Patenting Computer Related Inventions – Indian Law

Computer Related inventions (CRIs) occupy a major proportion of
applications examined by Patent Offices of various jurisdictions,
including India.

For instance, as per data hereunder, patents granted in India in the Computer and Electronics field have shown a strong upward trend, and in 2017-18, stood at third position.

APPENDIX -F

NUMBER OF PATENTS GRANTED FROM 2013-14 TO 2017-2018
UNDER MAJOR FIELDS OF INVENTIONS

Year	Chemical	Pharmaceuticals	Food	Electrical	Mechanical	Computer & Electronics	Biotechnology	General Engineering	Other fields (See App- F-1)	Total
2013-2014	1111	256	51	237	645	690	220	112	904	4226
2014-2015	1533	389	48	376	1047	835	262	145	1343	5978
2015-2016	1679	370	32	362	1414	810	181	142	1336	6326
2016-2017	2660	551	71	579	1939	1049	327	228	2443	9847
2017-2018	3318	733	106	818	2514	1028	505	297	3726	13045

(***Source :*** Annual Report, 2017-18 of the Office of Controller General of Patents, Designs, Trademarks and Geographical Indications)

At the same time, CRIs present unique challenges with respect to patenting. Not only in India but worldwide.

A
contributory factor has been that the underlying technologies grow very
fast with boundaries that are more and more blurred by the day.
Information Technology (IT) now is more comprehensively termed as
Information and Communications Technology (ICT) and incorporates aspects
such as IoT (Internet of Things), Blockchain, Machine Learning (ML),
Artificial Intelligence (AI) etc. Many inventors- including in the
Start-up space in India are trying to innovate using one or more of
these aspects as the building blocks of their innovations and filing
patent applications for same, hoping to get one/more patents and
capitalize on advantages that the patents can grant them.

To take into account developments in this domain in India and other jurisdictions as well as various concerns raised by different stakeholders at different times, the Indian Patent Office (IPO) has been issuing a series of guidelines on how a CRI (computer related invention) may be evaluated while considering grant of patent .

The first such “draft” guidelines were issued by IPO in June 2013. The second in August 2015, which were revised in 2016. Finally, on June 2017 the guidelines were again revised. The June 2017 guidelines are available at :

http://www.ipindia.nic.in/writereaddata/Portal/Images/pdf/Revised__Guidelines_for_Examination_of_Computer-related_Inventions_CRI__.pdf

And it is well worth anyone interested in CRIs and their patentabilty with respect to Indian law to have a look at above. These were applicable “with immediate effect” so presently CRI applications are examined per them by the Indian Patent Office.

In this context, it is interesting to look at a CRI application that was recently denied by the Indian Patent

Office.

This pertains to a patent application titled ‘Analyzing a query log for use in managing category-specific electronic content’ for which the Applicant is the social media behemoth – Facebook (FB). You can read more about this event at many places, including, for example, at:

https://www.financialexpress.com/industry/technology/india-refuses-facebook-patent-regarding-caregory-wise-electronic-content/1629534/

While this may not be the first refusal, either for FB or for many companies and individuals involved in computer related inventions, and of course will not be the last, it was of particular interest to me due primarily the entity involved.

An examination of the prosecution history of this patent application shows that while ‘substantially similar’ applications of the applicant had been granted a patent in US, Australia, China and Japan, the Indian application was refused in end Jun 2019 (filed in 2007). In July 2008, claims of the Indian application

were amended. The claims of any patent application serve as the
'boundary' of the invention and are considered for examination by the
Patent Office before grant of patent.

Essentially, the rejection
by the Indian Patent Office states that 'claims define algorithmic
operations and thus are not allowable under sec. 3(k) of the Patents
Act. They do not disclose any constructional or structural features. No
novel and/or inventive hardware features are defined in the claims.
Amendments effected in July 2008 are not allowable u/s 59(1) of the
Patents Act. In view of these, the invention as claimed falls within the
scope of sec. 3(k) of the Patents Act-1970 (as amended) and is
therefore not allowable. The application is, as such, refused a patent
u/s 15 of The Patents Act -1970 (as amended).'

Hereunder what the various section cited above actually state.

Section 3(k) states :

The following is not an invention within the meaning of this Act :

(k) a mathematical or business method or a computer programme

per se or algorithms;

For more and to discuss please see:

https://lawforall.in/ipforum/Thread-Section-3-What-are-not-inventions

Section 59(1) states :

(1)
No amendment of an application for a patent or a complete specification
or any document relating thereto shall be made except by way of
disclaimer, correction or explanation, and no amendment thereof shall be
allowed, except for the purpose of incorporation of actual fact, and no
amendment of a complete specification shall be allowed, the effect of
which would be that the specification as amended would claim or describe
matter not in substance disclosed or shown in the specification before
the amendment, or that any claim of the specification as amended would
not fall wholly within the scope of a claim of the specification before
the amendment.

For more and to discuss please see:

https://lawforall.in/ipforum/Thread-Section-59-Supplementary-provisions-as-to-amendment-of-application-or-specification

and Section 15 states :

Where
the Controller is satisfied that the application or any specification
or any other document filed in pursuance thereof does not comply with
the requirements of this Act or of any rules made thereunder, the
Controller may refuse the application or may require the application,
specification or the other documents, as the case may be, to be amended
to his satisfaction before he proceeds with the application and refuse
the application on failure to do so.

