



# **IP BULLETIN**

*A HALF YEARLY E- MAGEZINE ON IPR POLICY*

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# ACKNOWLEDGEMENT

I express my deep gratitude to Hon'ble Vice Chancellor Justice Mrs. Mridula Mishra, Hon'ble Registrar Shri Manoranjan Prasad Srivastava, for their free hand generous support in bringing this bulletin release. I also express my profound sense of gratitude to all the contributors, all the Hon'ble members of the Editorial Board, my colleagues at CNLU.

## ABOUT CNLU

In the State of Bihar, where the seeds of the earliest republic were sown and the crop of democracy cultivated, a need was felt by the government for a university which would provide quality legal education and strive to raise national legal standards to competitive international level and promote legal awareness in the community, which will lead to the realization of goals embodied in the Constitution of India. Thus, on July 15<sup>th</sup>, 2006 came into being Chanakya National Law University at Patna under the able guidance of its Vice - Chancellor/ Pro - Chancellor, Prof. Dr. A. Lakshminath, former Dean and Registrar, NALSAR University of Law, Hyderabad. CNLU was established under the Chanakya National Law University Act, 2006 (Bihar Act No. 24 of 2006) and included in section 2(f) & 12(B) of the U.G.C. Act, 1956.

No Educational Institution is complete without adequate facilities to its Students, Faculties & Employees. CNLU provides wide range of facilities on its campus. A well managed residential accommodation with modern facility provided to students. Mess & Canteen facilities on campus provide everything from a simple coffee and sandwich to a full meal. University provides a full range of medical services for students & for employees who register as patients. In addition to general practice services, CNLU provides a range of specialist clinics and visiting practitioners. University organised regular career fairs, training workshops, and one-to-one guidance for students. Counseling Service aims to enable students to achieve their academic and personal goals by providing confidential counseling

and support for any difficulties encountered while at CNLU. University provides a wide range of IT services including campus internet access via a wireless network and in student residences.

Number of retired Judges of the Supreme Court, High Courts and lower Judiciary as well as Senior Advocates & Educationalist have offered to assist the CNLU in its teaching and research programmes making education at CNLU a rare and exciting experience to the student body. CNLU admired example of maintaining financial autonomy along with greater accountability. It is equipped with the state-of-art infrastructure for successful imparting of legal education of the highest standards. The faculty at CNLU comprises highly acclaimed and experienced academicians who are proactively involved in grooming the younger generation to take CNLU to greater heights.

The construction work of the university spread on 18 acres of land at Nyaya Nagar, Mithapur near Mithapur Bus stand, Jakkanpur Police Station, Patna. A sprawling lawn with various types of palm trees has adds beauty to the landscape.



## ABOUT CIRF IN IPHD

Innovation is an imaginative initiative to resolve socio-economic –cultural –scientific-technological problems of everyday life. Wherever we are, innovation is required for advancement-progress- prosperity. Innovation motivates for research – searching the solution to a problem. The intellectual property is a creation of mind. It is in the form of copyright, patents, Trademarks, design, integrated circuit lay out design, trade secret, and geographical indications, bio-technological inventions, traditional knowledge, inventions related to plant varieties, farmers’, and plant breeders’ rights. Every types of intellectual creation is socio-economic oriented. But there is requirement of protection to the creators for their economic and moral rights involved in it. At the same time, the dissemination of intellectual property knowledge among the society is essential. The industry also requires connection and involvement.

IPR is a subject interconnected with almost all walks of human life today. The requirements of innovation in MSME cannot be denied which furthers employment in organised as well as unorganised sector. Likewise, the sports sector is closely connected with intellectual properties: patents, copyrights, design, trademarks, and traditional knowledge, etc. The tourism has become a mega source of commerce and employment, where in the innovation is every time a challenge. The National policy on IPR deals with the creation of Human capital with the same spirit that Human Rights tries to protect the Humanity.

Hence, the Chanakya National Law University aims to encourage research and innovation in IP and interconnected areas, i.e. Entrepreneurship, Sports, Tourism and Human Rights, through this Centre. The Centre will strive for the cause of economic development of the people of Bihar and all the persons/innovators in general in IP and inter-connected areas –entrepreneurship, sports, tourism, and ultimately Human development by protecting Human Rights.

### OBJECTIVES

Institutional Activities	Collaborative Activities
<ul style="list-style-type: none"> <li>• Awareness towards intellectual property Rights through seminar /Conference/ Workshop/Symposium and Innovation March.</li> <li>• Institutional project research from government Institutions/Research organisations in India/Abroad.</li> <li>• Inter-University Collaboration for research in the field of Intellectual property.</li> <li>• Facilitation Centre for registration and commercialisation related activities.</li> <li>• Consultancy facility from expert.</li> <li>• Publication of ‘Research Journal in IP’ and ‘Inter-disciplinary journal’ and ‘Books’</li> <li>• Organising Professional development program and Certificate courses.</li> <li>• Setting up Student IPR Club.</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> IP and Sports industry</li> <li><input type="checkbox"/> IP and Tourism</li> <li><input type="checkbox"/> Global Trade in IP and Humanrights</li> <li><input type="checkbox"/> IP and entrepreneurship.</li> <li><input type="checkbox"/> IP, Corporate and Competition.</li> <li><input type="checkbox"/> IP and Information security.</li> <li><input type="checkbox"/> IP, Humanities and Human Development</li> <li><input type="checkbox"/> Community IP, Benefit Sharing and Economic development</li> <li><input type="checkbox"/> Collaboration with Universities, NIPER, and RESEARCH CENTRES.</li> <li><input type="checkbox"/> Industry –University collaboration, (MSME, Startup-Startup)</li> </ul>

# INTELLECTUAL PROPERTY BULLETIN

(ISSN No.....To be obtained after release)

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**Hon'ble Justice Smt,  
Mridula Mishra, VC, CNLU.**

It's a matter of great pride and pleasure that the Centre for Innovation Research and Facilitation in Intellectual Property for Humanity and Development (CIRF in IPHD) of Chanakya Law University is releasing a magazine namely: I P BULLETIN, quarterly. The Bulletin has a feature of magazine with an effort to accommodate the application of IPR in industries and significance in business, disseminate the programs of the centre, IPR discussion and debates, innovations in industries and MSME. This is a journal cum newsletter for encouraging the students' entrepreneurs, academicians, and professionals to write column, case study and judgement analysis in the field of IPR. It has aim to make the stake holders aware about IPRs. The contents are well arranged and informative. It will prove beneficial to all the stake holders. This journal is a magazine on National IPR Policy of the Govt. of India. This magazine contains the implication aspects of intellectual property, starting from awareness program, capacity building, entrepreneurship and industrial application. The IP Bulletin will work as per the policy of the government to harnessing the natural resources for employment and economic development. This bulletin discusses the crisp policies, DIPP policy towards Intellectual Property creation, industrialization and commercialization in India. This IP bulletin discusses the India's growth stories in IPR Regime despite

pandemic conditions which is a proved fact with the invention of covaxon and Covisheid.

I wish all the best to the entire Team for this creative forum.

THE CENTRE FOR INNOVATION RESEARCH AND FACILITATION IN INTELLECTUAL PROPERTY FOR HUMANITY AND DEVELOPEMENT

## REGISTRAR'S MESSAGE



**Shree Manoranjan Prasad  
Shrivastava, Registrar, CNLU.**

The IP Bulletin published by the centre is another miles stone in its venture for the dissemination of Intellectual Property among the academia, professionals, entrepreneurs, consumers etc. The academic journal carries on materials for analysis, debates and discussion, but the maga-zine deals with miscellaneous pieces. It discusses the current issues and opinion of the con-cerned persons. It widens the knowledge of the readers. With this reference, this Bulletin has been launched to provide news on IPR, application of IPR in the industries, consumers benefits,innovation by the students, awareness programs and scope in the field of IPR .The bulletin ex- pects to present the world the application of IPR in our day to day life .How IPR has become a part and parcel of our life, industry and business and employment. This bulletin will prove a veryinformative forum for all the stake holders.

The National Policy on IPR is a vision document for intellectual creation, industrialization, commercialization, employment generation and economic growth. IPR is a creation of human mind which has potential to bring massive change if it is applied properly. IPR is the essential tool of entrepreneurship. This IP Bulletin intends to create awareness among the professionals, entre- preneurs, industrial and commercial worlds. The bulletin will collect and organize material forthe economic development to all the stake holders in future. I wish all success to the bulletin and All the best.

