

differentiating their nature of work at the first instance. There must be different wings for the three different segments of works and appointment of Special Officers or expert is very much needed. 1% Cess should not be the criteria.

The scheme for the welfare of the workers as structured under the Bill is replete with, infirmities, flaws, deficiencies, lacunae and omissions which can be made as a good Act if sufficient care is taken about different segments of work by dividing them depending on the nature of the work, and hazards involved into it. The distribution of collected Cess amount should be made among the workers depending on the nature of the work in different fields.

Jainendra Sharma, who has been a construction labourer for 35 years, told that “Schemes like NREGA (National Rural Employment Guarantee Act) are advertised and people are aware of them – Similarly rights for construction workers should also be advertised. Only one per cent of the construction workers in Delhi know about the entitlements. Government must take action to bring this Act among the people. It should conduct camps and make workers, owners and contractors know about the Act. It should initiate awareness about this Act by conducting legal awareness camps in rural areas too. It should arrange hoarding at some important places like industries, factories, hospitals, dispensaries *etc.*, with the information of various benefits available including obtaining the accident benefits *etc.*”

CONCEPT OF COPY RIGHT LAW - INTERNATIONAL CONVENTIONS – CRIMINAL PROCEEDINGS FOR INFRINGEMENT OF COPYRIGHTS

By

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1. Introduction :

Generally the word “Property” is known to the public at large in the form of ‘tangible property’ and in the legal language it is known as movable and immovable property. Earlier to the 17th century public knows only the tangible property. During the 17th century the idea was developed to identify the intellectual property of a person which is in the nature of intangible property such as patents, industrial designs, copyright and trade marks. In the last few years the law of intellectual property has gained importance in India and other countries in the world. With the changing needs of the

society the importance of the subject has further enhanced and it has been considered as one of the most important subject in the field of law.

The intellectual property can be divided into two main sectors namely:

1. Industrial Property.
2. Copyright Law

Industrial property means it is a kind of intellectual property and that relates to creations of the human mind *i.e.*, (i) Inventions (ii) Industrial Designs (iii) Trade Marks (iv) Service Marks (v) Commercial names

- (vi) Trade names (vii) Indication of source
- (viii) Applications of origin and
- (x) Representation of unfair competition¹.

Copyright means the exclusive right to do or authorise to do certain acts in relation to (i) Literary, dramatic, musical and artistic works (ii) Cinematographic Films and (iii) Sound Recordings.

2. Object of Copyright Law :

Copyright is a kind of intellectual property and has gained importance in recent times due to the development of the society and civilisation. The scope of copyright law also broadened coping with the innovations in the field of science and technology as a subject-matter of copyright. The copyright law has spread from the field of literary, dramatic or musical works but also artists, dress designers, architects, publishers, cinematographic films, sound recordings and entertainment industries. In the last few years copyright law further extended with the development and access to the computer programmes, and also audio-video recordings, reprography, cable television programmes were drawn in the copyright law.

The law of copyright in India not only try to protect the rights of the creator or author of the work but also enforces it. The need for protection of the copyright has increased manifold because of rapid technological development in the field of printing, recording and transmission *etc.* The Copyright Act, 1957 in its objects clause reaffirms this principle and states that any art and literature needs healthy environment and sufficient protection of the interest of the artist or author. Enrichment of culture through protection of copyright is considered as a vital social interest and worth protected. The Act also enacted to check the piracy, which deprives the author or copyright owner, the fruits of his labour.

1. G.B. Reddy, Intellectual Property Rights and law, 1st Edition (Gogia Law House, Hyderabad) Page 4

3. Copyright Law - International Conventions :

There are several important conventions evolved at the global level regarding protection of copyrights. At the international level in England in 1707 the first copyright legislation was enacted with a view to protect the copyright. The evolution of intellectual property law started with the adoption of Paris Convention in the year 1883 popularly known as Paris Convention. This convention was revised several times and finally it was revised in 1967 at Stockholm to deal with the industrial property law.

The first international convention on the law of copyright was the 'Barne Convention',² for the protection of Literary and Artistic works. This convention also revised several times and it was revised lastly on 24th July, 1971. In the year 1952 the another important treaty was adopted in this field in the Universal Copyright Convention, this was signed at Geneva on 6th September, 1952 and revised in the year 1971 at Paris.

Another important international convention called Rome Convention was passed in the year 1961, it provides protection for the neighbours rights in relation to performers, producers of programmes and broadcasting organisations. This convention was followed by two treaties signed in Geneva in the year 1996.

- (i) WIPO Copyright Treaty, 1996 with regards to digital technology and internet and
- (ii) WIPO Performances and Programmes Treaty, 1996.

The above two treaties are was adopted in Geneva by the WIPO Diplomatic Conference on Copyright and Neighbouring Rights Questions³.

