

Intellectual Property Rights - Need for a Liberal Approach

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Today, we live in a world where brain is big business. Intellect is used to innovate. Every innovation involves effort and expense. The result of research is commercially invaluable in art and industry. It means money. Thus, the modern man living in the materialistic world talks of the Intellectual Property Rights.

The term 'Intellectual Property' covers the whole field of creative activity. The product of every intellectual effort, be it in art, industry or literature, falls within its ambit. Thus, we have the concepts of Copyright, Patents and Trademarks. "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."ⁱ The object is to protect "applications of ideas and information that are of commercial value."ⁱⁱ

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 1710. In England. 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' was also made.

Progress accepts no pause. During the long gap from the 18th to the 21st century, industry and intellect have moved forward. At a rapid pace. So has the law developed. Through conventions, discussions and legislation. Throughout the world. Even in India.

Today, in India, we have the Copyright Act, 1957. It has been periodically amended. The changes were made to prevent piracy; to protect the performer's rights; for protection of computer programmes, cinematography films and sound recordings etc. Similarly, we have the Patents Act, 1970; the Trade Marks Act, 1999; 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

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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 has 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.”

These Statutes have been enacted and/or amended to meet our obligations under the GATT (General Agreement on Tariffs and Trade) and TRIPs (Trade Related Aspects of Intellectual Property Rights). But certain doubts persist.

Today, while the innovators and inventors, claim a reasonable reward for their effort, the others complain of exploitation. To a degree, both are justified.

On the one hand every innovation involves a substantial effort and expense. A large number of people undertake different projects. They work for years. Billions are spent. Some succeed. Do they not have a legitimate right to seek a reasonable reward for their effort and expense? It may be difficult 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 an escalation in the price of life saving drugs. The “poor and their Right to life” falls at the mercy of “fatal fate.”

Justice Jeevan Reddy has given an apt example of the consequences of the product patent system. May I quote?

“Glaxo is one of the multinationals. It 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.”

This is a clear case of exploitation. And such instances can be multiplied. The situation is serious. It calls for a solution. The students of law – the academicians as well

as the practitioners, have to inevitably don the role of social engineers and innovate. Even the Courts shall have to ensure that the laws enacted to protect the Intellectual Property Rights do not defeat the right to live or to make a living.

In a way, every word that I am speaking is in the English Dictionary. I may also have used the words of another author. Have I copied? Am I guilty of theft? Have I violated somebody's Intellectual Property Rights? Am I guilty of Plagiarism? To answer these questions, a balanced approach that promotes justice shall have to be adopted.

And then, when a man steals from one author, we call it plagiarism. If from many, he is credited with research. There is a paradox about Intellectual Property Rights. A distortion of values appears to be the dilemma of our times.

In the midst of this legalistic, we must also remember that imitation is a basic human instinct. Even a child repeats what he sees. That is really the way, he learns to talk and walk. To read and write. With time, he grows up. And then an exaggerated sense of self-esteem overtakes the young man. On growing up, he undertakes the most toilsome task. 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 gold. Having found it, he assimilates and amplifies the acquisition. Unites the borrowings into a presentable mosaic. Then he rejoices in the false glow of a totally transient fame. Of an imitator. Of a plagiarist. And is happy ever after.

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.”ⁱⁱⁱ

The question arises - Is there nothing ‘original’ in this world? Is originality merely ‘undetected plagiarism’? Voltaire once said, “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.”

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.

It is true that a copy can never be as good as the original. It is inferior. So is an imitator to the inventor. Every man realises 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 themselves,' do not usually like to 'revolve as satellites.' With the passage of time, it was realised that 'borrowed clothes cannot keep a person warm forever.' Thus, it is not surprising that man 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.

Constituting Commissions, enacting Acts and signing Treaties is a part of this effort. 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. The effort is perfectly just and fair.

But I ask, in all humility – 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 our primary law -the Constitution of India? Even while promulgating the other laws? It would be difficult to say – No! Then, why do we grumble?

May I tell a story? A judge pointed his stick at the accused in the court and said, "There is a criminal at the end of my cane." "At which end?" asked the man. The story embodies a fact of life. At which end is the devil? This is an every day dilemma. But let us remember – when I point a finger at somebody, there are three pointing towards me. The world faces a similar situation in the context of Intellectual Property Rights.

It is known that small things have produced big results. A falling apple had given the idea of the law of gravity. A tea-kettle on a stove had led to the invention of a 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 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, we should not sacrifice the mankind's interests.

Today, we talk of globalisation. A borderless world. In this wide world, the “works of art, the cinematograph films, gramophone records, literature, music, sound and television broadcasts, all lie stored in the small 16 inches prison called the Personal Computer. Everything is just a click away.” And yet, we want to create new barriers.

The futility of such an effort has been realised. 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.”

Today, even a kid 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 us not use the intellect and the intellectual property as we use the lamp in the study. Focused on my book. To protect my eyes. Let every innovator 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 develop a liberal approach and not exploit the developing countries.

Despite the changing values, intellect and industry are not incompatible. The two can combine to induce improvement. We can use intellect as an instrument for change. As a mirror. To reflect the light within. We need not imprison the intellect. Let us use it to help. Not to harm. Let global glory and not personal gain be the man’s mission. This would ensure a happier and healthier world.

Shall it ever occur? It can and it shall. If we adopt a liberal approach. I hope and pray that we do.

I thank you for this opportunity and wish your deliberations, a grand success.

ⁱ Intellectual Property: 2nd Edition By W.R.Cornish. Sweet and Maxwell. Chapter 1.

ⁱⁱ ibid

ⁱⁱⁱ W.R.Cornish