## EDITORIAL NOTE



Prof. Shubhash C. Roy,  
Professor of Law, Dean, R & D, Director

The **I.P.BULLETIN** (Intellectual Property Bulletin) is a publication of the Centre for Innovation Research and Facilitation in Intellectual Property for Humanity and Development (CIRF-in- IPHD). It is a **Magazine**, ISSN .....To be obtained as per rule. It carries news, column, case reports, essay writings events and activities, research in the domain of Intellectual Property Rights. It has to carry the application of intellectual creation which are of commercial significance. Intellectual property is a creation of mind. Why does it require protection? Whether all of us are aware of the Intellectual Property? Whether Intellectual property can speedup industrialization, commercialisation and generate employment? Whether Intellectual Property can boost up ‘**Make in India: Made in India; ‘Stand up India: Start up India’** Program? Whether Intellectual Creation have potency of making ‘**Self-Reliant Bharat’ (Atma Nirbhar)**? The Government of India has formulated ‘National I P Policy’ in 2016 with a slogan ‘**Creative India: Innovative India**’. It aims to IPR Awareness: Outreach and Promotion , To stimulate the generation of IPR, Legal and Legislative Framework - To have strong and effective IPR laws, which balances the interests of rights owners with larger public interest, Administration and Management - To modernize and strengthen service oriented IPR administration, Commercialization of IPR - Get value for IPRs through commercialization, Enforcement and Adjudication - To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements, Human Capital Development - To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPR.

The I P BULLETIN is another venture of the Centre with respect to the **National IPR Policy 2016, innovation policy 2019 and science and technology policy 2020**, to work for MSME. They have been working towards the propagation of creativity, innovation, industrialization and commercialization of intellectual property. This Bulletin has features like events, columns, news, research information, case review, essays etc. The first Half Yearly Vol. II January – June issue I of December 2021 is hereby submitted before the learned scholars, policy makers, entrepreneurs, MSME, Businessman, administrators,

agriculturists and all the concerned stake holders.



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## IP BULLETIN

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### IP INNOVATIONS

Baishali Jain\*

#### **RAKSHITA- Motorcycle ambulance**

The Central Reserve Police Force (CRPF) and Defence Research and Development Organisation (DRDO) launched a specially developed RAKSHITA- a bike ambulance to attend urgent evacuation needs of the security force personnel in event of a medical emergency or battle injury in Naxal affected areas. It will help in overcoming the problems faced by Indian security forces and emergency healthcare providers. It will provide life saving aid for evacuation of injured patients from low intensity conflict areas. The bike will respond to medical emergency need of patients faster than four wheeler due to its functionality and integrated emergency medical support system.

(Source: The Economic Times News, Jan 2021)



#### **Drip Irrigation System**

Ramesh Bariya, from Rotala village in the tribal dominated district of Jhabua in Madhya Pradesh while struggling with unpredictable rains, eroded soil, loss of fertility and rising temperatures developed a new technique – “Drip Irrigation using waste glucose bottles”, with the help from National Agricultural Innovation Project (NAIP). He hung one of these bottles next to each plant and with the help of the regulator that is normally used for drips in glucose bottles; he was able to maintain steady flow of water without having to constantly check on them. This helped him earn huge profit as well as save the environment by making use of bottles which would



\* Baishali Jain, Research Scholar, CNLU, Patna.

have otherwise taken forever to decompose in a sea of medicinal waste.

(Source: India Times News, July 2020)

### CoronaOven

Log 9 Materials, a Bengaluru headquartered nanotechnology start-up, has come up with first-of-its-kind a product named CoronaOven that makes use of UV-C light (having wavelength of 253.7nm) in combination with significant design parameters. The device disinfects surfaces (of various objects, personal protective equipment, etc.) from germs including bacteria and viruses. This unique multi-focal UV disinfection chamber claims to sanitise any surface within 4 minutes. CoronaOven is available in different sizes like 20-litre, 33-litre, 40-litre and 440-litre variants.

(Source: The Hindu Business Line, October 2021)



### 'Solution' converting Nitrogen into Oxygen

Indian Institute of Technology (IIT) Bombay has come up with a creative and innovative solution of converting Nitrogen Generator into Oxygen Generator. The pilot project is a collaborative effort between IIT Bombay, Tata Consulting Engineers and Spantech Engineers who deal with PSA Nitrogen and Oxygen plant production.

The solution was meant to address the shortage of medical oxygen for the treatment of Covid-19 patients in the country. It was done by fine-tuning the existing Nitrogen Plant setup and changing the molecular sieves from Carbon to Zeolite, which take air from the atmosphere as raw material. Therefore, each of them could potentially be converted into an oxygen generator.

(Source: Analytics India Magazine, April 2021)



### COVIRAP

Indian Institute of technology, Kharagpur launched its flagship product called – COVIRAP developed by Prof. Suman Chakraborty, Dr. Arindham Mondal and their group. It is a diagnostic technology that can be used for detecting infectious diseases including COVID-19 and beyond. It uses stepwise isothermal nucleic acid testing technology for the rapid diagnostics of pathogenic infections including SARS-COV2 in individuals. The COVID-19 diagnostic test can be conducted directly from human swab samples in the portable device. The result is made available within 45 minutes.

(Source: Analytics India Magazine, July 2021)



### Swasa Oxyrise

As the second wave of Covid-19 wreaked havoc across the country, lack of oxygen triggered a major crisis. To solve this problem, the Indian Institute of Technology (IIT), Kanpur, created a "Swasa Oxyrise" bottle which increases the oxygen in a human body. This





unique device can be carried anywhere with great ease and can meet the need of oxygen in case of medical emergency. One can easily intake oxygen by spraying it inside the face mask which will last for long time. This will boost the oxygen supply in the body. 10-litre of oxygen has been compressed in a 800gram bottle. Nearly 200 shots of oxygen can be given to person from a single bottle which is available for Rs. 499 only.

(Source: The Weekend Leader.com journal, July 2021)

### **Edir- Eco Friendly Fishing Trap**

The Galo, a tribe in Arunachal Pradesh n Northeast India designed a tool named as Edir- made from locally available bamboo material. Edir is skillfully designed fish trap in the form of basket used to catch fish swimming in streams. This conical shaped bamboo trap is entirely harmless to aquatic life, since it uses no chemicals nor does it trap other animals. The basket is placed in the river or flowing streams by blocking the other escape points, so that the fish gets trapped in Edir fish trap.

(Source: Abhinandan Dubey, EcoIdeaz, April 2019)



### **Halodu weeder –A blessing for hill farmers**

The slopes of mountains and the sporadic land patterns don't allow farmers to use tractors to sow or weed on a large scale. Raj Kumar, a resident of a remote village named Dalchera, Hamirpur district in Himachal Pradesh was another victim of such natural impediments, which exhorted him to innovate a novel tool named- Halodu. Utilising the second hand wheel and chimta from a wreck of the old bicycle, Raj Kumar invented a strange-looking but indigenous tool for weeding and sowing his field. The tool is not just cost effective innovation that helps farmers, but also helps in preserving the natural landscapes by avoiding the use of tractors that emit harmful greenhouse gases.

(Source: Abhinandan Dubey, EcoIdeaz, April 2019)

### **Plastic Public Toilet**

Delhi resident Ashwini Agarwal has made this special toilet from single use waste plastic bottles. One such toilet is made from the use of about 9000 waste bottles, which means that about 120kg of plastic is used. It has the storage capacity of 200-litre. This toilet is built at a cost of Rs.12,000 and gets installed in just two hours.

(Source: IndiaTimes.com, Sept 2020)



### **Hybrid Rickshaw**

Ramesh of Varanasi, with the help of his jugaado thinking and a motor mechanic, developed a hybrid rickshaw which runs on motor and also by pedaling. Its speed is 40 km per hour. A shade has been installed over the seat to avoid sun and rain.

(Source: IndiaTimes.com, Sept 2020)



### **Nano Plus - Mini Tractor**

Nileshbhai Bhalla a farmer from Gujarat developed a mini tractor equipped with Japanese technology. This tractor with 10 HP power is available in two models- 3 tires and 4 tires. This tractor helps in plowing, sowing, weeding, hoeing, load carrying, and insecticide spray and becomes a scooter on the road outside the field.