For more and to discuss please see:

https://lawforall.in/ipforum/Thread-Section-15-Power-of-Controller-to-refuse-or-require-amended-applications-etc-in-certain-case

While
above is only a summary of a recent event, I hope it is of interest to
inventors in CRI space in India to get a little more understanding of
patentability of CRIs. That is not to say that CRIs are not

being
granted patents in India (see data cited above) but that the invention
and consequent drafting needs to carefully factor in and elaborate upon
aspects that will make it patentable in accordance with Indian laws.

All comments, experiences, additional inputs welcome ! Feel free to share and pass on to those you feel could benefit, thanks !

This post was also put at :

https://www.linkedin.com/pulse/patenting-computer-related-inventions-india-hardeep-sodhi

PS : For those interested in details:

Application US 11/171,506

Indian Patent Application No. : 228/DELNP/2007

Claiming priority to US Provisional Application 60/584,137 filed July 1, 2004

PCT National Phase Application PCT/US05/23616

US Application : US 11/171,506

US granted patent :

https://patents.google.com/patent/US7379949B2/

PPS : Want assistance on any Intellectual Property matter such as patents, trademark, copyright, and further aspects such as contracts, commercialization, licensing, angel funding etc. etc. ? Initiate contact with me via the Contact Us Page, thank you !

The Missing Comma

The Missing Comma- and what it can cost you !

Sometime ago I wrote about the importance of precise and correct drafting, including correct usage of words.

You can find that article at :

https://lawforall.in/legal-drafting/

Or via LinkedIn at:

https://www.linkedin.com/pulse/legal-drafting-hardeep-sodhi/

Found an example of what imprecise drafting can lead to.

Here , a missing comma cost a company about US Dollars Five Million !!

The case is an example of an ‘Oxford Comma’. So , firstly what is an ‘Oxford Comma’ ? It is a comma that precedes “and” or “or” in a list of three or more words in a sentence. For instance, here is a sentence that uses one:
I have some oranges, bananas, and mangoes.

And a sentence not using one may be:
He went to the movie with his friends, Rajesh and Krishnan.

The latter may be interpreted as the friends were named Rajesh and Krishnan. Or, that there were three entities : friends, Rajesh , and Krishnan.

Mostly , this is harmless. Except when you are talking contracts – and lawyers

A suit was filed in 2014 by five truck drivers employed by Okahurst Dairy in Maine USA. They claimed unpaid overtime pay. The company, standing behind Maine's labor laws , claimed drivers were not eligible for overtime pay.
Maine's labor laws allow that anyone working for more than 40 hours gets overtime at the rate of 1.5 times normal wages. Except for certain exemptions.
Summarily put, relevant portion of the law states that the following activities do NOT qualify for overtime pay :
The canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of:

1. *Agricultural produce;*
2. *Meat and fish product; and*
3. *Perishable foods*

The drivers distribute perishable food, but don't pack it. The Company argued that there are two distinct activities that are exempt from overtime pay : packing for shipment, and distribution. So, distribution is an exempt activity not qualifying for overtime.

However, the drivers argued that since "packing for shipment" and "distribution" were not separated by a comma, that made them a single activity of packing either for shipment or for distribution.And since drivers distribute, they are outside this exemption and so qualify for overtime.

A 2017 ruling agreed with the drivers, sending the case back to the federal District Court and opening the door to the settlement the company filed in Feb. 2018. Under the terms of the agreement, the five "named" plaintiffs (those who led the suit) will each receive $50,000. Any of the approximately

127 drivers involved who file claims will receive a minimum of $100 or the amount of overtime pay owed from between May 2008 and August 2012.

So, words matter. And so does even punctuation !

For clarity, the law has since been edited and now reads :

F. The canning; processing; preserving; freezing; drying; marketing; storing; packing for shipment; or distributing of: (1) Agricultural produce; (2) Meat and fish products; and (3) Perishable foods.

And you can find the actual ruling at :

https://cases.justia.com/federal/appellate-courts/ca1/16-1901/16-1901-2017-03-13.pdf?ts=1489437006

Thoughts ? More examples ? Feel free to comment in !

PS : BTW, if you have read this far, correct word in image above
should be 'losing' not 'loosing' ! Let me know if you caught on early by
commenting hereunder :-))

Confidentiality and Patentability

Confidentiality and Patentability

Since the Indian Patent Forum may be visited by inventors wanting to patent their inventions, I am setting out there as well as here in non-legal terms, how important confidentiality is to getting a patent for your invention. While for patent practitioners most of what is set out here would be elementary, this article is directed towards people who are not well-versed with patenting.
To start, it is important to understand **what exactly is a Patent**.

A patent is a 'negative' right granted to you (the inventor or someone the inventor has 'assigned' the invention to) to enable you **PREVENT** others from using your invention without your consent, during the term of the patent (yes, patents DO have a tenure!!). It is granted for inventions, not for somethings that already exist. Those that already exist are termed as 'prior art'. Prior art does not mean only a working product, or a granted patent but can also include, for example , an article on a website ! A whole field in patenting is devoted to finding this 'prior art' for a claimed invention, for various purposes.

So, as is often said, a patent is a negative right , not a positive one as it does not permit one to do something but instead prevents one from doing somethings that may lead to, what is technically known as 'infringement' of a patent.

This right is granted by Patent Office of a country in return for a ' full disclosure'. You disclose to the patent office what your invention is and how it works. In return, if granted a patent, you have some time to gain advantage from that protection. After which the patent is open to the public to make free use of.

However, the important aspect here is that such 'full disclosure' has to be to the Patent Office per their laws and rules. Do it to anyone else, and you risk not getting a patent on your invention to begin with !

