is happening, they file a case and it drags on endlessly. “Everyone suffers in the short term but the two parties that most bear the brunt of this are the original landowners and the customers who buy the houses,” said Batra. Despite many cases being filed, the top builders continue to abuse land use.



Anurag Batra

The answer, Batra opined, is to minimise and eliminate the need for cash compensation. He suggested the introduction of land pooling and re-adjustment schemes to tackle this abuse of land use. “Aggregate the land required for a project, not by displacing and compensating the specific owner of the land, but by getting a larger group of adjacent land owners to make room by contributing a portion of their land parcels to a common pool in a manner that no one is displaced and all benefit from this project,” he said. In countries such as Japan where private property rights are strong, or Israel where the definition of public purpose is narrow, land re-adjustment is the only way to acquire land for developmental purposes. Under re-adjustment schemes, landowners are typically provided service land of similar value to what they part with. An excellent example of this is the Sardar Patel Ring Road in Ahmedabad. Batra emphasized the need for a rigorous checking mechanism with all the stakeholders before land is shifted from one party to another. Stringent punishment and fast track court procedures may also offer selective solutions, but they will not eliminate the problem. Technology may however offer a solution by putting in place a single, verifiable land record system.

Batra explained that the focus of our economy is shifting from ownership to experience and consumption.

Under such circumstances, access becomes more important than ownership. We need to create access to land rights in India. This can only happen if there is a political will to do so.

Capitalization of Property ●



Anupam Srivastava

Mr Anupam Srivastava, Founder Member and Partner at The Chamber of Law, talked about the capitalization of property and the reforms needed hereto. “Capitalization of property,” he explained, “means that we are able to use property as a free currency with ease of access and transfer.” There are five main hurdles to doing so in India.

The biggest hurdle is the **restriction on the use of land for a specific utility or function**. Currently, land in India is divided into two categories: agricultural and non-agricultural. Non-agricultural land is further divided into residential, industrial and commercial. Suppose an organization in Uttar Pradesh was given 100 acres of land for educational purposes.

Over a period of 15-20 years with rapid urbanization, this land fell into the heart of a residential zone in the city. It is neither practical nor feasible to run a research or an educational institute there. Yet rules forbid the use of this land for residential purposes. These restrictions on land conversion disallow a more productive and beneficial use of land.

The second hurdle comes in the guise of **land ceiling**. In India, one cannot hold more than a specified amount of agricultural land. This varies from 50 acres in the desert area in Rajasthan to 12 acres of irrigated land in Punjab. The genesis of this law lies in the post Independence land reforms and the abolition of the zamindari system. The land ceiling law makes it difficult for landowners to set up industries. Till 1984, the government could acquire land under the Land Acquisition Act. However, subsequently it brought in a new legislation encouraging people to directly buy from landowners so that it did not face difficulties due to eminent domain. Given that the amount of land people own is limited, and often insufficient to set up an industry or an educational institution, this creates problems. Although, the land ceiling law was enacted in the name of land reforms, it restricted the land usage by each person, thereby constricting its most efficient use.

Each state in India has its own method of keeping land records. This leads to the third challenge – **disorganized land records** that are difficult to access. The state of Karnataka was created from four princely states. Till date the state has four different systems of maintaining land records. Digitization only started in 2005 and is poor. Srivastava stressed the need for a uniform system of land records along with translation support to ensure accessibility of records maintained in the native language.

The fourth challenge can be seen from the **perspective of a banker**. In India, there are six methods for mortgaging land. Handing over of the title deed is the easiest and the most commonly used method. However, as per the statute, mortgage of an agricultural land can only happen by way of a registered instrument. This entails a cumbersome process of loan approval and results in a restriction of transfer.

Finally, to acquire a private land, due diligence for a period of 12 years is stipulated. However, to acquire a piece of land that belongs to the government, the due diligence period is 30 years! What this means is that if we start **maintaining proper land records** now, the situation would improve 30 years down the line.

In 2011, the government came out with a Land Titling Bill whereby all property owners were mandated to get land registered with the designated authority. Challenges would be invited and if no challenge was presented within a period of 5 years, the person registering the property would be recognized as its rightful owner and be provided with proper documentation. This would mean that anyone could buy land from them without hesitation. Such legislation to make the land free from any encumbrances is the need of the hour, said Srivastava.

Carrying forward the discussion on capitalization, **Mr Barun Mitra**, Founder-Director of the Liberty Institute, pointed out that the problem of poverty stems not just from a lack of capital but from our inability to capitalize our assets, skills and opportunities, simply and legally with minimum transaction costs. The extent of the land conflict, he explained, is such that both Amitabh Bachchan and a poor, rural farmer share the same plight. They face problems of titling, exchanging and use of land. Currently, 40 per cent of the farmers want to move out of agriculture and 75 per cent do not want their children to continue in their footsteps. Yet they cannot use their own land for other purposes due to land use rules and widespread corruption.



Barun Mitra

Corruption in land records stems from the power to decide how a piece of land will be used and the enormous discrepancy between land records and situation on the ground. Mitra estimated that 1-2% of India's GDP is being generated through underhand and under-the-table transactions related to land and property. Further, over 100 billion dollars of investments are stuck due to land and related problems. Almost 10 per cent of the murders committed in country are linked to property disputes and 66 per cent of the 7.2 million cases pending in the lower judiciary are land and property related. Currently, an estimated 900 million parcels of land need to be mapped, matched with their owners and the status updated in records.

Using Technology to ensure Land Rights ●

Mitra showcased how technology can provide a solution to this. He recounted the plight of the tribal people who were regarded as encroachers on their own land and through a short documentary shared the story of tribal communities from Gujarat who had managed to claim their land rights.

“This was a classic example of how the society was mobilized, political sensitization took place, the law got enacted and technology converged to help facilitate its implementation.”

Even after the introduction of the Forest Rights Act, 2006, the government only recognized the rights of the tribal people who were farmers and could prove that they had been farming the parcel of land that they were claiming prior to 2005. They demanded an official paper trail with government issued documents proving ownership. Most tribals did not have any such papers and so only 10 per cent of the claims were granted titles. When Mitra heard of this, he along with his friends, Trupti Parekh and Ambrish Mehta, deployed the Global Positioning System (GPS) technology to prove the claims

of the villagers. The trio trained the villagers to use a GPS enabled device to map their land. They then used archival satellite images from Google to show that these lands were not forested and were indeed being tilled prior to 2005. This time 90 per cent of the applications were granted titles. The GPS tracking worked because the community and the people knew who was farming which plot of land and were able to adopt the technology to document this. The change, in the words of Rama Bhai, a farmer and tribal leader from Sagai Village of Gujarat, is palpable. “Earlier, the Forest Department would not even allow us to dig a well because we did not have a title for the land. Now we own it.”

“This was a classic example of how the society was mobilized, political sensitization took place, the law got enacted and technology converged to help facilitate its implementation,” explained Mitra.