(Source: IndiaTimes.com, Sept 2020)





## I P BULLETIN

Vol. II (01), Jan-June 2021, pp.06-15



# MORAL RIGHTS AND THE RIGHT TO PARODY IN INDIA

Prapti Sharma

### ABSTRACT

*This research paper tries to examine the relationship between parody and an author's moral rights related to his copyrighted work, created by him. The paper first traces an outline of the evolution of the concept of moral rights, which are significant means of providing intellectual protection, not only of the authors' personal interests, but also the public interest. The paper then discusses the reasons why moral rights might come into conflict with parodies. The reasons study two theories underlying the protection of the interests of the author—the 'monist' and 'dualist' theory—and elucidates further on their implications for the exception of parodies. The paper further studies how jurisdictions make a significant impact on the kind of protection afforded to moral rights, thereby noting that the parody exception in 'copyright' law does not necessarily extend to moral rights in every country, but many countries do tolerate them and give them the defence under exceptions. The paper goes on to explore the extent of the author's paternity and integrity rights, along with their right against false attribution. It further examines the stand of Indian judiciary on the matter, and finally concludes by observing the findings of the research, while pondering whether recommendations for reforms are required in the Indian way of dealing with parodies and spoofs, and whether they should be further protected. The research methodology is majorly doctrinal.*

**Keywords: Copyright, Moral Rights, Parody, Intellectual Property.**

## **INTRODUCTION**

A Parody, including spoofs, is usually understood as a humorous or widely satiric imitation of an original work by an author<sup>1</sup>. In general understanding, parody is meant for either comical interpretation or ridiculing the artist's interpretation of work, as it has it. Furthermore, with advancement in technology, creating and publishing parody work online has become more convenient and easier. In fact, there are some websites that operate solely for publishing of parodies only. This therefore, spikes up a debate on the legality of a parody and its relation with the intellectual property rights of the original author, whose substantial amount of work is imitated and used for the running of such portals. However, the question pertaining such copying and whether it amounts to infringement or not, or whether it is exempted under the defence of fair use or even whether it affects the moral rights of the owner, turns out to be very subjective and relies on its answer from case to case, after studying facts and circumstances.

It is a known fact that parodies live off the things that they imitate. However, they also exist as literary works in their own right. Hence, they raise crucial legal and ethical issues for individuals in the area of literary, publication, and broadcasting information work. There may be infringing others' copyrights by using them in a misleading context, but may also fall well within the exception of the exercise of 'fair use' or 'fair dealing', and free speech<sup>2</sup>.

However, to better understand the intricacies of the criteria that categorize parodies into either that of an infringing nature as to the moral rights of an author, or into the exception of fair use, it is best to study the evolution of moral rights throughout history, and their growing space with respect to the Intellectual Property Law.

## **NATURE AND EVOLUTION OF MORAL RIGHTS**

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<sup>1</sup> LEXICO, <https://www.lexico.com/definition/parody> (last visited Oct. 06, 2021).

<sup>2</sup> Stuart Hannabuss, INSPIRATION OR INFRINGEMENT: PARODY AND THE LAW LIBRARY REVIEW (2002), <https://www.emerald.com/insight/content/doi/10.1108/00242530210418846/full/html> (last visited Oct. 14, 2021).

Moral rights can be understood as additional rights of creators of the copyrighted works. These additional rights are usually recognized in civil law jurisdictions and, to some extent, in some common law jurisdictions as well. They generally include:

- the right of attribution,
- the right to have one's work published while maintaining, anonymity, and
- the right to the integrity of the one's work.

The protection of the integrity of the one's work provides the author of the work with the right to raise an objection in case there is any alteration, distortion, or mutilation of his/ her work that is "*prejudicial to the author's honour or reputation*"<sup>3</sup>. The salient feature of such rights is that even if an artist has already assigned his or her copyright to a work created by him or her, to a third party, he or she still nevertheless gets to maintain the moral rights to his or her work.

Moral rights were initially recognized by France and Germany, after which, they went on to be included in the *Berne Convention for the Protection of Literary and Artistic Works* in 1928. However, there are some jurisdictions that allow for the waiver of such moral rights. The USA's *Visual Artists Rights Act of 1990* do recognizes the legality of moral rights; however, they only apply to a narrow subset of works, i.e. only in case of visual art<sup>4</sup>. Further, some countries like Austria differentiate between the concept of narrow and wide moral rights. While the former pertains to the integrity of the work, the latter seeks to limit its use, which sometimes tend to harm the author's integrity. To prevent this violation of wider rights, some copyright services provides for an allowance to the author to publish the details of allowed and disallowed usage intentions<sup>5</sup>.

### ***In the Berne Convention***

With the Rome Revision of the Berne Convention in 1928, the Berne Convention accepted two forms of such moral rights:

- paternity right: right of author to claim authorship of his work, and
- integrity right: right of the author to claim damages in respect of any mutilation, modification, or distortion of his work, which prejudices his honour or reputation.

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<sup>3</sup> Berne Convention for the Protection of Literary and Artistic Works, September 9, 1886, art. 6bis, S. Treaty Doc. No. 27, 99th Cong., 2d Sess. 41 (1986).

<sup>4</sup> Laura Gassaway (December 2002), *Copyright and moral rights*, INFORMATION OUTLOOK, Vol. 6, No. 12, p. 40 (Copyright Corner).

<sup>5</sup> REGISTERED COMMONS, <https://www.registeredcommons.org/faq/#f15>.

Article 6bis of the *Berne Convention*<sup>6</sup> includes these rights and states that they are independent of the economic rights of the author. Further, authors are also granted the right to claim authorship of their work- even if the copyright of the work has been given away- and to raise an objection in case there is *any distortion, modification of, or other derogatory action in relation to the said work*, in case the said action is prejudicial to the author's reputation or honour, in the article.

### ***Moral Rights in India***

Moral rights are recognised under section 57 of the Indian Copyright Act, 1957<sup>7</sup>. Section 57 of the Act refers to an author's Special Rights and states that the author of the copyrighted work retains the right claim authorship of the said work. Further, like the Berne Convention, it also provides the author with the right to claim damages or seek a restrain if there has been some form of distortion, modification, or mutilation of the work. Further, the right to restrain or claim damages can also be exercised if there has been any other action with regards to the said work that can prove to be prejudicial to the author's reputation.

In the case of *Amar Nath Sehgal v. Union of India & Ors.*<sup>8</sup>, the issue of these moral rights of the author was raised. The case was associated with a mural that was commissioned in 1957 by the Indian Government during construction of Vigyan Bhavan at New Delhi. The said bronze mural in question was of 140 feet sweep of 40 feet. It remained on display till 1979, after which it was confined to storerooms of the Union of India. The Hon'ble Delhi High Court referred to the *Berne Convention* while delivering its judgement, as it awarded damages of Rs. 5,00,000, as it ruled in favour of Amar Nath Sehgal and granted him the absolute right to recreate the mural at any place and held that he would have the right to sell it as well.

The Hon'ble Court, therefore, accepted the existence of the moral rights of the creator despite the work having been commissioned and copyrighted in favour of the Union of India, and it proved to be a landmark judgement in this area of intellectual property.

## **THE CONFLICT BETWEEN MORAL RIGHTS AND PARODIES**

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<sup>6</sup> Berne Convention for the Protection of Literary and Artistic Works, September 9, 1886, art. 6bis, S. Treaty Doc. No. 27, 99th Cong., 2d Sess. 41 (1986).

<sup>7</sup> The Copyright Act, 1957, Section 57, No. 14, Acts of Parliament, 1957 (India).

<sup>8</sup> 117 (2005) DLT 717.

A Parody, as understood in general sense, is a humorous work that critically comments upon, or ridicules an existing work, aimed at bringing forth the flaws of the said work<sup>9</sup>. That being said, is thereby understood that a parody is dependent on the original work of the creator to be well received and appreciated by the relevant audience. It means that the audience need to be acquainted with the original work, in order to appreciate the parody. But since, by nature, a parody generally lives off the work of another, it comes into conflict with certain areas of intellectual property law. But most importantly, a parodist may tend to violate the copyright and moral rights of the original author by modifying his work in such a critical or satirical manner, that may threaten to injure his honour and reputation, which is the area of research of this paper.

The concept of moral rights is basically an understanding that an author's work is an indicative extension of his personality that defines him<sup>10</sup>. Moral rights, therefore, are independent from copyrights, and thereby protects two basic rights of the author:

- the right to claim authorship of one's work and
- right to protect one's artistic integrity.

The latter of the two, commonly known as the 'right to integrity', is meant to safeguard an author's work from modification or distortion in such a way that leads to injuring his reputation and honour.

However, since there are two theories underlying the protection of the interests of the author—the 'monist' and 'dualist' theory, it is important to understand them as well to understand their implications on the exception of parodies.

- According to the monistic approach, the economic rights and author's moral rights, both are subject to, and interpreted as different manifestations of a single right, that is unitary.
- On the contrary, according to the dualistic approach, specified types of rights should be accorded separate backgrounds.