That is, your disclosure of your invention will be considered as 'prior art' and held against you only!! Your prior art 'anticipates' your invention and you may be refused a patent !
For instance, all these may be considered as 'prior art' :

- Putting a description of your invention on a Website
- Sharing it with a friend, who may, with all good intentions, disclose it to the press !
- Sharing with an 'expert' to get his suggestions on how to improve upon it.
- Discussing it in a social gathering.

This is also the reason why you would sign a ' Non-Disclosure Agreement' even with your Patent Attorney as a first step. There are other precautions/efforts a patent practitioner may suggest to you to help you achieve your goals, depending upon what they are. This includes, for instance, filing a 'provisional' application.

As is mostly the case in law, there are exceptions .

As for Indian Patent Act, these exceptions are mainly covered in various sections of Chapter VI : Anticipation (Section 29 to Section 34). Read about them here:
* S. 29 — Anticipation by previous publication
* S. 30 — Anticipation by previous communication to Government
* S. 31 — Anticipation by public display etc.
* S. 32 — Anticipation by public working
* S. 33 — Anticipation by use and publication after provisional specification
* S. 34 — No anticipation if circumstances only as described in sections 29, 30, 31 and 32
Do read in, and continue the discussions at / via :

https://lawforall.in/ipforum/Thread-Confidentiality-and-Patentability

Long, Long, Looooong Road to Justice, Indian Ishtyle !


Justice Delayed is Justice Denied !

Justice Delayed is Justice Denied – so said Gladstone, and oft repeated by all the Wise (w0)men !

But there is Law,there are Lawyers and then there is the Complainant who hardly has any knowledge of law,except that he has been wronged and a law exists, hopefully to help him.

Here is what happens. An example of a personal experience at a Consumer Court , repeated innumerable times in Indian Courts, I am sure. See carefully the attempts made. So that you can be forewarned what can / may happen in Courts.

Who is to blame ?

Those who are guilty. Since they will take recourse to all measures to delay. And for each delay, they rejoice since that is their measure of success, howsoever temporary.

Some say the judiciary also pitches in. Thankfully, that has not (generally) been my experience till date, at least from April 2015 when I started appearing in person in Court. Opposite Parties have been consistently fined for

adjournments (except last time, wonder why ?) . But they still attempt. And now they attempt to mislead and obfuscate during arguments, as they have been doing all this time.

I pray to God they don't succeed and will do my utmost to see to it.

What is YOUR view ? And what you think should be done ? What can YOU do about it ? ? Comment in !

Or would you rather prefer to wait for when, God forbid, you are on the receiving end of this " System " ?

S.N.	Date	Details
1	11-Mar-08	Complaint taken on record. Notice issued to Opposite Parties (OP).No reply from OP.
2	28-Apr-08	OP's Learned Counsel (LC) seeks 6 weeks time to reply with Records. He says earlier Complaint had no accompaniments and only now he has got them but Page 52 is still missing. LC for CN says he shall supply this page before day's end.
3	16-Jul-08	Ld. counsel appearing on behalf of opposite parties **seeks further six weeks' time for filing its written version. For this adjournment, opposite parties shall pay Rs.2000/- to the complainant as costs**. Stand over for directions on 12.9.08
4	17-Oct-08	LC for OP seeks 1 week time to pay costs of Rs. 5,000 to Complainants (CN). OP's reply filed across the table-may be taken on record. He has also given copy of same to CN's Learned Counsel. LC for CN seeks 4 weeks time to file rejoinder. Granted.
5	28-Jan-09	**Learned counsel for the opposite parties states that he will pay the cost of Rs.5,000/- to the complainant today itself**. Learned counsel for the complainant is directed to file the rejoinder, if any, within four weeks. List the case on 7-7-2009 for further directions.
6	7-Jul-09	None appears on CN's behalf. **Per record, CN has already filed rejoinder. OP says not received**. Registry directed to supply him a copy. CN to file Evidence Affidavit (EA) within 4 weeks. Copy of proceedings sent to CN.
7	10-Sep-09	CN says will file EA during the day and will send a copy to OP's counsel. OP to file Evidence affidavit 3 weeks thereafter.
8	4-Nov-09	LC for CN directed to supply a copy of it's Evidence affidavit within one week to OP.
9	18-Dec-09	LC for CN directed to supply a copy of its EA to OP.
10	10-Feb-10	LC for CN **directed to supply again a copy of its EA** to OP (**Comments** : Although there is clear proof on record that EA- Evidence Affidavit -has already been supplied by Complainants to Opposite Parties)
11	9-Apr-10	No ground for early hearing is made out. Misc. application is dismissed.
10		Listed for Directions on **9th Oct. 2014**