In response to a question on the Torren system that has been introduced in urban Rajasthan in 2016, Mitra expressed his skepticism. Disputes arise when the owner of a property and the person in possession of it are different. Legal recourse in India is a very slow process. What the Torren system offers is a title guarantee with minimum dislocation. This ensures that the person in possession of the land gets a right to the property for a nominal transaction while the actual owner is compensated. “The important question is who pays the compensation. In Western countries, it is the state or the insurance company. But insurance companies only pay when the land records are very accurate. In a country where 75-80 per cent of the land records have issues, no insurance company will pay,” Mitra explained.

Given the high valuation of property in urban areas, the government may not have the money to pay the requisite compensation. Mitra suggested that it would have been better to pilot this system in the rural areas where property prices are still low and the price differential is less.

The session concluded with the message that to bootstrap India into development, it is imperative to verify and maintain land records, and allow property transactions with minimal problems. After all, property rights empower people, nurture democracy, pave the road to prosperity and help improve the environment.



L-R:

Mr Anupam Srivastava, Founder Member and Partner, The Chamber of Law

Mr Barun Mitra, Founder-Director of the Liberty Institute

Mr Anurag Batra, Chairman and Editor-in-Chief, Businessworld

Mr Vikramjit Banerjee, Counsel, Supreme Court of India

Chapter 6 : Intellectual Property Rights: Whose idea is it?

Moderator:

Dr Geeta Gouri, Former Member, Competition Commission of India

Panelists:

- i. Mr Bhaskar Bhattacharya, Partner, Corporate Law Group
- ii. Ms Aarti Bhardwaj, Vice President, Publicis Media

Key Questions:

- Who owns an Idea?
- What is the relationship between Innovation and Intellectual Property Rights (IPR)?
- Who is a consumer?

Salient Points :

- Intellectual Property Rights cannot be absolute.
- Patent laws have originated from the laws of disclosure, not laws of monopoly.
- An idea belongs to the collective; individuals gain a time-bound exclusivity as an incentive to foster innovation.
- Innovation is a culture; a self-sustaining habit.
- There is a relationship between innovation and wealth, but no clear direction of causality.
- When we talk of IPR, the consumer becomes very important because (s)he is the competitive constraint.

India has consistently improved its performance on Intellectual Property Rights over the last decade. According to IPRI 2016, India scored 5.4 in Intellectual Property Protection, 4.0 in Copyright Piracy Level, and 7.5 in Patent Protection.

The final session of the IPRC sought to address the issue of patents and innovations by asking two fundamental questions:

1. Who owns an idea?
2. What is the link between Innovation and IPR?

Dr Geeta Gouri, Former Member of the Competition Commission of India, opened the session with a brief overview of the problem. Intellectual Property Rights are non-rival and non-excludible and therefore, a public good. Though the famous economist Kenneth Arrow has argued that, “Public goods should be free,” people need to be incentivized to create. Therefore, there has to be a provision for commercialization of public goods.



Geeta Gouri

There are some fundamental tensions between patent rights and property rights, Gouri noted. On the one hand, with the coming in of copyright and creative design there has been an expansion of patents. On the other, there is the issue of combination of patents. NPAs (portfolio asset companies) buy a number of patents and put them together to create troughs. Most products that we use employ a series of parts, features or technologies that are individually patented. Often, these patents have changed hands. “If one is unable to identify whose idea it is, does it mean that the consumers are being taken for a ride? The fundamental question really is, who owns an idea?” she explained.



Bhaskar Bhattacharya

Mr Bhaskar Bhattacharya of the Corporate Law Group sought to address the question of ownership in the context of common property rights and the rights of an individual. “Intellectual property is an intangible property. Who is the owner of this intangible property, the innovator-proprietor with particular exclusive rights or the ultimate user?” he asked.

He noted that in the pharmaceutical industry there is a constant debate on who is the actual beneficiary of an innovation and who should be the beneficiary. Does the ownership lie with the company that has come up with the drug after many rounds of research and development or is it a collective right of the patients who use the drug? It is this conflict that fuels the debate on pharmaceutical patents vis-à-vis healthcare access.

Bhattacharya admitted that he did not have an answer to the fundamental question of ownership. “In Hindi, patents are called *Ekasva*. The word literally means a monopoly,” he said. What this is indicative of is the tendency to consider monopoly as the starting point of Intellectual Property, and more specifically patents. Contrary to popular belief, the concept of trade monopoly was not introduced in India by the West. Indian history and mythology are peppered with examples of monopoly at play. Guru Dronacharya demanded the thumb of the archer Eklavya, so that his student, Arjun, remained unbeaten. Similarly, India exported a variety of mangoes called the 'Malda mangoes' from West Bengal during British times. Before shipping the fruit, the Malda cultivators would pierce it with a needle to prevent anyone from using the seeds to re-grow that variety of mango.

“Patent laws have originated from the laws of disclosure; not the laws of monopoly.”

This tendency to equate patents with monopoly notwithstanding, the fact is that patent laws have originated from the laws of disclosure and not the laws of monopoly, Bhattacharya explained. In fact, patents were invented to discourage monopoly and trade secrets. In order to understand to whom an idea belongs, it is important to clarify the perspective from which we are examining the issue. “Are we looking at patents from the perspective of monopoly or

disclosure? If IP is monopoly, then the next logical question that needs to be asked is does IP restrict innovation? If IP is disclosure, then does IP open up new avenues for innovation?” Bhattacharya questioned.

The last decade has seen a steep decline in morbidity related death rates. This is primarily due to the introduction of new therapeutics, innovations that have been made possible due to huge investments by the Pharmaceuticals companies. Such investments require incentives. Yet, we are talking of diseases of living human beings. The drugs need to reach them. Therefore innovations need to be accessible. Bhattacharya likened the issue of restrictive IP access to the chicken and egg story. If there are no new drugs, then diseases cannot be treated. But if there are new drugs and they are not accessible to patients, then the disease again cannot be treated. In other words, if a drug is not accessible to patients it is akin to having no drug at all. Yet if there is no drug at all, the question of access for the patients does not even arise.

“My personal opinion is that we cannot say that an idea solely belongs to the person who has generated it. Speaking from a purely commercial perspective, it would make no sense to have an innovation, if there is no market for it. Thus, without the collective right towards an innovation, my individual rights to IP make no sense,” Bhattacharya explained. He concluded that an idea therefore belongs to the larger collective environment. “I, as an individual, have simply been giving a time bound exclusivity of sort so that I get an incentive to innovate more.”

Aarti Bharadwaj, the Vice President of Publicis Media, agreed that IPR and Innovation represented the chicken and egg conundrum. “Does IPR drive Innovation or vice-versa?” she asked.