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<sup>9</sup> Van Hecke, B. W., "But Seriously, Folks: Toward a Coherent Standard of Parody as Fair Use", (1999) 77 *Minnesota Law Review*, 465, 465.

<sup>10</sup> Yeats, W. B., *The Tower, Among School Children* (1928) stanza 8, as cited in Yonover, J., "The "Dissing" of Da Vinci: The Imaginary Case of Leonardo v. Duchamp: Moral Rights, Parody, and Fair Use", (1995) 29 *Val. U.L. Rev.* 935, 947.

However, both these models meet at a common point when it comes to the protection of author's economic and moral rights.

However, since in many countries, the dualistic approach is followed, and therefore, moral rights are strictly separated from the economic and other rights of the author, implying that even after a copyright is sold to a third party, an author still gets to retain his moral rights to his work independently, it poses questions as to parodies destroying those moral rights by making fun of the original work of the authors.

## **LITERATURE REVIEW**

Studies and research conducted in the area of parodies and moral rights indicate that parodies are often viewed critically on the same pedestal as satires. In 2020, while hearing a case related to the stay of a Netflix series “*Hasmukh*”<sup>11</sup> for allegedly making derogatory remarks against the legal fraternity, the Delhi High Court defined a satire as “...*a work of art. It is a literary work that ridicules its subjects through the use of techniques like exaggeration. It is a witty, ironic, and often exaggerated portrayal of a subject.*” The given definition clubs satires with parodies and indicates that both forms of artistic expressions can use the defence of fair use while dealing with the allegations of copyright and related rights violation.

However, academicians stay conflicted on the question whether these forms of artistic expression should or should not be allowed to use the defence. Many lean against leaving the question to the discretion of courts<sup>12</sup> and site the example of Indian film director Ram Gopal Varma using a parody of the National Anthem in the trailer of his movie, *Rann*, which was subsequently removed by the Central Board for Film Certification. The Supreme Court had held that no one had the right to distort the National Anthem in the name of artistic expression. However, in the same research paper, the author concluded that the fundamental right to freedom of speech and expression<sup>13</sup> negates all the other arguments against censoring such parodies.

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<sup>11</sup> Ashutosh Dubey vs Netflix, Inc & Ors. on 5 May, 2020.

<sup>12</sup> Shan Kohli, *Parody of National Anthem: Ram Gopal Varma ki Nayi Aag*, 3 NULS L. Rev. 215, 216-227 (2010).

<sup>13</sup> INDIA CONST. art. 19, cl. (1)(a).



The contradiction in the above two judgements, however, only flares the debate over these parodies even further. It raises the question as to the parameters that should be used to judge whether a parody in question actually violates moral rights or not.

## **DO PARODIES REALLY VIOLATE MORAL RIGHTS?**

### ***Indian position on fair use and parodies***

Section 52 of the Indian Copyright Act, 1957<sup>14</sup>, gives the concept of ‘fair dealing’ of the original work, and states that a fair dealing of a literary work with the aim to criticise or review, shall not constitute infringement of copyright.

In *M/s. Blackwood & Sons Ltd. v. A.N. Parasuraman*,<sup>15</sup> the Madras High Court observed that so as to constitute a fair dealing, there shall be no intention on the part of the alleged infringer to compete with the copyright holder and to derive any profits from such competition. Further, alleged infringer’s motive in dealing with the work must not be improper.

The first condition, which is understood as ‘the market substitution test’, can be proved with ease, as most of the parodies do not seek to compete with the original and existing work, but merely seeks to ridicule or criticize it in a manner that exposes its flaws. As regards to the second condition, it creates doubts as to what actually constitutes an ‘improper use’, and whether a parody satisfies such use. Such question however, can only be answered by studying facts and circumstances of each case.

One such test to answer the question was formulated in the case of *Civic Chandran v. Ammini Amma*<sup>16</sup>, wherein the Kerala High Court held that as long as a parody copies from the original existing work in order to criticize it, it does not constitute an ‘improper use’ of the original work, and hence qualifies as fair dealing. It is pertinent to note that, to arrive at this judgement, the factors considered by the Hon’ble Court were:

- the value of the matter taken in relation to the criticism;
- the purpose that it is taken for; and

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<sup>14</sup> The Copyright Act, 1957, Section 52, No. 14, Acts of Parliament, 1957 (India).

<sup>15</sup> AIR 1959 Mad. 410.

<sup>16</sup> 1996 PTR 142.

- the likelihood of competition between the two works.

### ***Moral Rights and Parodies***

Section 57 of the Indian Copyright Act, 1957 protects one's moral rights to his work, even after the copyright is sold to a third party.

However, it is argued that a proper interpretation of this Section 57 would signify that parodies, for the matter of fact, do not violate the 'right to integrity', safeguarded under moral rights, of the author. A parody, if understood in a deeper sense, does not constitute a mutilation, modification, or distortion of the original existing work of the author. Rather, it actually constitutes a new and independent work in its own right, which only borrows certain elements from an original existing work, in order to bring out its flaws and criticise it. A study of various cases of parody above confirms it as a work that has borrowed certain elements from the existing, and allegedly infringed work<sup>17</sup>. For this reason, a parody, therefore, cannot be understood to be in violation of the author's 'right to integrity', or his moral rights.

### **ANALYSIS AND FINDINGS- IS THE PROTECTION RENDERED TO PARODIES PRACTICALLY SUFFICIENT?**

The recent years have seen a high rise in the space of entertainment industry that, have tried to accommodate parodies and spoofs in India. The biggest and most common creations of such form of entertainment are seen on YouTube Channels that constantly create and upload humorous critical parodies, generally aiming more successful channels or Bollywood movies, songs, and dance numbers.

The 2019 famous spat between an Indian page that goes by the name T-series and an international page by the name of PewDiePie made rounds of talks around the social media. But while the two pages monetised its spats and multiplied subscribers in a matter of few days, other small YouTube sensations like Salil Jamdar, faced the Indian page's claims of copyright infringements when the former uploaded a diss track taking aim on the spat, forcing Jamdar to make the video private<sup>18</sup>.

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<sup>17</sup> Campbell v. Acuff-Rose 510 U.S. 569 (1994).

<sup>18</sup> *Bollywood's Bullying is killing Indian YouTube Parody Creators*, GADGETS360, (Feb. 20, 2021, 9:01 PM), <https://gadgets.ndtv.com/entertainment/features/bollywood-parody-youtube-copyright-fair-use-t-series-yrf-creators-india-2236480>.

Another former popular comedy collective AIB too, had found itself in midst of various controversies as it created spoofs and parodies targeting Bollywood music, dance, and movie trailers, when it had existed.

And although such hindrances do not stop such channels and collectives to stop making parodies, they however, certainly prevent them for earning revenues off a content that they made by themselves, since the brands and movies, whose content is mimicked, claim copyright infringement, and generally take off most of the revenue generated by such spoofs.

Unfortunately, unlike in the United States, where such parodies are provided with greater protection from copyright claims under 'fair use' exception, Indian Judiciary base off its test of granting exception on the fact whether such parodies seek to earn money off the original content<sup>19</sup>.

While the creators hope to have clearly seek to feel solace by the fact that their parodies receive substantial protection at the hands of both the judiciary and the legislature, and therefore, are not, as such, actionable, but the fact of the matter remains that there exists an economic or monetary justification for maintaining that level of protection that parodies currently enjoy. This means that intellectual property protection against parody or the exception of 'fair dealing' effectively provides no monetary benefits. On the contrary, it poses a significant negative impact on the quantity and quality of work produced in society, since such work find it difficult to earn revenue, or monetise their creations.

Such intellectual property blanket provided to the original creators, certainly deprives the general public of entertainment and critical points of view of independent parodists, as due to the lack of any additional incentives for individuals to engage in productive labours, parodists find themselves discouraged from reviewing others' work.

In short, it becomes economically inefficient and practically against the principles of intellectual property law to grant intellectual property law protection against parodies. Hence, in light of the facts and cases discussed in the paper, it is recommended that parodists and creators of spoofs should continue to be given considerable protection against actions under

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<sup>19</sup> AIR 1959 Mad. 410.

intellectual property law, and the economic test should be a matter to be reviewed by the judiciary.