2. Barne Convention was adopted on 6th September, 1886.

3. Treaties was adopted at Geneva on 20th December, 1996.

The main objects of World Intellectual Property Organisation (WIPO) are

- (i) To promote protection of intellectual property throughout the world through co-operation among States and with collaboration with international organisation like ILO and UNESCO.
- (ii) To ensure administrative co-operation among intellectual property unions in the year 1970 the WIPO became a specialised agency of the united agency system of organisations, with mandate to administer intellectual property matters recognised by the member States of United Organisation. The most important international organisation responsible for development of intellectual property rights is the W.T.O. created in the year 1995. The WTO is the successor to the General Agreement to Tariff and Trade (GATT). This was established to *create* a new international economic order in the changed liberal economy.

Another important International Agreement between the members of WTO is Agreement on Trade Related Aspects of Intellectual Property Right, 1994 (TRIPS)⁴. This agreement binds on all the members of WTO. The main object of the agreement is to reduce distortions and impediments to international trade. Articles 9 to 14 of the Agreement deal with copyright and related rights. TRIPS include time frame by which WTO member countries have to give effect to its provisions.

- (i) Developed countries were required to implement TRIPS complaint legislation by 1st January, 1996.
- (ii) Developing countries were required to implement the TRIPS Agreement provisions by 1st January, 2000.

- (iii) Undeveloped countries have to implement the TRIPS Agreement provisions by 1st January, 2006.

The Government of India is bound by conditionalities of the TRIPS Agreement and Indian Parliament has taken steps in making laws in conformity with TRIPS Agreement. The amendments which have been made in various intellectual property laws like trademarks, copyright, law of design, semi-conductor and integrated circuits, trade secrets, patents, geographical indications and plant varieties.

4. Copyright Law in India :

Prior to the independence we have several legislations on law of copyright. After independence a separate law exclusively on the copyright was enacted in the year 1957 namely Copyright Law Act, 1957 repealing the applicability of Copyright Act, 1911 and 1914. In the year 1971, a Universal Copyright Convention was signed at Paris and as a result thereof the Copyright Act, 1957 was amended in the year 1983 for the following specific purposes;

- (i) Incorporating the provisions of compulsory licences for translation and reproduction of foreign works required for instructional purposes.
- (ii) Providing adequate protection of authors rights.
- (iii) Removing administrative drawbacks and other lacunae experienced in administration of Copyright Act, 1957.

India developed in the field of technology, new problems arose and infringement of copyright started. To over come the evils of piracy the Copyright Act was again amended in the year 1984.

Copyright (Amendment) Act, 1994:

In 1994, India signed on GATT Agreement. The Copyright Act, 1957 was

4. TRIPS Agreement came into force on January 1st, 1995.

amended by Copyright (Amendment) Act, 1994 with a view to put our country at par with other countries in the field of law relating to intellectual property and copyright in particular. The Amendment Act 1994 were response to technological changes in the field of communications like broadcasting and telecasting and the emergence of new technology like computer software. Again the Act was amended in the year 1999 and amendments were made in the definition of literary work and the meaning of copyright in respect of computer programme and also make the Copyright Act fully compatible with Trade - Related Aspects of Intellectual Property Rights (TRIPS) Agreement. With these amendments the Indian Copyright Law has become one of the most universal acceptable copyright law in the world.

Moreover, India is a signatory to both the international conventions *i.e.*, the Berne Conventions of 1886 and Universal Copyright Convention of 1952.

5. Remedies for Infringement of Copyrights:

Section 51 of the copyright Act explains the situations in which a copyright in any work is deemed to be infringed, in general, commercially exploiting the work in any form by any person without authority constitutes infringements.

Based on the type of copyright work, infringement may be

- (a) Reproducing the work in a material form.
- (b) Publishing the work
- (c) Communicating the work to the public
- (d) Performing the work in public or
- (e) Adopting or translating and doing any of the above works from (a) to (d) relation to a substantial part of the work.

6. When a copyright is not infringed :

As provided in Section 52 of the Copyright Act, under the following circumstances, it does not amount to be an infringement of copyright:

- (a) a fair dealing with a literary, dramatic, musical or artistic work, not being computer programme for the purpose of either private use including research or criticism or review, whether of that work or of any other work, or for reporting the current events either in a newspaper, magazine or similar periodical or by broadcast or in a cinematography film or by means of photographs, Section 52(a) and (b), or
- (b) reproduction of literary, dramatic, musical or artistic work for the purpose of a judicial proceedings or reporting of a judicial proceeding, (Section 42(c)) or by a teacher or a pupil in the course of instruction or as a part of the questions to be answered in an examination or in answers to such questions.
- (c) Reproduction or publication of literary, dramatic, musical or artistic work in any work prepared by the Secretariat or a Legislature exclusively for the use of the members of that Legislature; (Section 52(d))
- (d) Reproduction of any literary, dramatic or musical work in a certified copy made or supplied in accordance with any law for the time being in force; (Section 52(e))
- (e) A reading or recitation in public of any reasonable extract from a published literary or dramatic work, (Section 52(f)),
- (f) Publication in a collection composed mainly of non-copyright matter, intended *bona fide* for the use of educational institutions, and described so in the title, *etc.* (Section 52(g))