11	9-Oct-14	Learned counsel for the parties present. Arguments heard.The opposite party has already filed the evidence and before filing of the evidence, learned counsel for the complainant has moved an application that its evidence should be closed. This argument is meritless since the evidence has been filed. Therefore, this argument is left out of consideration.**Learned counsel for the complainant is not ready with the arguments**. Therefore, the matter is adjourned to 6.4.2015 for final arguments. **Comments** : Since matter was listed only for Directions, arguments were not supposed to take place that day anyways !! CN's LC has no idea why the order says what it says. For various reasons (NOT the above one since that is a minor matter) , CNs decide to start appearing in person next date onwards.
12	6-Apr-15	Counsel for the parties present. As we are busy in hearing a matter pertaining to the year 2001, **the matter is adjourned to 28.01.2016, for final arguments.** **Comments :** CN appeared in person. Yet the order says what it says,
13	1-May-15	**Order** : An application has been filed by the petitioner. Notice be sent to the opposite parties returnable on 28.1.2016, the date already fixed. **Comments** : **This is an application under S. 340 of Criminal Procedure Code (CrPC). This is on a serious matter.** Evidence clear as water to the plain eye. Delivered PERSONALLY to OP's Counsel Office by complainant. For those interested, you can read about S. 340 CrPC here . S. 340 CrPC in turn refers to S. 195 CrPC, which can be found here. And, if you want to pursue further, offense made out is under, among various sections, S. 193 of India Penal Code. Read about S. 193 of Indian Penal Code here. While all above provisions (and many more !!) exist, they are generally not invoked since very difficult to prove. In this case however, by sheer divine will, proof is evident ! This will put the OPs in hot water indeed.
14	28-Jan-16	Complainant is present in person. Counsel for the Opposite Parties is present. **Reply (to S. 340 application) not filed. Last opportunity is granted for 10.03.2016.** **Comments** : OP's Counsel says did not receive the S. 340 application !! Complainant showed the receipt to the Judge and explained he has personally delivered. When OP's Counsel said the person delivered to " has left the organisation" and they have no idea what happened to the application !!
15	10-Mar-16	As we are busy in hearing the arguments in another case, no time would be left to hear this matter. Therefore, **the matter is adjourned to 02.06.2016 for final hearing.**
16	2-Jun-16	**Order** : Complainant No. 3 is present in person. **Counsel for the Opposite Parties has moved an application, seeking adjournment on the ground that due to personal reasons he has gone out of station, hence cannot appear.** The complainant submits that he has come from Noida and incurred enough time and expenditure. The complainant further submits that he loses his salary for coming to this Commission. It was the duty of the counsel to inform the opposite parties (Complainants), beforehand. **Adjournment is granted subject to payment of Rs.500/- as cos**ts, which will be paid to the complainant, who is present before this Commission. **Last and final opportunity is granted for filing written submissions and for final arguments on 18.07.2016. It is made clear that no other opportunity shall be granted. If the Counsel for the Opposite Parties is busy or cannot appear before the Commission on the date fixed, he must make some other arrangement. No further opportunity shall be given on any ground.** It is brought to our notice that OP's advocate, Advocate, who has moved the application for adjournment, **has not even filed his Vakalatnama.** This point is being kept open and will be heard on the next date of hearing, i.e., on 18.07.2016.**Comments** : Just **one day** before the hearing on 10th March 016, OP filed reply to S. 340 application of the Complainant. Court registry refused to accept (maybe since proof of delivery to Complainant did not accompany the application). Later, OPs moved an application for condonation of delay which was accepted by Court.
17	18-Jul-16	**Despite of the clear directions and last opportunity given, opposite parties have failed to file written submissions. Learned counsel for the opposite parties requests for one more adjournment to do the needful.** **Matter is adjourned, subject to cost of Rs.9,900/- to be paid** by the opposite parties to the complainants by way of bank draft of Rs.3,300/- each in the name of respective complainants. Needful be done within four weeks with copy to complainant No.3. List on 27.9.2016

18	27-Sep-16	**Order** : Complainant No.3 is present in person, vehemently objects for the presence of counsel for opposite parties on the ground that **there is no Vakalatnama on record till date from the said counsel** and, therefore, he has no authority to appear on behalf of the opposite parties. This issue was also raised during previous occasion. **OPs LC undertakes to file his Vakalatnama within a week**. **The complainant seeks to impose cost for not filing Vakalatnama by the said counsel. This point will be decided on the next date of hearing.** The complainant also brought to the notice that the opposite parties have not paid the cost imposed upon them during the previous proceedings (Rs.500/-). Therefore, it is also directed to OPs learned counsel, to verify and pay the cost, if any, due from the opposite parties by the next date of hearing. This case is already ripe for arguments which may entail lengthy arguments. Therefore, I prefer to hear the arguments before the Division Bench. **Therefore, list the matter for final arguments on 21-11-2016.** Both the parties are directed to file short synopsis of their arguments not exceeding three to four pages with cross references and pagination as per the court file within two weeks prior to the date of arguments with advance copy to each other.
19	21-Nov-16	**Order : An adjournment is sought on behalf of the opposite parties on the ground that the OP's counsel is in personal difficulty**. An application in this regard was moved on 15-11-2016. On perusal of the application we do not find details of the actual difficulty which has prevented the counsel from appearing. We are not convinced with the ground for adjournment. **Matter is adjourned subject to cost of Rs.10,000/- to be paid to the complainant No.3** through bank draft in his name on or before the next date of hearing. **List on 20-12-2016 for final arguments. No further adjournment shall be granted.**
20	20-Dec-16	Just as CN started arguing their case, OP's counsel interrupted saying some prior record not submitted (although not concerned at all with matter at issue !!) CN said they can even now submit the record. Hon'ble Court granted permission. **Order** : Complainant seeks an adjournment to move an application seeking permission to file the record . Application, if any, be filed before the next date of hearing with advance copy to the learned counsel for the opposite parties. Cheque of Rs.10,500/- has been given to the complainant No.3 against the previous cost which is accepted subject to encashment of the cheque. List on 22 Feb. 2017**Comments** : Document sought has ALREADY Been referred to both by OPs as well as CNs in their submissions. OP knows this fully well. **This is just a delaying tactic but since it will make CN's case stronger, this is for the good.Proceedings on 2nd Feb. 2017** **Order :** Complainants have moved an I.A. seeking permission to file additional documents. Learned counsel for the OPs seeks time to file reply. Reply, if any, be filed to the application, within four weeks. **List on 22.05.2017.**
21	22-May-2017	**Order : Counsel for the Opposite party states that he does not wish to file reply to Interim Application of complainants** seeking permission to file the record. Counsel for opposite party has no objection if the application is allowed, subject to cost. In view of the concession given at the bar and the nature of documents sought to be filed, application is allowed. List on 15.1.2018 **for final hearing.** **Comments: As expected, OP's counsel had NOTHING to say/ object to !**! Yet in the process, he has managed to DELAY the case by a year ! Ah well, at least the CN's case becomes stronger…