As a concept, Intellectual Property has existed for more than a hundred years. Efforts to legalize IPR globally

can be traced to the Berne Convention of 1886 that sought to protect literary and artistic works. In August 1952, the Universal Copyright Convention was adopted. The Dramatic Performance Act of 1873 marked the beginning of India's foray into IPR. The main aim behind all these attempts was to protect the knowledge of a person, award this knowledge and enable its translation, reproduction and spread without dilution. Today, the Trade Related Aspects of Intellectual Property Rights (TRIPS) defines intellectual property. It categorizes IP into several compartments like patents, copyrights, trademarks and geographical indications.



Aarti Bharadwaj

“It is fair to say that we do not want to make any new idea or concept exclusive. We do not want to create these monopolies, exclude people from new developments and innovations. Yet, we do want to award the culture of innovations,” she stated explaining the conundrum. Major sectors like pharmacy, telecom, technology or software make huge investments in people, time and money for creating IP. It is important to have an awards system that ensures a return on investment for them.

Bharadwaj and her team looked at the World Intellectual Property Organization's database of 133 countries across 123 years to unpack the IPR-Innovation relationship.

Table 6.1 - Changing World Order in Innovations

	1980	1990	2000	2010	2014
China	0%	1%	4%	20%	35%
United States of America	13%	17%	22%	25%	22%
Japan	23%	37%	30%	17%	12%
Republic of Korea	1%	3%	7%	9%	8%
Germany	6%	4%	5%	3%	2%
India	0%	0%	1%	2%	2%
Russian Federation	0%	0%	2%	2%	2%
Canada	3%	3%	3%	2%	1%
Brazil	1%	1%	1%	1%	1%
Australia	2%	0%	2%	1%	1%

Bharadwaj observed that in examining the relationship between innovation and IPR, the economic literature primarily focused on the north-south divide.

Table 6.2 - The classic North-South divide in Innovation

North	South
Developed economies	Emerging economies
Source of technology and innovation	Acquire technology through transfer or imitations
Demand for better IPRs to keep the competitive advantage and ensure ROI on R&D investments	IPR protection to foster growth

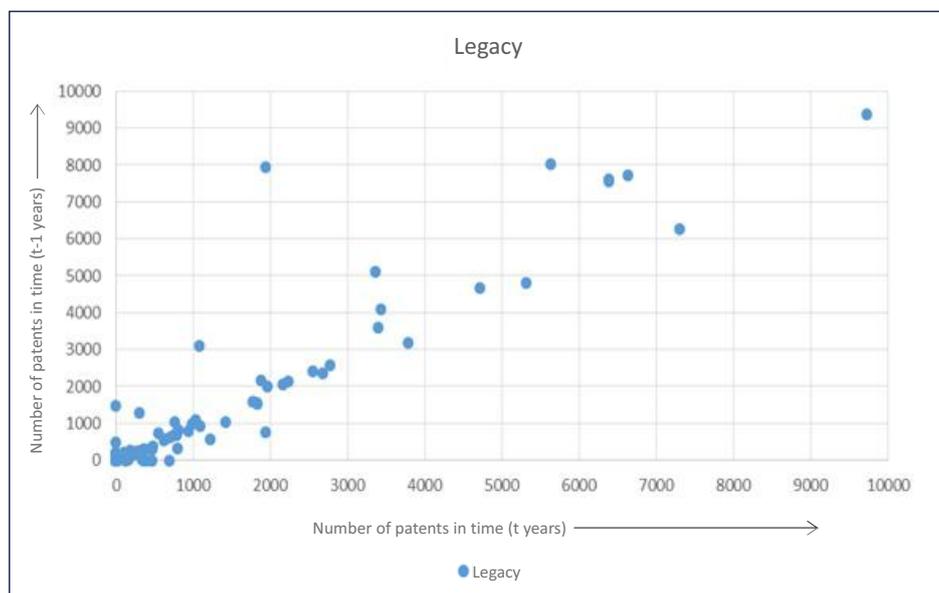
“We fixed the metric for innovations as the number of patents filed because that tells us how many people think they are innovating or coming out with new ideas that are worth being deemed as innovations,” she explained. The data revealed that in the 1980s, most innovations were focused around the western economies or the North. However, over a period of time there has been a shift in focus towards the Asian superpowers like Korea, China and even India. Today, China accounts for 35 per cent of the world's innovation. What was it in the environment that jumpstarted China's innovation drive and enabled it to emerge as the world's biggest innovator in less than 35 years? To answer this question, Bharadwaj and her team began to look at the relationship between patents, GDP Growth and FDI.

“Innovation is not dependent on the economy but on the environment, that is, on how the infrastructure, policy and regulatory environment support innovation.”

“What emerged was that while IP does not depend on growth percentages, it does seem to largely congregate in hubs,” Bharadwaj explained. If we look at the top ten countries in terms of the number of patents filed, they account for more than 75 to 80 per cent patents in any given year. In the United States, the Bay area has emerged as the hub of innovation, while in India most of the innovation takes place in eight centres.

Secondly, the data shows that the co-relation between wealth and innovation increased from 10 per cent to 44 per cent over a period of 26 years. Yet, there is no clear direction of causality. The most important finding was that IP is a legacy. “Innovation is a self-sustaining habit. Once an economy hits the spiral, it just keeps going,” she stated.

Fig. 6.1 Innovation is a self-sustaining habit



Therefore, innovation is not dependent on the economy but on how the infrastructure, policy and regulatory environment support innovation. This represents an opportunity for the developing countries. If they identify a new hub and connect with it, they will innovate faster. “In India, when we started looking at state GDPs and other factors, similar results emerged. We found that India has started hitting the positive spiral of innovation,” Bharadwaj said.

She added that India had come a long way from the 1980s when it accounted for practically zero per cent of the world's innovations. Today, there is some nascent awareness about IPR and this is reflected in the Research and Development (R&D) spends of businesses. Increased IPR protection has translated into higher firm level R&D spending. IP is an important component of the government's 'Make in India' campaign.

The development of software protection under the Copyright Act is a step in the right direction. Yet, a lot remains to be done. Implementation of laws in the country is poor. Often policies do not get translated into practice. Patenting in India remains a hugely complicated process with many incumbent barriers.

Gouri pointed out that for the markets to function, we need very clear property rights. “Unfortunately, the market functionaries who come to the Competition Commission are all competitors; they all want to use the Commission and get an edge,” she explained. Although the patent gives a legal right to a dominant position, the underlying fact is that the Act in itself is so structure-less that lawyers can argue both ways. Therefore, the Competition Commission has to keep looking at competitive constraints. It has been observed that the maximum competitive constraints come from demand side, that is, the consumer. For instance, if the demand is highly elastic, a monopolist will not be able to keep his or her prices high.

“The consumer becomes very important because he gives the counter pressure, he is the competitive constraint.”

