

NOTES AND COMMENTS

INTELLECTUAL PROPERTY RIGHTS – NEED FOR A LIBERAL APPROACH

TODAY, WE live in a world where money is the main *mantra*. Brain is big business. Human intellect is used to innovate. Every innovation involves effort and expense. And often, the ultimate result of research is of immense use in art and industry. It carries a commercial value. It means money. Thus, the modern man living in the materialistic world looks for the fruits of his labour. He talks of the intellectual property rights.

‘Intellectual Property’ is a comprehensive expression. It covers the whole field of creative activity. Every innovation, be it in art, industry or literature, falls within its ambit. Thus, we have the concept of copyright, patents and trademarks. It has been rightly said, “Patents give temporary protection to technological inventions and design rights to the appearance of mass-produced goods; copyright gives longer-lasting rights in, for instance, literary, artistic and musical creations; trade marks are protected against imitation so long at least as they continue to be employed in trade.”¹ The basic object is to protect the “applications of ideas and information that are of commercial value.”²

The idea is not totally new. It has grown over a period of time. ‘Gains of learning’ is a concept that was known to Hindu law. But the first copyright statute in the world, Act 8 of Queen Anne, was enacted in England in the year 1710. It is recorded that the author and his assigns were given the sole ‘liberty of printing and reprinting’ the book for ‘a term of fourteen years.’ It was extendable for another 14 years, provided the author was alive. The protection was available only if ‘the title had been entered before publication in the register book of the stationer’s company.’ Provision for ‘penalties, confiscation of pirated books and payment of a fine of a penny per sheet’³ was also made.

Human progress accepts no pauses. During the long gap from the 18th to the 21st century, industry, intellect and innovation have moved forward at a rapid pace. And the law on the subject has developed through conventions, discussions and legislation. It is an international phenomenon and India has not lagged behind.

1. W.R.Cornish, *Intellectual Property* 3(2nd Edition 1989).

2. *Ibid.*

3. *Id.* at 246.



Today, in India, we have the Copyright Act, 1957. It has been periodically amended.⁴ The changes have been made to prevent piracy; to protect the performer's rights; for protection of computer programmes, cinematograph films, sound recordings etc.⁵ Similarly, we have the Patents Act, 1970, the Trade Marks Act, 1999 and the Geographical Indications of Goods (Registration and Protection) Act of the year 1999; the Semiconductor Integrated Circuits Layout Design Act and the Information Technology Act, both promulgated in the year 2000. The Protection of Plant Varieties and Farmers' Rights Act, 2001 was enacted to protect the rights of farmers and plant breeders. The Union Ministry of Environment and Forests has already initiated a National Biodiversity Strategy and Action Plan. The plan will cover wildlife, crop and livestock diversity and micro-organisms and will deal with conservation, sustainable use and issues of social and economic equity in the use of natural resources.

Even the states have not been silent. To illustrate: The Kerala Government had sometime back decided to introduce a legislation to protect the intellectual property rights of its tribal people who have been practising traditional nature-based medicine for centuries. With the new legislation, the government would be able to get patent rights for the traditional tribal medicine.⁶

These statutes have been enacted and/or amended to meet the obligations under GATT and TRIPS. But certain doubts persist.

Today, while the innovators and inventors claim a reasonable reward for their effort, the others complain of exploitation. In a way, both can claim to have some justification. It is known that every innovation involves a substantial effort and expense. A large number of people undertake different projects. They work for long periods of time. Sometimes it runs into years. They spend substantial amounts of money and go through sleepless nights. At the end, only a few succeed. Do they not have a right to seek a reasonable return or reward for the effort and expense? The expectation is legitimate. It would be wrong to say – 'No.'

On the other hand, the implementation of the laws relating to intellectual property rights provides a typical instance of the manner in which the developed nations and the multinational companies act greedy and exploit the needy. To illustrate: In the field of human health, the grant of 'product patent to pharmaceuticals' inevitably leads to a great escalation in the price of life saving drugs. A majority of the people find the prices to be prohibitive. The "poor and their Right to life" falls

4. The Act has been amended in 1983, 1984, 1992 and 1994.

5. See, s. 13, Copyright Act, 1957.

6. See, Patents Act, 1970 as amended in 2005.



at the mercy of “fatal fate.”