22	15-Jan-2018	**Order : Proxy Counsel says the arguing counsel had met with an accident eight to ten days back and that he had been advised bed rest.** Since this is a **ten year old matter,** final opportunity is given to the opposite parties to argue the case. Complainant No.3 who is present in person pointed out that the **names of a number of advocates have been mentioned on the Vakalatnama including that of the arguing counsel. However, in the case of the arguing counsel , the bar council enrollment number has not been mentioned.** The learned proxy counsel stated that the said number shall be got mentioned before the next date of hearing. List the matter on 30th May 2018 **for final hearing** **.Comments :** These tricks have been played by OP's counsel in the past too. WHERE does this end and WHY does the Court allow this to go on!! CN asked for costs to be put but NONE put !! Note ALSO that this seems to be a "fake lawyer" to begin with as he has not put BCI enrollment number on the Vakalatnama, which is REQUIRED per Bar Council of India Rules. Ah well, the CN is getting smarter, at least !!
23	30th May 2018	OP's advocate (so far the arguing counsel – say Lawyer No. 1 -LN1) – the lawyer without Vakaalatnama first and even now with a defective vakalatnama – who has been reason for adjournments, **now says his 'senior' (say lawyer No. 2 will argue the case and since the 'senior LN2 ' is busy, seeks another date** ! Although earlier other OP advocates have been seeking adjournment since the LN1 is busy, has met with an accident etc. etc.. For example, refer to order dated 15 Jan. 2018 above. CN strongly objects. OP's advocate says adjournments have been caused by CN since he has been hiding 'previous records'. CN again strongly objects. Honorable Court tells him to present in open court his case on this matter. Which he does. No rebuttal from the unauthorized lawyer. CN vehemently asks for costs. Not granted and next date of hearing set for 16th Aug. 2018. In the order of the HC, reason for adjournment is not mentioned. Also the fact that complete rebuttal has been made to false allegation of LN1 is not clearly brought out !! **Order** : List the matter **for final hearing** on 16th Aug. 2018. **Comments :** Upon seeing the Order after few days, CN moves an application setting out facts clearly and seeking an amendment.
24	16th Aug 2018	**Again, LN1 turns up with no LN2 in view** !! However, since anyway there is only single judge present, Honorable Judge does not proceed with arguments and sets next date. **Order** : **List the matter for final arguments before the Division Bench on 01.11.2018** at 2.00 pm.
25	1st Nov. 2018	Three lawyers from OPs side turn up. **None of them is either LN1 or LN2. They plead for another date since their ' senior' is busy !!** CN objects. The bench allows him to present his arguments and after listening to him for a while, sets a 'short date'. **Order** : Heard in part. List on 22nd November 2018 in final hearing matters **Comments** : So, after ten years, at last a 'part' hearing !!
26	22nd Nov. 2018	Since full quorum of judges is not present, matter adjourned to **2nd Jan. 2019 for final hearing** .
27	2nd Jan. 2019	As Opposite Party's Senior Counsel is out of country, hearing adjourned to 17th Jan. 2019
28	17th Jan. 2019	Part Hearing by the Complainant. NDOH (next date of hearing) 23rd Jan. 2019
29	23 Jan. 2019	Hearing could not take place as one member of the bench unwell. NDOH 11thFeb. 2019
30	11 Feb. 2019	Lack of Quorum. NDOH 13 March 2019
31	13th March 2019	OP's Counsel absent. Short date given to 14th March 2019
32	14th March 2019	Complainant partly heard. NDOH 10th April 2019
33	10th April 2019	Major pleadings of Complainant over. Bench decided to hear Opposite Party Counsel. Opposite party's submission started. Opposite party's Counsel not aware of exact procedure followed by his client on one critical aspect. Says can find out and revert. Time granted . NDOH 10th May 2019.

So there you have it – a synopsis of complete and tortuous journey till date. Since matter is 'sub-judice' I have not given details but anyone can make out what is happening here.

I can appreciate the Hon'ble Judges' task as well, since the legal provisions as they exist allow some of above. Life.
Also, bear in mind this is just one forum, rights of appeal exist right up till Supreme Court , and at each such stage the proceedings may take time !!

During this journey of 10 years till now, I have met a large number of people in one way or another connected with the Indian legal system. I have met lawyers asking for tens of thousands of rupees just to appear for one hearing, and I have also met other lawyers not asking for that much. I have met people who indicated they can 'help' me for money since they in turn 'know' people , and I have met lawyers very senior who listened to me patiently for 2-3 hours and then shared their guidance without even mentioning money once.

To all above , I am very grateful since each one left me with something to learn from. Indeed, this website is a consequence of such experiences and learnings !!

NOTE : I have also decided to try and earn some 'good karma' out of all above. If you / someone you know has suffered in a Consumer matter and wants to pursue it further – or just needs to have preliminary discussions – AND is prepared for the long haul as above (may not always happen, but could) you/ they can talk to me without obligation.

For the purpose, click here. Please DO refer to link of this post so that I know the context .

Thanks for the read !!

Forgery of Medical Records – what recourse ?