Yet till now, there has never been a discussion on who is the consumer. Is it the competitor or the end user of the product? The Act defines a consumer as anyone who buys a product or a service or hires it for a price. The consumer who approaches the Competition Commission is in fact the competitor. The question then is, “Who or what are we protecting, competition or the competitor?” Gouri illustrated this with the Micromax and Ericsson dispute that has been referred to the Commission. Micromax has been

using technologies that Ericsson claims to have patented. Micromax claims that the royalties being charged by Ericsson are excessive and deny the Indian manufacturers access to the market. While Micromax is not the end user of the product, it is hiring the product and is therefore, under the Act, a consumer.

“The latest economic analysis shows that India and Malaysia, not China have gained from innovation in software. Currently, all the cases against innovations come from Europe as Europe has stagnated,” Gouri said. As an emerging player of innovation, should India be protective? If yes, then what kind of protection and policy is needed? In this context the regulatory environment – not just the Competition Commission, but the regulatory environment of telecom and patents as well - becomes important. Gouri concluded by reiterating that to keep the system going, “it is very important to identify the consumer with society and the benefits that come to society.”

The ensuring discussion on IPR threw up some very interesting points. Under the Patents Act, there is a provision for arbitrary patent acquisition. While this has only happened once in India thus far, with the rise in innovation this could become a major issue in the future. There is a distinction between compulsory licensing and government acquisition. Till now only three compulsory licenses have been granted, the latest being in Pharmaceuticals. Government march-in rights are prevalent in most jurisdictions. In the one instance when the Government of India acquired a technology under Article 100 of the Patent Act, it was only because it was hampering the running of the railway system, which is a public good. Apart from this, there have been two cases where patents have been revoked because the government felt it would harm the public to grant an exclusivity in those areas. “The Government of India has thus far been restrained and responsible in dealing with the issue of patents,” explained Bhattacharya.

Gouri raised the issue of copyrights in music and the publishing industry. “In a country where people have no qualms about piracy, this becomes a very important issue,” she noted. Take the case of music. A system of two-part tariff is in place now. One pays an upfront fee for the patent, that is, the right to the music. Subsequently, everytime the music is used or played, there has to be a return for the person who created it. That becomes the operating charge or the second part of the tariff.

Unfortunately, when it comes to the publishing industry, the publisher has much greater powers and can reprint a book any number of times without paying the author any additional royalty, if the terms of the contract so stipulate. “In the current scenario, giving the copyright to a publisher is akin to selling your property,” Bhattacharya explained. As these issues come to light more, policy-makers may design systems

to ensure that both the parties in a transaction have equal bargaining powers. This is essential to encourage creativity. In agribusiness or textile designs, unless there are strong rights, especially on copyrights, misappropriation is a major worry.

The panel concluded with the observation that given the constraints that ordinary people face in approaching the legal system, the IPRC is the best forum to take up such issues.



L-R:

Ms Aarti Bharadwaj, Vice President, Publicis Media

Dr Geeta Gouri, Former Member, Competition Commission of India

Mr Bhaskar Bhattacharya, Partner, Corporate Law Group

Chapter 7 : The Way Forward

The IPRC 2016 was organized by the India Property Rights Alliance to increase awareness about India's position on property rights and to find measures to secure these for all citizens. It once again reiterated the importance of property rights for the establishment of a free market and a truly democratic society. The Conference saw the launch of the Global International Property Rights Index 2016. Lively discussions on various sub-themes of the Index, revealed interesting insights and possible solutions to key issues like minimum state, judicial independence, corruption, capitalization of property and ownership of ideas, that constrain the strengthening of the Right to Property in India. The three interactive sessions with 65 delegates and 14 speakers enabled the India Institute to identify the way forward. **The next edition of the India Property Rights Conference will be held at New Delhi in July 2017.**

In the interim, the following steps will be taken to ensure continuity of the conversations that began at IPRC 2016 and to take these deliberations and debates to a wider audience across the country:

- **Launch of an India Property Rights Index:** India is a diverse country with wide-ranging regional and sub-regional differences. The India Institute will launch the India Property Rights Index to rank states according to the rule of law and the status of property rights. The Index will capture the performance of different states on the various sub-components of property rights and will encapsulate the differential conditions of all the stakeholder groups, including farmers and those engaged in micro, medium and small enterprises. It will be released at the third edition of the IPRC to be held in New Delhi in 2017.
- **Annual Dinner/ Meeting of Alliance Members:** To strengthen the India Property Rights Alliance and devise strategies for creating, transforming and strengthening the discourse on property rights in the public domain, a meeting of alliance members will be organized.
- **Dialogue on the Use of Technology for Transparency and Accountability:** Robust cadastral records- with clearly drawn boundaries and updated ownership details- remain a key challenge for India. As a result, legitimate transactions such as transfer and capitalisation of property often require "dirty" paperwork, while the corrupt and the cronies are able to misappropriate others' property. Internationally, countries like Georgia and Honduras are using the block chain technology to conduct pilots for creating immutable land records. Known more for applications in the world of financial technology, blockchain can be used to create and maintain immutable digital registers and track all alternations that take place within them. Every change within the system leaves an unerasable trail. When applied to records of property titles, it will eliminate the scope for forgery, tampering and destruction of records. Besides securing the rights of lawful owners of property, it will increase the level of trust in the system, improve ease of doing business, and reduce property related litigation. Banks and insurance companies will have to spend less on the verification of records, leading to higher availability of credit, and reduced operational expenditure. Similarly, the GIS can become an important tool for reducing discrepancies in land records. These measures need to be studied and discussed in great detail. IPRA, through collaboration and partnership, will create a space to explore the potential of emerging trends and technologies in securing property rights. It will create awareness, foster dialogue between experts, practitioners and policy-makers, and craft a policy framework to aid in the adoption of such technologies. The findings and recommendations from these dialogues will feed into the next IPRC and pave the way towards more robust physical property rights in India..
- **Call for Papers:** Future editions of the conference will witness a call for papers.

Participants Speak



“Exceedingly good and informative.”
-Mr Virendra Khaneja
Counsel, Khaneja Associates Consultants

“A lot of knowledge received. It was excellent.”
-Mr C S Chhabra
AAO, Ministry of Agriculture

“All the sessions were up-to-date and relevant.”
-Dr Lekshmi R Nair
Centre Manager, CPPR, Kochi

**“Well organized and very relevant.
Good selective audience.”**
-Ms Rafat Siddique
Director, Yes Bank, New Delhi



**“It was a successful event. Congratulations!
Rule of law for a civilized society,
a good idea, especially for India.”**
-Mr S M Abid Shah
Ex-Principal & Journalist

Program Schedule

Wednesday, 10 August 2016

- 09.30 AM** Registration
- 10.00 AM** Welcome by Mr Baladevan Rangaraju, Founder-Director, India Institute and Co-founder, India Property Rights Alliance
- 10.30 AM** Introduction to the International Property Rights Index (IPRI)
Mr Lorenzo Montanari, Executive Director of Property Rights Alliance

GLOBAL LAUNCH OF THE 2016 INTERNATIONAL PROPERTY RIGHTS INDEX

- 10.30 AM** **Highlights of the 2016 Ranking:** “Where does India stand in the IPRI and the spill-over effect on other rankings? by Dr Sary Levy- Carciente (author of the International Property Rights Index 2016), Professor, National Academy of Economic Sciences and Central University of Venezuela
- 11.15 AM** **Keynote Address:** Mrs Meenakshi Lekhi, Member of Parliament in the Lok Sabha from New Delhi constituency, National spokesperson of BJP, Supreme Court of India lawyer

- 12.00 PM** **PANEL 1: RULE OF LAW**
HOW TO CREATE INSTITUTIONS THAT WORK FOR EVERYONE?