## **CONCLUSION**

The findings of this paper indicate that parodies do not necessarily infringe an author's moral rights, as for doing so, it would require such creations to injure the reputation and honour of the original work, and use or mimic them so as to constitute 'improper use'. However, the test given in the *Civic Chandran* case provides that parodies should not aim to compete with the original work in order to qualify as fair use, requiring the parodists to give up on the prospect of revenue earning through their work. Therefore, even after the protection provided to parodies by the Indian Copyright Act, 1957 by encompassing it in the definition of 'fair dealing', and the judiciary favouring their existence, the parodists fail to stand strong on an economic holding, rendering them lacking in their content creation. This certainly deprives the general public of the critical and humorous point of views of seeing the flaws of the content. In short, it becomes economically inefficient and practically against the principles of intellectual property law to grant intellectual property law protection against parodies. Parody is understood as a humorous or widely satirical imitation of an original work by an author. In general understanding, parody is meant for either comical interpretation or ridiculing the artist's interpretation of work, as it has it. Very rarely does it seek to injure the reputation or honour of the creator, therefore, turning the events into entertaining discourse for the public. By this reason, it is concluded that parodies do not violate the moral rights of the original author guaranteed to him by the Act, and must be therefore, be viewed only as a source of laughter and constructive criticism, worthy of protection.



## **FASHION INFLUENCER NEED: FASHION LAWS INDIA**

Prakhar Dubey\*

### **ABSTRACT**

In the present article we will understand about the importance of existing fashion regime in India and why the fashion industry needs separate laws for the protection in the present Intellectual Property Right. This article explains how this area is flourishing with the advancement in technology and social media has introduced a lot of designers to showcase their talent. Even though at present we have fashion protection copyright, trademark, and design Act, still a large number of fashion influencers suffer as there is intense competition in the market. This article talks about the trickle-down approach. The current problems that can occur due to counterfeit and knock off and current examples where we can see these happening in the market of Delhi and Mumbai commonly. There are many other problems of fashion influencers which are existing more than these. The current regime in Consumer Protection Act 2019 which can be seen as a glimmer of hope but is it really effective? The article ends with suggestion and conclusion to protect the current fashion influencer and make the law better.

**Key Words:** Knockoff, Counterfeited, Trademark, Copyright, Design Act etc

### **UNDERSTANDING THE INDIAN FASHION INDUSTRY**

As we know the fashion industry is known as the apparel industry is famous for generating tons

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of dollars along with generating money it is a great source for people to get themselves employed, we see every year millions of people get themselves employed but often the amount of time they put to come up with something new get unnoticed. The people in the fashion industry have faced the issue of imitation of their original content being copied and presented elsewhere and with the advancement in the latest technology, we can see copying in fashion design more than ever.

The fashion industry is known to grow every day and since the last decade we have seen this area proliferating. We saw many designers locally have made their mark not only domestically but also internationally. If we see the fashion events have grown from 1 to 5 from the start of 2004 to late 2015.<sup>20</sup> In a study conducted by the Associated Chambers of Commerce and Industry of India (ASSOCHAM) the fashion industry has grown from 750 crores and predicted that this will grow from 40% in 2012 to 15,000 crores by late 2020.<sup>21</sup> But this study went on to point out that Indian designer work in the global market has not flourished. The study points that designer wear had increased from 0.32% in 2012 to 1.9% in 2020.

If we talk about fashion design, they are created where one's creative mind and intellectual innovation play a crucial role in displaying their art and getting protection under Intellectual Property Right (IPR). We all know that garments and accessories are used for the functional purpose for our life but with the trending fashion and influencers who are working behind it shows an expression which transcends mere utility. This strong protection is needed to provide safeguards to these influencers.

### **RESEARCH AREA**

This research question for this paper concerns that the fashion industry has got weak legal protection and this is when a sui-generis need for fashion law is required in Indian regime. Even though we have fashion design being protected under the copyright, trademark, and design Act, still a large number of fashion influencers suffer as there is intense competition in the market. Even the paper provides a clear distinction in knocking off and counterfeit and existing problems in the current IPR regime.

### **DO WE NEED IPR PROTECTION IN FASHION DESIGN?**

With the growing technology and growing human intellect, the trend in fashion is increasing day by day and there is a subjective opinion that with the growing pace of fashion and different

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<sup>20</sup> The 5 large Indian Fashion events are (1) Lakme Fashion Week (2) Wills Lifestyle Indian Fashion Week, (3) Bangalore Fashion Week, (4) Indian Bridal Fashion Week (5) Blenders Pride Indore Fashion Week

<sup>21</sup> <http://www.fashionenigma.com/articles168.asp>.

fashion influencers coming up with something new every day one set of opinions is strongly raised which demand IPR protection in fashion regime but with this, we cannot say definitely that everyone thinks that IPR protection is a necessary solution for fashion design some believe that IPR protection for fashion design must be avoided.<sup>22</sup>

There is a group that opposes IPR protection for fashion design they have made a critical argument which shows that as the fashion industry is rich and growing, IPR protection is not necessarily needed rather, they claim if IPR protection will be absent it will boost confidence fashion designer to innovate new designs which ultimately leads to the growth of the fashion industry.

Copying is commonly seen as a trend that we see among fashion design and it usually occurs between the highest to lowest strata of the fashion industry thus it is in the best interest that IPR protection should be avoided.<sup>23</sup> Extending this IPR protection in the fashion industry is not much for top fashion designers though it becomes a thinking perspective for upcoming designers and small business owners who get stuck in the market competition and there is enough over-exposure as social media has brought us together because of copying.<sup>24</sup>

The other argument that some put forward is that there should be IPR protection provided to the fashion industry, and it is not just from the highest to the lowest where just the copying occurs but this copying occurs with many fashion designers who are emerging in this industry and even the small business owners, who suffer due to intense competition and overexposure thus to solve this mischief IPR protection to the fashion industry is the best solution

## **IPR PROTECTION FOR FASHION DESIGN UNDER DESIGN ACT**

The present Designs Act 2000 in India protects the design which is specifically registered under Section 2[d] of the Design Act 2000<sup>25</sup> where the term design is defined. If we talk about the

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<sup>22</sup>Shamnad Basheer (2007), "The Piracy Paradox: "Fashionable" IP", available at, <http://spicyip.com/2007/09/piracy-paradox-fashionable-ip.html>

<sup>23</sup> "Trickle Down Theory" Fashion begins at the top of the class structure which moves downward slowly.

<sup>24</sup> Erika Myers (2009), note 19, p. 58

<sup>25</sup>The Design Act 2000 Section-2(d) "design" means only the features of shape, configuration, pattern, ornament or composition of lines or colors applied to any article whether in two dimensional or three dimensional or in both forms, by any industrial process or means, whether manual, mechanical or chemical, separate or combined, which in the finished article appeal to and are judged solely by the eye; but does not include any mode or principle of construction or anything which is in substance a mere mechanical device, and does not include any trade mark as defined in clause (v) of sub-section (1) of section 2 of the Trade and Merchandise Marks Act, 1958 or property mark as defined in section 479 of the Indian Penal Code or any artistic work as defined in clause (c) of section 2 of the Copyright Act, 1957

trademark Act it has no provision for providing the fashion garment it merely protects the aspect of the garment like shape, colour, pattern, special symbol, etc and it should be registered enough to get the protection. The class of fashion articles is enlisted under the Schedule III of the Design Rules, 2001 where class is mentioned and according to which protection is granted. The design should match the standard set as per definition of design as defined under Section 2[d] of the Design Act after their registration also as per Section 4 of the same Act the criteria should be met which says: -

1. Design should be original and has a creative element
2. The design should earlier not be disclosed to the general public anywhere before it is made available for successful registration.
3. It should be made in such a way that it is distinguished from earlier or any other design so that it can create its mark.
4. There should not be any obscene content on the design or anything which can temper the sentiment of personal religion, etc.<sup>26</sup>

## **TRADEMARK PROTECTION FOR FASHION DESIGN**

Let us see how a trademark helps maintain a special identity for any brand. This is not fashion designers but the people attached to this industry like weavers etc but the trademark law protection for any fashion brand is not quite exhaustive. If we see in India the Designs Act of 2000 under Section 2(d) defines what is design in detail but the lacuna arises when it does not count the trademark within the scope of Section 2(1) (v) of Trade and Merchandise Marks Act, 1958 which after the repeal shall be the corresponding definition of Trade Marks Act, 1999.<sup>27</sup>

To understand it in a better way let us take the case of **Micolube India Ltd. v. Rakesh Kumar**<sup>28</sup> trading as **Saurabh Industries & Ors.** here in this case the question was whether any kind of remedy exists by passing off and whether any kind of action will be taken for any registered design which bears a trademark as filed by the plaintiff, in this case, Hon'ble full bench decision came with 2:1 majority where it was held that the plaintiff would be entitled to bring a kind of action against passing off in respect of a design used by the original designer as a trademark

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<sup>26</sup>The Design Act, 2000, Section-4 "Prohibition of registration of certain designs".