- **Medical Negligence – a crime committed behind closed doors, on the uninformed and the unconscious !!**
- **By organizations with whole teams of lawyers ready to resort to all tactics to suppress justice opposing complainants generally not aware of even the basics of law, what to talk of medical jurisprudence !**
- **By those who think they can even commit forgery of medical records and get away – and mostly do ! Because the hapless patient has no recourse !**
- **With others conspiring to help out their "brothers" !**

Yet, in some cases, justice is done. As in this case. Sometimes God intervenes..others can only blame past sins, perhaps ?

This when the complainant is herself a doctor – imagine then the status of non-doctors !

Why doesn't the Consumer Forum have a SEPARATE BENCH , with medically competent people, for these category of cases ?

These excerpts hereunder taken from :

http://timesofindia.indiatimes.com/city/delhi/botched-up-operation-victim-doc-gets-rs-80-lakh-in-damages/articleshow/58618109.cms

Emphasis is mine. Read on, cry, and hope you are never in these hapless situations !

- The Delhi State Consumer Commission recently indicted the private hospital and its eye surgeon for medical negligence and deficiency of service, asking them to pay compensation and damages of nearly Rs 80 lakh, for botching an eye operation that led to loss of vision of Dr Prakash Sharma.
- The commission, presided by N P Kaushik, held Dr Sharad Lakhotia and Talwar Medical Centre guilty and asked them to pay Rs 19 lakh at 12% interest and Rs 20 lakh at 12% interest respectively. Interest will be charged from 1999, when the complaint was filed.
- The consumer watchdog also concluded that **both the doctor and the hospital fudged medical records relating to the case to escape liability.** Sharma had alleged that the hospital f**orged her husband's signature to claim he had given consent before the surgery.**
- The commission was surprised that despite evidence of fabrication and concealment of documents, a**n in-house inquiry by Delhi government's health department gave the doctor and the hospital a clean chit *even while admitting in the report that it did not have access to details of operation notes***. An earlier complaint by to the directorate health services, Delhi, had led to the constitution of a two member enquiry committee by the Gurur Nanak Eye Centre.
- **"In the absence of surgery notes, enquiry committee**

could not have arrived at a conclusion that there was no negligence on the part of the treating doctors," the commission pointed out, faulting the panel for giving an ex-parte order without hearing Sharma.

- Taking a stern view of the connivance of the doctor with the eye hospital located in Greater Kailash the Commission asked the Medical Council of India (MCI) and Delhi government's directorate of health services **to take action against him and the hospital for deficient service**. (Would be interesting to see exactly WHAT action will be taken by these esteemed bodies .. how many doctors have been faulted by MCI til date ?)
- Through advocate Mohit Mudgal, the woman doctor informed the commission that she underwent a cataract surgery in 1998 at Talwar Medical Centre after which she lost vision in her left eye, forcing her to stop her medical career.
- Complainant (Sharma) by profession is an **obstetrician and gynaecologist**. She has been deprived of conducting surgeries on her patients. She became a social recluse after having lost sight in the left eye," the commission noted.
- Dr Sharma, widowed soon after the incident, welcomed the verdict. "I feel fortunate to have seen **justice served in my lifetime.** My husband, Wing Commander V K Sharma was working hard on this case on the day he passed away. Wherever he is, I feel he will be happy to see his efforts have finally brought the guilty to justice."

For those interested in seeing the Court Judgement in full, here are the relevant details to click on :

IN THE STATE COMMISSION: DELHI

(Constituted under Section 9 of the Consumer Protection Act, 1986)

Date of Decision: 27.04.2017

Complaint Case No. 283/2001

If you are a sufferer of medical negligence – and need some advice on how the law works , talk to me – I would be happy to help ! And if you have any helpful suggestions to offer, you too are most welcome – comment in !

Ghost Surgery may kill you ! Read on to know what can / does happen, more than you may think !

Ghost Surgery – a despicable crime !

Ghost Surgery – A Crime performed on the unconscious

!

Medical Definition of *ghost surgery*: the practice of performing surgery on another physician’s patient by arrangement with the physician but unknown to the patient.

This is a DIRECT, PERSONAL experience, not hearsay, which is ongoing. In case you are / or know Public Minded Lawyers willing and capable to take this and other similar causes to Supreme Court , let us talk – or share this post with them so that they may contact me direct using form hereunder. In any case I request you to share this post in your groups, Whatsapp , LinkedIn, FaceBook , Twitter, Google Plus etc. etc. – simply paste the weblink http://lawforall.in/ghost-surgery/ therein – or use any of the sharing buttons provided below. Thanks a LOT. You may save some people’s lives !

Medical Negligence is a crime VERY difficult to prove since generally done behind closed doors of an Operation Theater. The guilty NEVER admit to their guilt, and even if caught go scot free mostly – – numbers speak for themselves ! If the trend continues, next time it could be you/yours/me/mine ! It has already been for my family and we are still suffering !

The US Position :

No “malice” or intent to injure, however, is required to establish battery in general or specifically, “ghost surgery.” In Perna v. Pirozzi, 92 N.J. 446, 457 A.2d 431 (1983), the

Supreme Court held that **such a battery results when a medical procedure is performed by a "substitute" doctor regardless of good intentions**. The Court there took notice of standards published by the Judicial Council of the American Medical Association, which read:

To have another physician operate on one's patient without the patient's knowledge and consent is a deceit. The patient is entitled to choose his own physician and he should be permitted to acquiesce in or refuse to accept the substitution. The surgeon's obligation to the patient requires **him** to perform the surgical operation: (1) within the scope of authority granted by the consent to the operation; (2) in accordance with the terms of the contractual relationship; (3) with complete disclosure of all facts relevant to the need and the performance of the operation; and (4) to utilize his best skill in performing the operation. It should be noted that it is the operating surgeon to whom the patient grants consent to perform the operation. The patient is entitled to the **services of the particular surgeon with whom he or she contracts**. The surgeon, in accepting the patient is obligated to utilize **his personal talents** in the performance of the operation to the extent required by the agreement creating the physician-patient relationship. **He cannot properly delegate to another the duties which he is required to perform personally.**

……Ghost surgery "remains a battery even if performed skillfully and to the benefit of the patient."