Panelists & sub- themes

- Dr Amit Kapoor, President & CEO, India Council on Competitiveness
Competition is the answer to corruption (Chair)
- Ms Seetha, Author and Senior Journalist, Writer at Swarajya and Firstpost
How can we achieve minimum government?
- Dr Arghya Sengupta, Founder & Research Director, Vidhi Centre for Legal Policy
Reforms for judicial independence

- 01.00 PM** Lunch and Networking

01.45 PM

**PANEL 2: PROPERTY RIGHTS
IS RESTORATION OF PROPERTY RIGHTS AS A FUNDAMENTAL RIGHT
THE NEED OF THE HOUR?**

Panelists & sub- themes:

- Mr Vikramjit Banerjee, Counsel, Supreme Court of India
Why should Property Rights be Fundamental Rights?
- Mr Anurag Batra, Chairman and Editor-in-chief, BW Businessworld
How can we curb "land use" abuse? (Chair)
- Mr Barun Mitra, Founder-Director, Liberty Institute
Land Rights: A step towards property rights
- Mr Anupam Srivastava, Founder member and Partner, The Chamber of Law
Reforms for capitalising property

03.00 PM

**PANEL 3: INTELLECTUAL PROPERTY RIGHTS
WHOSE IDEA IS IT?**

Panelists & sub- themes:

- Mr Bhaskar Bhattacharya, Partner, Corporate Law Group
Whose idea is it?
- Dr Geeta Gouri, Former Member, Competition Commission of India
Whose business is consumer interest? (Chair)
- Ms Aarti Bharadwaj, Vice President, Publicis Media
IPR and Innovation

04.00 PM

Vote of Thanks by Mr Manoj Mathew,
Focal Point, India Property Rights Alliance

04.15 PM

Tea

Speaker Profile



Vikramjit Banerjee

Mr Banerjee is a Counsel at the Supreme Court of India. He is a law graduate from the National Law School of India University and has completed his LLM in Human Rights and Civil Liberties from University of Leicester. His research interests are in the areas of Constitutional Law, Law and Culture, Law and Religion, and Law and Development. He has been associated with organisations such as, People United for Better Living in Society (PUBLIC), Center for Civil Society (CCS), iJustice, Bharatiya Janata Party (BJP), Swadeshi Jagran Manch (SJM) and others.



Anurag Batra

Mr Batra is a serial entrepreneur, media mogul, journalist and an eternal optimist rolled into one. He holds B. Tech in Computer Sciences which he acquired before joining Management Development Institute (MDI), Gurgaon, one of India's leading Business Schools. He is a first generation entrepreneur and currently the Chairman and Editor-In-Chief of BW Businessworld, a 35 year strong business media brand as well as one of the most respected business publications in the country. Since taking over BW Businessworld about 2 years and 4 months back, Mr Batra has expanded the brand into digital at www.businessworld.in which is approaching ten million in monthly traffic, events and BW communities.



Aarti Bharadwaj

Ms Bharadwaj currently leads the Global Analytics delivery hub for Publicis Media based out of India. She has worked on marketing and media analytics for the past 9 years across brands like GSK, Kelloggs, HSBC, Axis Bank, Coca Cola and Samsung. Prior to that, she has used quantitative techniques in research in the areas of Development Economics and Energy Economics. Her published work includes papers on using quantitative techniques to quantify digital and social advertising effectiveness in media, Convergence attribution across Paid, Owned and Earned Media, demand forecasting for electricity, intellectual property rights and their impact on the economy. She has a degree in Mathematics, and has specialized in Quantitative Economics from Indian Statistical Institute, Delhi.



Bhaskar Bhattacharya

Mr Bhattacharya has extensive knowledge and experience in drug laws and alcoholic beverage regulations and the regulatory environment over the years. During his more than a decade of association with CLG, he has advised and successfully completed a number of enviable assignments for various Union Ministries, Trade & Corporate Bodies, international NGOs, etc. on a variety of issues ranging from India's WTO commitments, Public Policy Advocacy, Regulatory and other compliance issues and so on. In the pharmaceutical sector, Bhaskar advises clients predominantly on Pharmaceutical Policy issues, especially issues relating to IP and Government Price Controls.



Barun Mitra

Mr Mitra is the Founder and Director of the Liberty Institute, a non-profit, independent public policy research and advocacy organisation, based in New Delhi, India. Liberty Institute is dedicated to enhancing individual freedom in economic and political domains. Among the recognition the Institute has received was the Templeton Award for social entrepreneurship in 2003. Barun Mitra also received the 2005 Julian L. Simon Award for his contribution in environmental policy debates from the Competitive Enterprise Institute.



Lorenzo Montanari

Mr Montanari is the Executive Director of the Property Rights Alliance (PRA), an advocacy group/think tank based in Washington, D.C., USA, committed to the protection of physical, legal and intellectual property rights around the world. On the international stage, PRA works closely with famed property rights champion and President of the Institute for Liberty and Democracy (ILD) in Lima, Peru, Hernando de Soto and other 81 think tanks. At the Property Rights Alliance, he is in charge of publishing the International Property Rights Index, an international comparative study focus on intellectual and physical property rights. Previously, he worked for a public affairs firm in Washington, DC and as a political analyst and electoral observer in Latin America. Lorenzo holds a BA in Political Science and in International Relations from the University of Bologna and MA in Political Management from the George Washington University. He collaborates with The Daily Caller and Forbes.



Baladevan Rangaraju

Mr Rangaraju is a social entrepreneur and education policy expert with vast experience in teaching, research, advocacy and management. He is the Founder and Director of the India Institute (www.indial.org), a non-profit think tank, and a Co-founder of the India Property Rights Alliance.

He speaks, writes and comments on topics related to education choice, rule of law and property rights. His study, "The Private School Revolution in Bihar: Findings from a survey in Patna Urban" (with James Tooley & Pauline Dixon), is India's first landscape study of the private school ecosystem in a city. It won the Templeton Freedom Award in 2012.

His recent projects include launching the mobile app itorney to secure legal rights in India for which he won the 2014 Think Tank Shark Tank Grand Prize, and Niti Express, a stories based radio program for legal literacy.