<sup>27</sup> The Trade and Merchandise Mark Act 1958, Section 2(1) (v)

<sup>28</sup> Case No.: CS (OS) No. 1446 of 2011 (decided on 15/05/2013, majority opinion was given by Rajiv Shakhder and Sanjay Kishan Kaul, JJ. whereas dissenting opinion was rendered by Man Mohan Singh, J.). Also reported in: 199 (2013) DLT 740.



but it should meet the essential of a trademark.

The Court went further to interpret the definition of design as per Section 2[d] it might not be difficult to register the same design under Design Act and Trademark Act but after the registration as per Design Act under Section 11, there exists no limitation where trademark can register same as that of design it is because any kind of use under the registered design in the form of a trademark is not given important component for cancellation under the Section 19 of the Design Act.

Thus, the court believes a suit for any kind of infringement for a registered design and passing off action and this action could be taken but suit shall not lie against any kind of registered design along with passing off and this suit should be filed before expiry period as mentioned in Section 11 of the Design Act 2000 and this judgment is crucial as it is expounded the scope for a fashion designer to register their design under trademark.<sup>29</sup>

## **COPYRIGHT PROTECTION FOR FASHION DESIGN**

Now coming to design protection under the current Indian Copyright Act, 1957 regime it mentions some ground specific law relating to copyright and protection of design in general, but considering the fashion design in particular dealt under, Section 15 of the Copyright Act.<sup>30</sup>

Now as we know that fashion design is some sort of a design, the framework for design protection is relevant and applicable to fashion design protection also. It can be seen that fashion design which can be registered as a design under the Indian Designs Act, 2000 and is registered under the provisions of the Act will automatically get copyright protection only under the Designs Act and nowhere else. It is understood that a fashion design is better protected as an artistic work under the Copyright Act, 1957 and designers tend to establish their design under the artistic work and for which any fashion design registering itself under copyright will get protection for design for a maximum period of fifteen years which in any case can be revoked by any designer or if he/she want to get copyright then they have to register

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<sup>29</sup>The Design Act 2000 Section 11 Copyright on registration

(1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during ten years from the date of registration. Copyright on registration.

(2) If, before the expiration of the said ten years, application for the extension of the period of copyright is made to the Controller in the prescribed manner, the Controller shall, on payment of the prescribed fee, extend the period of copy-right for a second period of five years from the expiration of the original period of ten years

<sup>30</sup> The Copyright Act, 1957 Section 15(2) Copyright in any design, which is capable of being registered under the Designs Act, 1911 (2 of 1911) 2, but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright, or, with his licence, by any other person.

again after 15 years

## **THE PROBLEM OF KNOCKING OFF AND COUNTERFEIT**

Now here the researcher has tried to mark a distinction between the knockoff and counterfeit. So well Knockoff refers to copy or imitation of someone's creation/idea which is popular and this content or material has been produced illegally without having any license to create such content/material.<sup>31</sup> This is quite a popular term in the fashion industry where we see copies of original designs or material a lot of times nowadays and this content is sold in the market under the label and the produced content is the original copy of the design. The knockoff is used in the way it makes a copy of the original design with name and credit not given to the original designer as it is identical to the design which is produced originally.

Now coming to what is counterfeit it is generally a copy of what is generally an original fashion design with a brand symbol attached to it. The person who is trying to sell counterfeit his real intention is to deceive the buyer who came to him with the apparel design with that of presenting counterfeit one. This product is sold in lieu to pass the same as that of the original ones. This is generally seen by fashion influencers as piracy in the domain of fashion design even though the counterfeits cannot carry the original design and versatility the only thing that they attempt to do is to copy and present it.<sup>32</sup>

To prove the point mentioned above we can easily find these examples prevailing in the market. There was news in the market that Anushka Sharma, Sonam Kapoor bought the Bridal Sabyasachi lehenga of Manish Malhotra lehenga for Priyanka Chopra wedding even though there are other examples sold in the market in the form of counterfeit. There are other examples of local Kanchipuram Saree, Bandhani Saree, Chanderi Saree, etc work done on these sarees by fashion designer work which are easily copied and even sold at big prices.<sup>33</sup>

There is an urgent need to protect the handloom prepared by local people. Their lack of knowledge in the domain of IP protection brings out the barrier to them as we can see protection exists but they are not able to exercise it properly. This becomes a hurdle in fashion designers who generate less and, in this way, suffer losses in their income even many times this can result

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<sup>31</sup> Knockoff as defined under THELAW.COM LAW DICTIONARY & BLACK'S LAW DICTIONARY 2<sup>nd</sup> Edn. <https://dictionary.thelaw.com/knock-off/> (Last accessed on 1<sup>st</sup> July 2021)

<sup>32</sup>Counterfeit THELAW.COM LAW DICTIONARY & BLACK'S LAW DICTIONARY 2<sup>nd</sup> Edn. <https://dictionary.thelaw.com/counterfeit/> (Last accessed on 1<sup>st</sup> July 2021)

<sup>33</sup>Delhi brides are big on celeb inspired lehengas, and how, Aditya Dogra <https://www.hindustantimes.com/fashion-and-trends/delhi-brides-are-big-on-celeb-inspired-lehengas-and-how/> (Last accessed on 1<sup>st</sup> July 2021)

in shutting down business for their local handloom workers who cannot make themselves with the giant in the industry who have established themselves as a premium brand.

Thus, now it is need of the hour to protect the Indian handloom designers where local handloom workers, fashion influencers exit in large number not only person who is a newbie to this field suffers from the issue being down by the competition but many workers are in this field for many years then also they suffer as their work is not protected and this is the reason why strong legislation is a need which can protect their work from piracy.

If we see, there are various shopping areas like Sarojini Nagar in New Delhi and Linking Road in Bombay which are quite popular for well-known fashion design clothes and every block has resulted in knockoffs and the price is even half or many times  $\frac{1}{4}$  of the actual price. We always regard that consumer preference should be the utmost priority and providing customers with quality cannot be compromised in any way because of ever-growing technology. Today we live in an era where most people use social media sites like Instagram, Snapchat or Facebook, etc . We can find a lot of knockoffs available here in their stores at the cheapest price.<sup>34</sup>

In this way there will be a chunk of knockoff produced at every knock and corner and how can we even then expect that effective litigation can be the solution to this problem. As litigation is a quite taxing process and requires a lot of money when one goes further to seek legal remedy against any kind of counterfeit and knock off. Thus, it's high time we must strengthen our existing legal system where an effective process can be carved out for the litigation filed by these designers against knockoff and counterfeit.<sup>35</sup>

## **A LOOK AT FASHION INFLUENCER IN INDIA**

Influencers display their art of design in many ways by organizing fashion shows, ramp walks, etc. Even the rapid development in technology has connected enthusiastic fashion influencers with their audience through their different social media handles. Nowadays the marketing and publicity promotion is something which is not compromised so that the fashion creates a mark among the audience and even the brand gets recognized by creator personality. Though earlier a particular brand didn't have to be famous because it is attached with a particular celebrity being endorsed and used their known public faces but nowadays, we have seen many

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<sup>34</sup> <http://rsrr.in/2021/01/28/need-for-fashion-law-in-india/>

<sup>35</sup> Knock-off the Knockoffs: The Fight Against Trademark and Copyright Infringement <https://publish.illinois.edu/illinoisblj/2009/09/21/knock-off-the-knockoffs-the-fight-against-trademark-and-copyright-infringement/> (Last accessed on 30<sup>th</sup> June 2021)

influencers coming up online with their YouTube Channel, Vlogs, etc where they share their ideas and fashion.

Even with this advancement we don't see this marketing regime where their fashion is showcased there is no specific law if there is any kind of legal issue that arises here, however, a step has been made to make a necessary modification in the laws to protect fashion influencers for example in new Consumer Protection Act 2019<sup>36</sup> we have Central Consumer Authority Prevention of Misleading Advertisement and Necessary Due Diligence for Endorsement of Advertisement Guidelines 2020<sup>37</sup> and even the Advertising Standards Council of India Code for Self-Regulation in Advertisement.<sup>38</sup> These guidelines put forth the penalty if any case person has found misleading people by faulty advertisement in the names of these fashion influencers. Even the Act had attempted to introduce claims being made available to influencers and even by these new guidelines other fashion influencers will be under monitoring process so that original creator and consumer rights can be protected

This step is not only required in India but even this problem arises in many countries thus a step is made by bringing bodies like the Fashion Foundation of India [FFI] where all the top designers can file issues relating to fashion infringement and also even the other aspects where these leading fashion influencers have faced are figured here.<sup>39</sup> Here research not particularly on the IPR domain but even other aspects based on Research and Analysis to make the work of fashion influencers and industry better.