- (g) The performance, in the course of the activities of an educational institution, or a literary, dramatic or musical work by the staff and student of the institution, or in contravention of the conditions of a licence, or a contravention of any condition imposed by a competent authority, “.....” *etc.*, (Section 52(i))
- (h) The making of sound recordings in respect of any literary, dramatic or musical work, subject to the conditions specified in Section 52(1)
- (i) The performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution, (Section 52(1))

The Copyright Act provided certain exceptions to infringement. The object of these exceptions is to enable the reproduction

of the work for certain public purposes, for encouragement of private study or research and promotion of education. They provide defences in an action of infringement of copyright. Section 52 gives a long list of act which do not constitute infringement of copyright.

Three types of remedies against infringement of copyright are available under Act. They are;

- (i) Civil remedies under Section 54 to 62.
- (ii) Criminal remedies under Sections 63 to 70
- (iii) Administrative remedies under Section 53

Criminal Proceedings for Infringement of Copyright :

The Copyright Act enables the owner of the copyright to take criminal proceedings against on infringer. The offences and the penalties provided under the enactment are :

Sl.No.	Offences	Punishment
1.	Knowingly infringing or abetting the infringement of a copyright in a work or any other right conferred by the Act except the right conferred by Section 53A (resale share right in original copies)	Imprisonment - Minimum of six months; maximum of three years. Fine - minimum of Rs.50,000/- and maximum of Rs.2,00,000/-.
2.	Enhanced penalty is provided on second and subsequent conviction for the above offence (Section 63A)	Imprisonment - Minimum of 1 year, Maximum - three years. Fine - Minimum of Rs.1,00,000/-; Maximum - 2,00,000/-
3.	Knowingly using of infringing copy of a computer programme (Section 63 B)	Imprisonment - Minimum of 7 days, maximum of three years fine.
4.	Making false entries in register of copyrights kept under the Act, making a writing falsely purporting to be a copy of an entry in such register or producing as evidence any such entry or writing knowing it to be false (Section 67)	Imprisonment upto one year or fine or both.
5.	Knowingly making false statements for the purpose of deceiving or influencing any authority or officer in execution of the provisions of the Act (Section 68)	Imprisonment upto one year or fine or both.
6.	Publishing a sound recording or video film without specifying the particulars required to be provided under Section 52 A i.e. in contravention of Section 52A (Section 69)	Imprisonment upto three years or fine or both

Where the infringement has not been made for gain in the course of trade or business, the Court may after recording special reasons for doing so, impose less than minimum imprisonment or fine specified.

The above mentioned penal provisions under the Act show that the penalties, which include imprisonment and monetary fines are such as to provide a deterrent. This seems to have been done in recognition of the fact that profits obtained from copyright infringement may be so high that the award of damages to compensate the right-holder may be relatively small and the finding and destroying of infringing goods and material very difficult. Criminal remedies are used only in case of wilful piracy on a commercial scale.

Regarding the procedure that has to be followed for investigation, inquiry and trial of offences under the Act, unless there is a special provision in the Act regulating any procedural aspect, the Code of Criminal Procedure, 1973 has to be followed.

8. Conclusion :

The law of intellectual property has become an integral part of the economic life in the world at large. The use of ideas and information that are of commercial value are being protected under this law. The revolution taken place in the field of information technology has posed challenges particularly in the area of copyright law. Though the

Copyright Act, 1957 has incorporated adequate measures to protect the right of owners of copyright in general and authors of literary work in particular (the Computer Programme also defined as literary work). It is an indisputable prevailing fact that the authors of literary works are being exploited by publishers in many ways such as not paying remuneration or paying inadequate remuneration or royalties and non-disclosure of total number of copies sold in the market *etc.*,

The video piracy has become an integral part of day-to-day life style in most of the metropolitan cities and our Copyright Law failed to provide relief to the authors of original work. The copyright confers a long lasting right in literary or artistic creation. In case of infringement of such rights law provided certain remedies to the owner. But our experience with the existing law shows that we have not succeeded in this direction and still a lot is left to be achieved. New technologies is certainly bound to pose new problems in the field of video piracy, information technology, computer programmer, literary, dramatic, musical and artistic creation *etc.*

The need is arisen for enforceability of Copyright Act in fullest extent for copyright owners in India and for international community of the world. Our India would stand by the expectations of the world at large in protecting the intellectual property rights and consequently benefiting all people of our nation and the world.

EMPLOYEES' STATE INSURANCE ACT, 1948 – AN IMPORTANT STRATEGY TO COVER ALL THE WORKERS IN INDIA: AN OVER VIEW

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1. Introduction:

Social Insurance is one of the most important strategy of social security. The social

insurance is a compulsory, contributory, employment – related approach whereby benefit eligibility is based on directly or indirectly on the length of employment (or