Seetha

Ms Seetha is a senior journalist with over 30 years of experience in reputed newspapers and business magazines such as The Telegraph, DNA, The Economic Times and Times of India. She is the author of The Backroom Brigade: How a few Intrepid entrepreneurs brought the world to India; and co-author, along with R C Bhargava, of The Maruti Story: How a Public Sector Company put India on Wheels. She currently writes for Swaraja, India's first liberal centre-right media venture, and Firstpost.



Sary Levy-Carciente

Dr Carciente is a Venezuelan economist with expertise in the field of financial macroeconomics. She holds a PhD in Development Studies, a Master in International Economics and a Professional Specialization in Administrative Sciences. She is Board Member of the National Academy of Economic Sciences in Venezuela, a full professor at Universidad Central de Venezuela, and during her academic career has held different positions. She wrote her Ph.D. thesis on financial instability, developing a mathematical model showing how economic cycles allow irregular dynamics that eventually can lead to chaos. In her more recent researches, she uses network theory to depict the topological structure of financial systems and to model contagion effects under systemic stress.



Geeta Gouri

Dr Gouri, Former Member of the Competition Commission of India, is an economist with vast and diversified experience in academic and administration. A doctorate in economics from Jawaharlal Nehru University, her career initially was in academics starting at Lady Shri Ram College for Women, (Delhi University), later at the Institute of Public Enterprises, and thereafter at Industrial Development Bank of India (IDBI) before shifting to Andhra Pradesh Electricity Regulatory Commission as Director (Tariffs). Dr Gouri has been a visiting scholar at London Business School and a resource person in seminars in India and abroad, in the areas of power sector reforms and privatization.



Amit Kapoor

Dr Kapoor is the President and CEO of India Council on Competitiveness; Honorary Chairman at Institute for Competitiveness, India and Editor-in-Chief of Thinkers (Magazine). He is the chair for the Social Progress Imperative and Shared Value Initiative in India and sits on the board of Competitiveness initiatives in Mexico, Netherlands, Italy & France; Member of the Board of Strategic Management Forum in addition to being advisor to Thinkers50 and participant with the Global Solutions Network.

He is an affiliate faculty for the Microeconomics of Competitiveness & Value Based Health Care Delivery courses of Institute of Strategy and Competitiveness, Harvard Business School and an instructor with Harvard Business Publishing in the area of Strategy, Competitiveness and Business Models. He has been inducted into the Competitiveness Hall of Fame which is administered by Institute for Strategy and Competitiveness at Harvard Business School. Amit is a Ph.D. in Industrial Economics and Business Strategy and has received the Ruth Greene Memorial Award winner for writing the best case of the year, by North American Case Research Association (NACRA).



Meenakshi Lekhi ●

Mrs Lekhi is a lawyer of Supreme Court & socio-political activist. She has worked on several important cases like banning of lotteries in Delhi, Shantimukund rape case, and special prosecutor for Jyoti Dhawan's case. She has been involved with several NGOs and Commissions for Women Empowerment. She has also been member of the drafting committee of "Women Reservation Bill" & "Problem of Sexual Harassment at Workplace". She has been taking various lectures at NHRC and gender training programmes with various Ministries. She is also regular on television debates on various national channels on several issues of national importance.



Arghya Sengupta ●

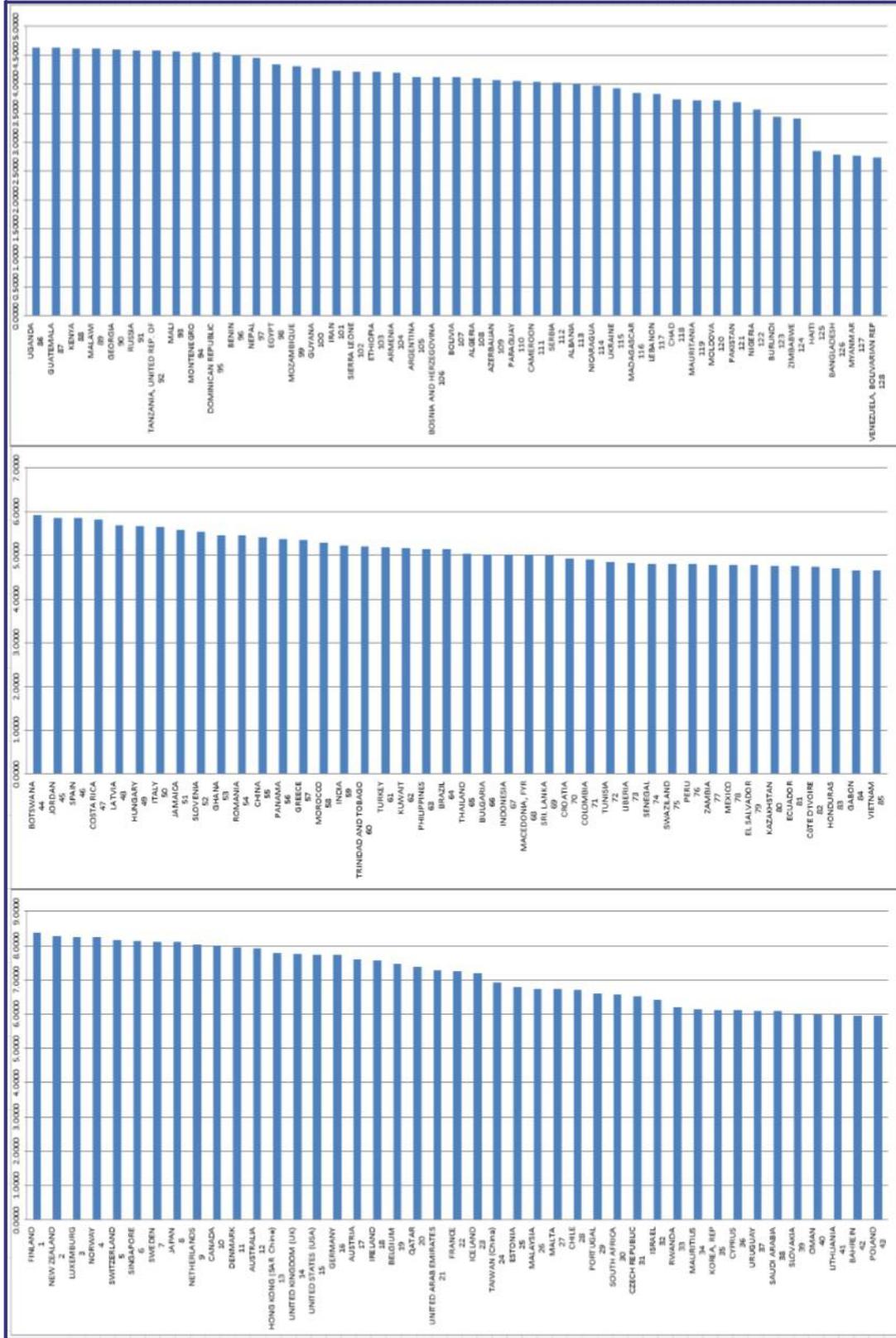
Dr Sengupta is the Founder and Research Director at Vidhi. He is an alumnus of National Law School of India University Bangalore and the University of Oxford where he was a Rhodes Scholar. While, at Oxford, he completed his D.Phil. on Independence and Accountability of the Indian Higher Judiciary and was a Lecturer in Administrative Law. His areas of specialisation are constitutional and administrative law. He has a number of academic publications on the Supreme Court, Parliament, fundamental rights and federalism and writes regularly for The Hindu, The Times of India and the Economic and Political Weekly.