We also have FFI which is a step towards creating a protective legal cell to help these emerging designers in matters relating to IPR, compulsory licensing, etc. To name a few organizations involved in this step ahead are Apparel Export Promotion Council [APEC] Fashion Design Council of India [FDCI] but this also is a time taking process and it is high time when the problem needs to be fixed.<sup>40</sup>

The IPR domain for the fashion influencer will help me provide the desired justice without anyone's right being infringed, thus it is time a formal law can be brought which will be a great step in the way to protect the fashion influencer right.

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<sup>36</sup> Consumer Protection Act 2019, Indian Code (2019)

<sup>37</sup> Central Consumer Protection Authority (Prevention of Misleading Advertisement and Necessary Due Diligence for Endorsement of Advertisements) Guidelines, 2020, Gazette of India, part III Sec.4 4

<sup>38</sup> The Code for Self-Regulation of Advertisement content in India, Advertisement Standards Council of India

<sup>39</sup> The Fashion Design Council of India <https://www.fdc.org/> Last accessed on 27 June 2021

<sup>40</sup> The Apparel Export Promotion Council of India <https://www.apecindia.com/> Last accessed on 27 June 2021

## **PROBLEMS WITH EXISTING LAWS**

The fashion industry is known for its dynamic nature. It can be easily seen that the trend of the market changes constantly and here the consumer is known as the king. Thus, now it is an ever-increasing need to protect the fashion designer work from getting them copied we can nowadays almost different fashion-house which are trending in market releases several mandatory guidelines so that they could prevent their design.

The requirement of registration under the existing acts may pose a hindrance because it is time-consuming. The procedure for registration may take up to a few months. If registration is absent, no protection is offered and subsequently, the danger of the creator's work being exploited is commonly seen.

In the existing scenario pecuniary damages whenever fashion disputes arise are usually not exceeding Rs 50,000.<sup>41</sup>The paper recommends that this threshold needs to be altered as it undermines the value of the existing fashion regime adding to it the problem in the fashion industry is that if the core design gets copied but the rest of the elements such as the fabric used, the pattern of the garment, etc. are presented with slight change it can give the impression to other people that the work is not being copied and it becomes difficult to seek remedies.

## **CONCLUSION**

The fashion industry is evolving with time and it has an impact on the life of each individual who is associated with the fashion industry. Thus, it becomes extremely crucial to draft and implement formal and strict laws for this industry. Thus, our legislature must work to create a fashion law otherwise bring a change in the existing state of law regime to be stricter to protect the right of fashion designers from any kind of infringement. There is a dire need to improvise the existing intellectual property regime in India to make it more favourable to protect fashion design from different ways of piracy.

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<sup>41</sup> The Designs Act, 2000 Section 22, India Code (2019)



## **MADHUBANI PAINTING: HERITAGE OF MITHILA**

Priya Singh & Shalini Bhatt\*

### **INTRODUCTION**

India has a rich storage of traditional art from the pre-history period to the present time. The art of painting differs from period to period and region to region. There is a living culture in the art field of Bihar that is called Mithila Painting or Madhubani Painting which brightens the cultural identity and social identity of Bihar and this art of painting has been changing from generation to generation in various regions<sup>42</sup>. Madhubani Painting is generally done by folk artists in three ways: Bhatti Chitra which is also known as wall painting, PataChitra (canvas painting), Aripana (floor painting). Among these wall paintings and floors, painting is very famous in the Mithila region<sup>43</sup>. The wall painting is popularly known as Mithila painting or Madhubani painting or Mural Painting in the Mithila region<sup>44</sup>. Madhubani is a District in North Bihar, a Place that is rich in arts and crafts. This part of the country is famous for wall painting, canvas painting, and floor paint.

The art of Madhubani painting has been continued for a long time and even it is evolving day by day. The beautiful canvas painting can be seen at every house in Madhubani which is very much attractive, it is painted with colors or black ink<sup>45</sup>. This painting is not only specified to

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<sup>42</sup> Chandra Samsher Bahardursingh, Madhubani Paintings: People's Living Cultural Heritage (November 16, 2021, 11:15 AM), <https://www.worldhistory.org/article/1527/madhubani-paintings-peoples-living-cultural-herita/>

<sup>43</sup> Soma Ghosh, Madhubani Painting- Vibrant folk of Mithila (November 16, 2021, 11:20 AM), <https://www.scirp.org/journal/paperinformation.aspx?paperid=99588>.

<sup>44</sup> Aditi Ray, From Madhubani to Kalamkari, These 11 Indian Art Forms Have Survived the Test of Time, the Ethnic soul (November 16, 2021, 11:25 AM), <https://www.craftsvilla.com/blog/indian-art-forms-painting-madhubani-warli/>.

<sup>45</sup> Nibedita Das, Madhubani Paintings: Its Existence and Possibility, International Journal of Scientific and Research Publications, Volume 3, Issue 2, February 2013 1 ISSN 2250-3153.

the artist of the village as of Madhubani but also connoisseurs of the art living beyond the country. This art of painting is said to be date back to the times of Lord Rama when it is considered that Janaka the king of Mithila, had commissioned many artists to make paintings on the occasion of his daughter Sita to Rama<sup>46</sup>. The continuity of this painting can be traced from 1097 AD to 1550 AD during the Khandavala Dynasty (Darbhanga Maharaja) till the present day. This painting is an emblematic expression of experience, belief, art, and culture as such symbolism and beauty that hold them together in a single school of traditional art. The Maithili painters use specific symbols such as fish which symbolize fertility, peacocks that are related to romantic love, fish that symbolizes fertility, procreation, and good luck which is characterized by the vibrant use of color and traditional geometric patterns supporting the main theme<sup>47</sup>. Even the Indian Government has taken initiative by starting programs to educate people on Madhubani Painting. Jagadama Devi was the first artist of Madhubani painting who received the National award in 1970 and the Padmashree award in 1975 from the Indian Government<sup>48</sup>.

## **HISTORY AND EVOLUTION**

Madhubani Painting also known as 'Mithila School of Painting' was originated mostly in the north Bihar region. This painting is mostly done by women and depicts the religious stories in painting. This vibrant art is being made in some parts of Bihar for many centuries, but there is no concrete evidence available to support when it began<sup>49</sup>.

Mythologically it is said that King of Mithila Raja Janak; father of Sita asked the local women of Mithila region to decorate the walls and floors of his palace on the occasion of his daughter Sita's wedding with the Ayodhya prince Ram and from then onwards this art is blooming<sup>50</sup>.

This art was first recognized as 'Maithili Painting' when a British civil servant went there for an inspection after an earthquake in 1934.<sup>51</sup> The painting started getting recognition when

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<sup>46</sup>*Ibid.*

<sup>47</sup>Madhubani Paintings, Indian Culture (November 16, 2021, 11:35 AM), <https://indianculture.gov.in/paintings/madhubani-paintings>.

<sup>48</sup> **Sumitra nair, this interesting story of madhubani paintings will leave you in awe, the ethnic soul (november 17, 2021, 2:00 pm), <https://www.craftsvilla.com/blog/history-of-madhubani-art-paintings-will-leave-you-in-awe/>.**

<sup>49</sup>Soma Ghosh, Madhubani Painting—Vibrant Folk Art of Mithila (November 17, 2021, 2:10 PM), <https://www.scirp.org/journal/paperinformation.aspx?Paperid=99588>.

<sup>50</sup> **sushmita, madhubani painting the global art: 10 unknown facts about madhubani painting (november 17, 2021, 2:18 pm), <https://jaanoandseekho.com/madhubani-painting-the-global-art10-unknown-facts-about-madhubani-painting/>.**

<sup>51</sup> Archer, W. G. (1949). Maithil Painting, Marg: A Magazine of Architecture and Art, Vol. 3, No. 3. Bombay: Marg Publications.

women shifted their medium of painting to paper along with walls in villages of Madhubani like Laheriagunj, Rashidpur, and Harinagar. This is when the art started reaching art enthusiasts and the middle class of the country<sup>52</sup>. The art got national recognition when some well-known artists of Madhubani painting like Sita Devi and Jagdamba Devi got National Award from the President of India.

These award-winning women also traveled abroad to exhibit the art and also represented a kind of 'women empowerment in the predominantly patriarchal society of Bihar.

Nowadays one can see this beautiful piece of art on clothes, walls of railways, trains, picture galleries, etc.



