

searchers follow, and inherent in this is added secrecy and potential withholding of knowledge.²⁸³

2. Differences between India and the United States

Shamnad Basheer and Shouvik Guha attack the bill on the grounds that success in the United States would not necessarily lead to success in India.²⁸⁴ The authors contend that legal transplantation is "often unsuccessful if external forces, such as international institutions, assume institutional, cultural, or political realities that in fact are not present or properly developed."²⁸⁵

The authors note that aspiration of the Bill is to "create wealth." Basheer and Gupta agree with the contention of Lin et al. that legislators have exaggerated the United States Bayh-Dole bill's success in this regard, but further extend their analysis by considering particular aspects in the Indian market that could lead to a Bayh-Dole failure. For example, the Council of Scientific and Industrial Research in India (CSIR) is actually losing money on its patents, which is evidence pointing to the conclusion that Bayh-Dole provisions would have a very limited effect.²⁸⁶

The authors further attack specific provisions of the bill as unable to effectively promote technology transfer. For example, the proposal "assumes that patents are always the best way to incentivize innovation and requires patent application in all cases."²⁸⁷ In India, the cost of patents are prohibitive at times, and the inability to make an ex ante determination of what inventions will benefit from patents will unduly inhibit effective transfer under the Indian scheme.²⁸⁸

The authors ultimately conclude that for a bill like Bayh-Dole to be effective in India, it should include "more public interest safeguards," and an "affordable pricing scheme," among other changes.²⁸⁹ While Basheer and Lin et al. differ on reasons that the Indian Bayh-Dole Bill would be a concern if passed, they agree that the United States BDA would not be beneficial if superimposed on India without much

283 *See id.*

284 *See* Basheer and Guha, *supra* note 278.

285 *Id.* at 278. The others define legal transplantation as "the transfer of laws and institutional structures across geopolitical or cultural borders." *See id.* at 277.

286 *See id.* at 282. The CSIR is a "network of government laboratories" and one of India's largest patent filers. By noting that this government organization is not profiting off patents it has title to, the authors believe that shifting the title to universities will lead to the same result as CSIR has attempted to commercialize its patents just as a university would.

287 *Id.* at 284.

288 *See id.* at 285.

289 *Id.* at 298-300. The affordable pricing scheme would be similar to what some American scholars believe is inherent in the US Bayh-Dole Act, and others believe do not exist at all. For more on this question, please see Section V-A-4, *supra*.

thought. The concerns in India might mirror concerns in other developing countries with respect to using Bayh-Dole schemes.