Anupam Srivastava ●

Mr Srivastava has the experience of more than 23 glorious years in the practice of civil and corporate laws, which are being witnessed by a plethora of judgments, serving as judicial precedents across the High Courts of the Country. He has co-authored a book on a new enactment which has high impact for the Industry- Guide to Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. This book will serve as a guide to every one interested in the acquisition of the land. The book is published by CCH- A Wolters Kluwer Business in 2014. Anupam's expertise transcends the varied areas of civil and corporate practice, which includes the Real Estate Laws, Commercial Transactions, Company Matters and the Personal Laws. His book "A Hand Book on Real Estate Investment- A Legal Perspective", written by him is the only book available in the market, which provides help to the laymen in his day to day life, for issues, being faced by him, related to real estate laws.

2016 IPR Ranking



	IPRI	LP	PPR	IPR
Score (Mean)	5.4458	5.1302	5.8745	5.3327

2016 IPRI - Ranking by Quintiles

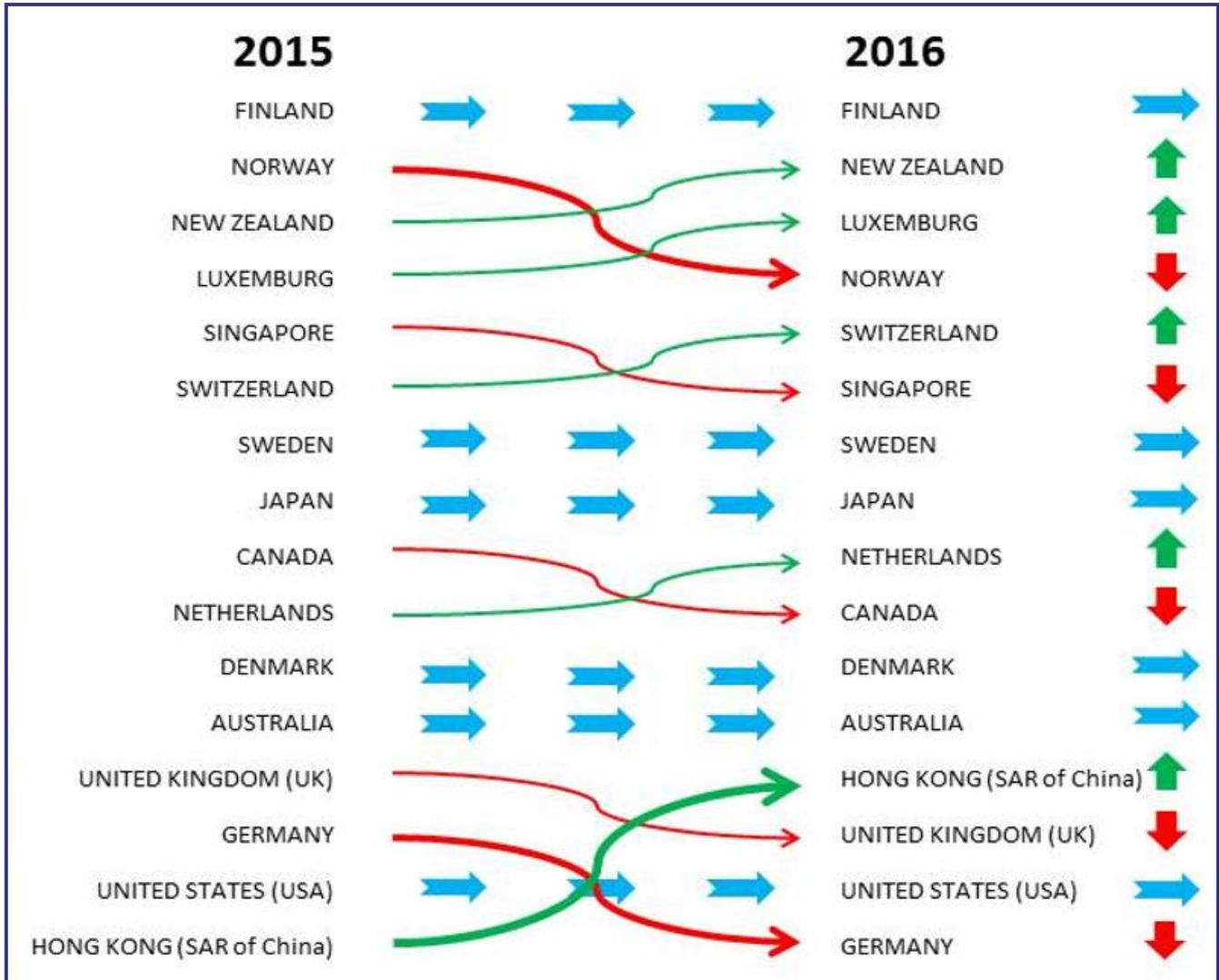
Top 20 Percent	2nd Quintile	3rd Quintile	4th Quintile	Bottom 20 Percent
FINLAND	IRELAND	SLOVAKIA	BRAZIL	MALI
NEW ZEALAND	BELGIUM	OMAN	THAILAND	MONTENEGRO
LUXEMBURG	QATAR	LITHUANIA	BULGARIA	DOMINICAN REPUBLIC
NORWAY	UNITED ARAB EMIRATES	BAHRAIN	INDONESIA	BENIN
SWITZERLAND	FRANCE	POLAND	MACEDONIA, FYR	NEPAL
SINGAPORE	ICELAND	BOTSWANA	SRI. LANKA	EGYPT
SWEDEN	TAIWAN (China)	JORDAN	CROATIA	MOZAMBIQUE
JAPAN	ESTONIA	SPAIN	COLOMBIA	GUYANA
NETHERLANDS	MALAYSIA	COSTA RICA	TUNISIA	IRAN
CANADA	MALTA	LATVIA	LIBERIA	SIERRA LEONE
DENMARK	CHILE	HUNGARY	SENEGAL	ETHIOPIA
AUSTRALIA	PORTUGAL	ITALY	SWAZILAND	ARMENIA
HONG KONG (SAR of China)	SOUTH AFRICA	JAMAICA	PERU	ARGENTINA
UNITED KINGDOM (UK)	CZECH REPUBLIC	SLOVENIA	ZAMBIA	BOSNIA AND HERZEGOVINA
UNITED STATES (USA)	ISRAEL	GHANA	MEXICO	BOLIVIA
GERMANY	RWANDA	ROMANIA	EL SALVADOR	ALGERIA
AUSTRIA	MAURITIUS	CHINA	KAZAKHSTAN	AZERBAIJAN
	KOREA, REP	PANAMA	ECUADOR	PARAGUAY
	CYPRUS	GREECE	CÔTE D'IVOIRE	CAMEROON
	URUGUAY	MOROCCO	HONDURAS	SERBIA
	SAUDI ARABIA	INDIA	GABON	ALBANIA
		TRINIDAD AND TOBAGO	VIETNAM	NICARAGUA
		TURKEY	UGANDA	UKRAINE
		KUWAIT	GUATEMALA	MADAGASCAR
		PHILIPPINES	KENYA	LEBANON
			MALAWI	CHAD
			GEORGIA	MAURITANIA
			RUSSIA	MOLDOVA
			TANZANIA, UNITED REPUBLIC OF	PAKISTAN
				NIGERIA
				BURUNDI
				ZIMBABWE
				HAITI
				BANGLADESH
				MYANMAR
				VENEZUELA, BOLIVARIAN REPUBLIC OF