Jeevan Reddy J has given an apt example of the consequences of the product patent system which deserves notice. He noted that Glaxo, one of the multinationals, markets, *inter alia*, ‘Zenetac’, an antacid medicine in India, U.K and U.S. A ten-tablet strip of ‘Zenetac’ in India costs a little above seven rupees, in England it costs more than three hundred rupees and in USA, it costs more than eight hundred rupees. Even in Pakistan, it is sold for Rs. 12.5/-. You may immediately ask why is Glaxo selling the very same medicine in India at such a cheap price and why is it selling the same in USA at more than hundred times the price in India. This is because in India, we do not have the product patent. The absence of a product patent has enabled a number of Indian pharmaceutical companies to manufacture antacid tablets with the same properties by different processes, which are both cheaper and may be better.

Such instances can be multiplied. Surely, the situation is not ideal. It amply illustrates and fully justifies the concern expressed by the developing economies. Inevitably, it calls for a solution. The students of law—the academicians as well as the practitioners - have to don the role of social engineers. They have to innovate. There is always a way for the willing. A way must be found. Failure is certainly not an option.

And equally, the courts have to ensure that the laws enacted to protect the intellectual property rights do not defeat the right to live and make a living. Purposive and not technical interpretation of the statutory provisions is an old and accepted rule of construction. The courts may have to adopt a liberal rather than the literal construction of the provisions so as to avoid the unintended mischief and ensure a fair and reasonable result.

There is a good rationale for this principle. In a sense, every word that a person uses or writes is in the English Dictionary. Equally, some of the expressions may be from notes prepared by him on earlier occasions. Today, he may not remember the source. But surely he is not the inventor of these words or expressions. But can it still be said that he has copied? Is he guilty of theft? Has he violated somebody’s intellectual property rights? Is he guilty of plagiarism? Similarly, every car has four wheels, usually four doors and an engine. Is every manufacturer guilty of theft? The answer should be ‘No.’ And then, when a man steals from one author, it is called plagiarism. But if he writes a paper and quotes from many, he is credited with research. Is there not a paradox about plagiarism and other similar rights? It seems that the things are becoming too technical. A distortion of values appears to be the dilemma of our times.

One must remember that imitation is a basic human instinct. Even a child repeats what he sees. And that is the way he learns to talk and



walk, read and write. With the passage of time, the child grows up. He faces competition. He searches for fame. Thus, each individual, be he an artist, a craftsman, dramatist, farmer, filmmaker, musician, scientist or a writer, hunts for – ‘the perfume of heroic deeds.’ He looks for what others have done. Having found it, he assimilates and amplifies the acquisition. He unites ‘the borrowings into a presentable mosaic.’ Then he instinctively claims the end product to be the result of his own research. This has happened throughout human history since times immemorial.

It has been said, “Brahms was a notorious plagiarist of melodies of other composers. Especially of Beethoven. The *Vesta* furnished Shakespeare with the foundations for his *Merchant of Venice*. The stories of most of his plays had already appeared in prose and had been adapted by other dramatists before he appropriated them... Plato’s *Ideal Commonwealth* was the common ancestor of Sir Thomas Moore’s *Utopia* and Bacon’s *New Atlantis*. In truth, in literature, in science and in art there are, and can be, few, if any, things, which, in the abstract sense, are strictly new and original throughout.”⁷ Is it not so?

Voltaire once said that originality is nothing but judicious imitation. The most original writers borrowed from one another. The instruction we find in the books is like fire. We fetch it from our neighbour’s, kindle it at home, communicate to others, and it becomes the property of all. Originality is simply a pair of fresh eyes looking at an old object. One of the best uses of originality is to say common things in an uncommon way. This is true even today.