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What does Indian Law say on this ? Are

you / anyone you know a Sufferer on this/any other aspect of Medical Negligence ? Contact me using form hereunder to share your experiences, get and give help and advice to eradicate the malaise of Medical Negligence ! Thanks a LOT and Be Well !

Recording of Court Proceedings

Not only must Justice be done; it must also be *seen to be done*

.. is oft repeated. And indeed Justice is supposed to be done in public. Unless decided by the Court to be an " in camera " trial, one can simply visit the Court and watch the proceedings. Even Court Records – submissions by different parties and then the final judgement – is supposed to be Public and accessible to anyone.

In Theory.

Come the Digital Era then, the logical next step would have been recording of Court proceedings. And indeed the more advanced countries seem to have moved in such direction as you can find plenty such videos on youTube ….

In India, however, the Jury of honorable Judges is still out on the matter. Why they want to avoid public scrutiny is of course best known to them.

It is interesting , hence, to note of some attempts being made in this direction. For one such, see :

And for the full story on this, see :

http://www.legallyindia.com/201402284392/Bar-Bench-Litigation/deepak-khosla-records-fight-with-clb-judge-about-audio-recording-before-clb

And on more on the man, see :

http://www.legallyindia.com/201308073894/Interviews/deepak-khosla-profile

Taken from there, a truly utopian vision- as any who has ever been to any court would vouch ! :

“If it were utopia, the moment I go to court the judge would stand up and say to me: ‘Mr. Khosla despite our best efforts at devising laws whose objective would be to prevent people breaking the law, it seems in your case we have failed. So on behalf of society I owe you an apology and I apologise. Now please tell me what your problem is and how can I help you?’ That’s how a hearing should start,” 53-year-old law student Deepak Khosla tells me.

Indeed, the previous Government had made some plans in his direction See;
http://archive.indianexpress.com/news/legal-reforms-government-for-video-recording-of-court-proceedings/1193581/

Quoting :

“The Advisory Council met here. Unanimously the council believed that court proceedings must be videographed and that

the technology (for the same) must be put in place now," he told PTI here.

Explaining the reason behind the move, Sibal said the processes of the law must be "as transparent" like the processes of the government.

Sibal said the plan is to begin with video recording of the proceedings of the trial court.

"…start with the trial courts as it is the foundation of the justice system," he said.

The Minister said the judiciary will be taken on board on the issue.

UNQUOTE

And with the present Modi Government's push for transparency in all fields, one can only hope for the best !

Eleven Months Lease Deeds also need registration !

L:ease

Eleven Months Lease Deeds also need registration

It is a common misconception that Lease Deeds for a period less than a year need not be registered, per Indian Law for

properties in India. Hence, many Landlords and Tenants proceed accordingly since in the process savings can be made on Stamp Duty. Besides, the time and hassle of going to the Registrar's Office is avoided. The confusion arises since the provisions of the Transfer of Property Act are NOT understood properly since those relevant have to be read ALONG WITH that of the Registration Act

The Courts are increasingly clarifying and elaborating this. As in the case hereunder.

Case :

Abdul Rasheed S/O Meeran Sab vs Srinivas S/O Kashinathrao on 16 April, 2014

(Karnataka High Court Judgement)

Issue :

Whether a lease deed, where the term of lease stated therein does not exceed one year, requires to be registered under the provisions of the Registration Act, 1908 is the question that needs an answer in this writ petition.

The question is answered in the affirmative. In law, the lease deeds of the aforesaid kind also require to be registered and therefore, such unregistered lease deeds **cannot be received as evidence** of any transaction affecting the property.

….

3.1 Sections 4 & 107 of the **Transfer of Property Act, 1882** read as follows:

S.4. Enactments relating to contracts to be taken as part of Contract Act and **supplemental to the Registration Act.**

The Chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act,

1872 (9 of 1872) And section 54, paragraphs 2 and 3, and sections 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1908 (16 of 1908).

S.107. Leases how made.

A lease of immovable property from year to year, or for any term **exceeding** one year or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument **or by oral agreement accompanied by delivery of possession.**

3.2 Sections 17(1) & 49 of the **Registration Act, 1908** read as follows:

S.17. Documents of which registration is compulsory.

(1) The following documents shall be registered, if the property to which they relate is situate……..namely:-

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) **leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent**;

S.49. Effect of non-registration of documents required to be registered

No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall-

(a) affect any immovable property comprised therein, or
(b) confer any power to adopt, or
(c) be received as evidence of any transaction

affecting such property or conferring such power, **unless it has been registered:**

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered **may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.**

4. As could be seen from the above quoted provisions, all leases not covered by first para of S.107 of the T.P. Act may be made **either by a oral agreement accompanied by delivery of possession, or by a registered instrument.** A lease, the registration whereof is not compulsory under S.17(1)(d) of the Registration Act, becomes compulsorily registrable, **if reduced into writing** in view of second para of S.107 of the T.P. Act read with para 2 of S.4 thereof. **A written unregistered lease of immovable property, even though the term of lease stated therein does not exceed one year, is inadmissible in evidence in view of S.49 of the Registration Act, 1908 read with second para of S.107 of the Transfer of Property Act, 1882 & second para of S.4 thereof. A lease for a period of one year falls within the expression 'All other leases' stated in para 2 of S.107 of the T.P. Act and may be made by a oral agreement accompanied by delivery of possession.**

…….