Strongest

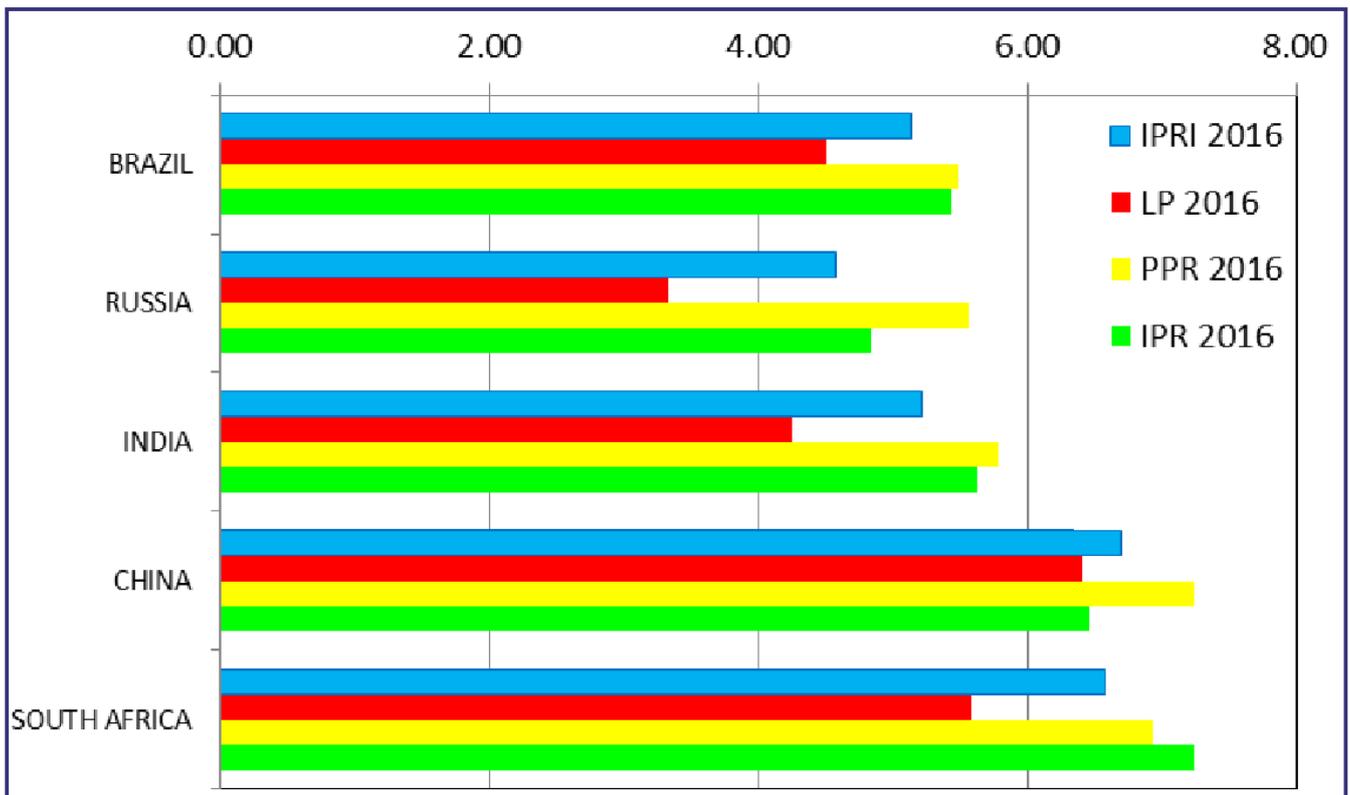


Weakest

IPRI 2016 vs IPRI 2015 - Top Countries Ranking Change



IPRI and Components - India and BRICS Countries



India vs Other Countries

COUNTRY	IPRI	LP	LP-ji	LP-ri	LP-ps	LP-cc	PPR	PPR-pr	PPR-rp	PPR-eal	IPR	IPR-IPP	IPR-pp	IPR-cp
INDIA	5.22	4.25	5.03	4.82	3.08	4.07	5.78	4.61	8.44	4.30	5.62	5.36	7.52	4.00
BANGLADESH	2.78	3.07	2.29	3.56	3.25	3.18	2.87	4.10	2.10	2.41	2.39	2.73	3.15	1.30
BRAZIL	5.14	4.50	3.97	4.84	4.97	4.24	5.49	4.86	8.84	2.78	5.44	4.46	6.85	5.00
CHINA	5.41	4.39	4.81	4.33	4.07	4.34	6.51	5.75	9.36	4.43	5.32	4.94	8.42	2.60
IRAN	4.24	3.58	4.35	2.93	3.18	3.86	5.15	4.91	9.56	0.97	3.99	3.25	4.73	
NEPAL	4.46	3.92	4.52	3.65	3.59	3.91	5.50	4.55	9.84	2.11	3.97	3.56	4.37	
PAKISTAN	3.68	2.80	4.27	3.44	0.13	3.37	5.04	4.12	8.36	2.63	3.21	3.68	4.47	1.50
RUSSIA	4.58	3.33	3.17	3.58	3.32	3.26	5.57	3.89	9.52	3.28	4.84	3.37	7.35	3.80
SOUTH AFRICA	6.59	5.59	7.41	5.32	4.85	4.77	6.93	7.45	9.21	4.14	7.23	7.35	7.75	6.60
SRI LANKA	5.00	4.73	5.42	4.70	4.50	4.32	5.64	5.53	8.29	3.11	4.61	5.68	6.45	1.70

India

PROPERTY RIGHTS ALLIANCE

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