And then there is another truth. No law has ever proved to be a total deterrent. Crime has persisted despite stringent laws. This is so even in the case of laws relating to intellectual property rights. Throughout human history, the ‘stigma of servile imitation’ has not bothered the imitators. The ‘glorious galaxy of grand old thieves’ has continued to thrive on theft. Distinguished people have drawn upon the common ‘heritage of knowledge.’ Many have presented the works of others as the fruits of their own labour. And the world has generously accepted the claim.

If so, why should one not adopt a liberal approach in the construction of statutes relating to intellectual property rights? Would such an approach not help the needy as well as the greedy?

It is true that a copy can never be as good as the original. It is inferior. So is an imitation to the invention. Every man realizes that ‘a grass-blade of his own raising is worth more than a barrow-load of flowers from the neighbour’s garden.’ Those ‘who have light in

7. W.R. Cornish, *supra* note 1.



themselves,' do not usually like to 'revolve as satellites.' With the passage of time, it was realized that 'borrowed clothes cannot keep a person warm forever.' Thus, it is not surprising that man has felt the need to protect society from social thieves. From 'the art imitators, design duplicators, literary craftsmen and sniffing scientific pirates.' And this effort to prevent piracy has to continue. It is necessary to do so. But it is not necessary to examine every work under a microscope. Only a broad view has to be taken.

Constituting commissions, enacting Acts and signing treaties is a part of the effort to check piracy. Today, there are piles of paper on the subject. All concerned with preventing piracy and plagiarism. To check copying of the physical material existing in the fields of art, literature and science etc. The primary object is to protect the artist and the author which is perfectly plausible.

But the question that may be asked is – Do the honest thinkers not steal unconsciously from each other? Even while enacting Acts? Does a plagiarist not often improve upon something that was poorly written? Does he not "preserve the work for posterity?" Did our founding fathers, all men of undoubted eminence and integrity, not borrow from lands that lie beyond our own borders while framing the Constitution of India? Have the draftsmen not borrowed from others while promulgating various other laws? Do we not draw upon the experience of others every day? It would be difficult to say – No! Then, why grumble?

It is known that small things have produced big results. A falling apple had given the idea of the law of gravity to Albert Einstein. A tea-kettle on a stove had led to the steam engine. A lantern on a windy night was the forerunner of the pendulum. A spider's web had paved the way for a suspension bridge. A flying bird had told the Wright brothers that man could fly. A Siberian crane had inspired man to make a hovercraft. An idea, like a plant has to be transplanted. Just as a weed in one bed grows and gives flowers in another, a mere 'night-shade in one mind unfolds as a morning-glory in the other.'

Sharing is essential for progress. While trying to protect an individual's rights, mankind's interests should not be sacrificed. Today, there is talk of globalization - a borderless world. In this wide world, the works of art, science and technology lie stored in the 'small prison called the Personal Computer.' Everything is just a click away. And yet, new barriers are being created.

The futility of such an effort has been realized. The European Commission had observed that – "These new technologies have entailed the de facto abolition of national frontiers and increasingly made the territorial application of national copyright law obsolete."⁸

8. www.faqs.org/faqs/european-union/basics.



Today, even a child shall not remain confined to a cave. It is evident that 'the commerce of intellect loves distant shores. The small retail dealer trades only with his neighbour; when the great merchant trades, he links the four quarters of the globe.' There is a need for a world order. The pure air and water in the universe belong to the world. Why not information on the internet? With the revolution in technology, there is need for revision of human thought.

Let not the intellect and the intellectual property be used as one uses the lamp in the study. Focused on one's book, to protect one's eyes. Let it be like the lamp at the lighthouse. To guide the lonely sailor on the rough sea of life. For the good of man and his kind. Let the developed world not exploit the developing countries. Despite the changing values, intellect and industry are not incompatible. The two can combine to induce improvement. One can use intellect as an instrument. One need not imprison the intellect. One should learn to help not to harm. Let global glory and not personal gain be the man's mission. For a happier and healthier world.

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