6. At this stage, learned counsel for the petitioner by

relying on the proviso to S.49 of the Registration Act, submits that the proviso permits the petitioner to produce the lease deeds as evidence of any **collateral transaction not required to be effected by a registered instrument**. The counsel is right in his submission. Accordingly, the petitioner is at liberty to apply to the trial Court by specifically stating the collateral purpose for which he wants to produce the lease deeds. If such an application is made, the trial Court shall consider the same in accordance with law.

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So, if you have an ORAL AGREEMENT of one year or less that is fine but the moment you reduce it in writing for evidentiary purposes it will require registration !! And for what ” collateral purposes” will that UNRegistered Lease Deed be valid is not clarified !!

So, BETTER to get all Lease Deeds registered !

Loan your cash at your risk – S. 138 may not help you !

Cash

Loan your cash at your risk !

So you have a large “unaccounted cash ” lying at home. Unaccounted as in not declared in your Income Tax Returns. You

loan it to someone and get a Cheque from him in return. The Cheque bounces.

Can you use the provisions of S. 138 of the Negotiable instruments Act to recover the amount ?

The Law says NO !

See :

Sanjay Mishra vs Ms.Kanishka Kapoor @ Nikki on 24 February, 2009

(Bombay High Court decision)

Held :

" **The provision of section 138 can not be resorted to for recovery of an unaccounted amount**. A cheque issued in discharge of alleged liability of repaying "unaccounted" cash amount cannot be said to be a cheque issued in discharge of a legally enforceable debt or liability within the meaning of explanation of section 138 of the said Act. Such an effort to misuse the provision of section 138 of the said Act has to be discouraged."

Your face is – or could be – your fortune !

Your Face is your Fortune !

While the Cosmetics Industry has been trying to convince us of this for ever since we can recall, even the law says so ! Read on for how you can protect – or make – your fortune !

Any use of an image / photograph without permission can invite privacy suits. Right of Publicity has been held to be a part of Right of privacy.

See : R. RajaGopal v. State of Tamil Nadu, (JT 1994 (6) SC 514)

Where held :
the first aspect of this right must be said to have been violated where, for example, a person's name or likeness is used, without his consent, for advertising – or non-advertising – purposes or for any other matter.

Definition of "mark" in Section 2(m) of the Trademarks Act 1999 does include names. However, there is no statute to protect publicity and image rights. Only a passing-off action may lie to protect a well known individual's reputation if it can be shown the misrepresentation would cause irreparable damage to his reputation.

Further, Section 14 of the Trademarks Act may be invoked . This prohibits registration of a Trademark falsely suggesting a connection with a living person / person who died within last 20 years of the application of registration of Trademark. in the Montblanc case, one of the defence was such a permission had been obtained.

BUT Publicity rights are reserved for persons, not events. See :

Delhi High Court in ICC Development (International) Ltd v Arvee Enterprises (2003 (26) PTC 245 Del)

where it was held that the use of Cricket World Cup event name by advertisers NOT the official sponsors was NOT misuse.

Unauthorised exploitation of image, publicity and goodwill of a person by falsely indicating his endorsement of products/ services can certainly be the cause of a passing-off action.

In several well known cases, the law has been clearly settled. For example :

The Montblanc campaign (2009)

Montblanc released special-edition pens in India entitled 'Mahatma Gandhi Limited Edition 241′ and 'Mahatma Gandhi Limited Edition 3000′. They had Gandhi's portrait engraved on the nib. Tushar Gandhi (Gandhi's great grandson) had given his permission and approval to their release. But the launch of the pens was contested under Emblems and Names (Prevention of Improper Use) Act 1950, which prohibits the use of names and images of nationally important personalities for any trade, business or professional purpose, unless permitted by the government.

Montblanc was forced to withdraw its advertising campaign and the pens from the market.

DM Entertainment v Jhaveri (1147/2001)

Whereby Daler Mahendi prevented registerationof dalermehndi.net by a party, Delhi High Court recognising the fact that an entertainer's name may have trademark significance.

Sourav Ganguly v Tata Tea Ltd- Calcutta High Court

A well known tea brand was offering customers a chance to meet him, implying he was associated with the promotion when he was

not. Successful challenge made, although dispute finally resolved amicably.

Tata Sons Ltd v Ramadasoft (D2000-1713, February 8 2001)).

Wherebv Ratan Tata objected to the domain “tata ” being taken by someone else. Via an arbitration, the domain was finally transferred to him.

Jaitley v Network Solutions Private Limited ([181(2011)DLT716])

Delhi High Court upheld the right of politician Arun Jaitley to domain arunjaitley.com

Titan Industries Limited v Ramkumar Jewellers ([CS(OS) 2662 of 2011]) -decided 26th April 2012

Amitabh and Jaya Bacchan assigned all their personality rights to plaintiff in connection with marketing of its brand of jewellery ” Tanishq”. Defendant erected a hoarding identical to Plaintiff’s, including identical photo of the couple. No permission taken from the couple, nor authorised by plaintiff. Court held the defendant liable not only for infringement of the plaintiff’s copyright in the advertisement, but also for misappropriation of the couple’s personality rights. The court granted an interim injunction in the plaintiff’s favour.