Others include scenes from Mahabharata and many rituals of popular festivals like Chhat Puja and simple rural and social life and folk dance. (Source: All India Radio/ Twitter)

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<sup>52</sup>*Ibid.*



## **WHY AND HOW DID MADHUBANI PAINTING GET GI TAG?**

THE GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION) ACT, 1999.

This act provides for the registration and better protection of the products for geographical indications relating to goods.

Definitions of some important terms:

- “Geographical indication”, is related to goods, it means an indication which symbolizes such goods as agricultural goods, natural goods, or manufacturing goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a product's quality, reputation or another characteristic of such goods is essentially attributable to its geographical origin and in the case where such goods are produced goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such area, region or locality, as the case may be.
- “Goods” means any natural, agriculture or manufactured goods or any goods of handicraft or industry and includes foodstuff and arts;
- “Indication” means any name, geographical or figurative symbol, or any mixture of them conveying or suggesting the geographical origin of goods and products to which it applies.<sup>53</sup>

Geographical Indication is a tag indicated by the government of India as recognition of Intellectual property from different states on natural and industrial products and manufacturing processes that are exclusively related to a particular area. The GI tag ensures that only authorized artisans are allowed to use the product's name. GI tag gives assurance about the quality and authenticity of the painting. From time immemorial, the Madhubani painting has remained confined to a small area, where artists have passed on their knowledge to their coming generations. This has helped to preserve the art and culture to a large extent. Madhubani painting got GI tag in the year 2007<sup>54</sup>. This painting uses a two-dimensional imaginary pattern and the colors are derived from plants.

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<sup>53</sup> THE GEOGRAPHICAL INDICATIONS OF GOODS (REGISTRATION AND PROTECTION, ACT 1999.

<sup>54</sup>Madhubani art or Mithila Art, Kalantir ( November 17,2021, 2:30 PM), <https://www.kalantir.com/blogs/art-is-us/madhubani>.

## Renowned Artists of Madhubani Painting

Madhubani painting was mostly done by women of north Bihar. They were the ones who brought national recognition to this piece of art.

There are some renowned artists namely:

- **Sita Devi**

Born in 1914 in a small village named Jitwarpur in Bihar is a celebrated artist of Madhubani Painting. She was the one who brought national recognition to Madhubani painting. She was conferred with various awards like the State award in 1969, the National award in 1975, and the Padma Shri in 1981. She also got the Bihar Ratna Samman in 1984. She encouraged thousand people of in her village towards this art. She was praised by many including the president and prime ministers of India. She died in 2005<sup>55</sup>.

- **Ganga Devi:**

Born in 1928 in a Kayastha family of Bihar, Ganga Devi took the art outside India, specializing in kachni, line drawings. She was conferred with the National award and also with Padma Shri in 1984<sup>56</sup>.

- **Baua Devi:**

She is from jitwarpur village of Bihar. She was the one who brought Madhubani painting on paper in 1966. She was awarded the Padma Shri award in the year 2017<sup>57</sup>.

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<sup>55</sup>Abhay Kumar, Jitwarpur in Bihar scores hatrick of Padma awards, Deccan Herald (November 14, 2021, 2:35 PM),<https://www.deccanherald.com/content/597118/jitwarpur-Bihar-scores-hatrick-padma.html>.

<sup>56</sup>EdgasDegar (November 14,2021, 2:40 PM), Art Lounge,<https://blog.artlounge.in/blog/2021/4/8/ganga-devi>.

<sup>57</sup>Shruti Singla, The Better India (November 14, 2021, 2:45 PM),  
<https://www.thebetterindia.com/227810/madhubani-artist-baua-devi-padma-shri-jitwarpur-photo-story-legend-india-gop94/>.



Baa Devi, artist (Source: [www.deccanherald.com/content/597118/jitwarpur-bihar-scores-hattrick-padma.html](http://www.deccanherald.com/content/597118/jitwarpur-bihar-scores-hattrick-padma.html)(newspaper image) (accessed 16.11.2021)).

- **Mahasundari Devi:**

Mahasundari Devi was from the Ranti village of Bihar. She learned Madhubani Painting at a very young age from her aunt. She stepped out from the social norm like ‘purdah’ and became an artist of Madhubani Painting in 1961 and founded a co-operative society Mithila Hastashilp Kalakar Audyogki Sahyog Samiti. She was awarded with many awards including the National Award in the year 1982, Tulsi Samman in the year 1995, and the Padma Shri in the year 2011. Her art included clay, paper mache, sujani, and sikki (grass arts). She died in 2013<sup>58</sup>.

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<sup>58</sup>Soma Ghose, Madhubani Painting—Vibrant Folk Art of Mithila, Scientific Research ( November 17, 2021, 2:30 PM), [https://www.scirp.org/html/1-1250236\\_99588.htm](https://www.scirp.org/html/1-1250236_99588.htm).



Mahasundari Devi, artist. File:Dayanidhi Maran presenting the Shilp Guru Award 2007 to Smt. MahaSundari Devi from Bihar for Madhubani Painting.  
(source: Wikimedia Commons, accessed on 16.11.2021)

- **Bharati Dayal:**

Bharati Dayal is a contemporary artist of Madhubani painting. She is from Samastipur, Bihar. She is in this field since 1984 and she has been continuously propagated the Madhubani Painting on media like acrylic and canvas. For this noble work, she has been even recognized as a fine art worldwide, Belgium. Some other artists including Dulari Devi, Radha Kumari, and Mahalaxmi, Karpuri Dev have made their mark as Madhubani artists. She guided other women artists. She uses natural and vegetable-based colors in her paintings<sup>59</sup>. She is also known for her excellent combination of traditional art and modern topics of the day. She had won the National Award for Excellence in art and crafts in 2006.

- **Other Artists:**

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<sup>59</sup>Dayal, B. (2016). Madhubani Art. New Delhi: Niyogi Books.

Other artists active in Madhubani Painting are Shanti Devi, Yamuna Devi, Chano Devi, Phoolmaya Devi, Mudrika Devi, Chandrakala Devi, Bindeshwari Devi, Shashikala Devi, Godavari Dutta, Leela Devi, Chandrabhushan, Ambika Devi, and Manisha Jha who have got National awards. Jagannath Jha is another well-known artist. Also, Dulari Devi, Mahalaxmi, Karpuri Dev, and Radha Kumari have made their mark as Madhubani artists.<sup>60</sup>

## **MADHUBANI PAINTINGS IN CONTEMPORARY WORLD**

Madhubani Painting is a way of life of people in a village called Ranti in Bihar. The women practice this art in the village and use it as an opportunity to create awareness and empower women. Famous artists of Madhubani paintings artists such as Mahalaxmi, Karpuri Devi, and Dulari Singh are playing important roles in teaching people around them the importance of Madhubani Painting. Their works are also displayed in Museum in Japan. Many institutions teach Madhubani Paintings to young artists. Some of the famous institutions are located in Benipatti in Madhubani District, Gram Vikas Parishad in Ranti, and Vaidehi in Madhubani. In modern times, the presentation and style of art have been significant transitions<sup>61</sup>. While the walls have been now replaced by papers and canvases, Madhubani Painting has also been considered in apparel and home decor. The biggest impact of Madhubani painting has had in the last few decades in the social condition of women in Bihar. The women are coming out as an inspiration for many people.<sup>62</sup> The office of Development Commissioner (Handicrafts) Ministry of Textiles, Government of India is working for the growth of this art with the Government of Bihar to give chances to artisans to portray their paintings and cultural activity in different places. The Ministry of Textile has come up with various kinds of a scheme like Marketing support, design, and technology up-gradation, training, Babasaheb Ambedkar Hatashilp Vikash Yojana, etc<sup>63</sup>. A Training center has been established by the Government bearing a 6months course of Madhubani Painting at Upendra Maharathi Handicrafts institute of

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<sup>60</sup>Ibid

<sup>61</sup>Madhubani- the art from the forest of Honey, Knappily (November 13, 2021, 2:50 PM), <https://knappily.com/lifestyle/madhubani-art-471>.

<sup>62</sup>Ibid

<sup>63</sup>AMBEDKAR HASTSHILP VIKAS YOJANA, INDIA FILINGS (NOVEMBER 13, 2021, 2:57 PM), <HTTPS://WWW.INDIAFILINGS.COM/LEARN/AMBEDKAR-HASTSHILP-VIKAS-YOJANA/>.

Patna. Particular Teachers are employed to train the art of Madhubani paintings to students and some collections are well preserved in this institution.

### **GI REGISTRATION OF THE PAINTING**

After 2 years of the filing of the application, the famous Madhubani Painting of Bihar got a geographical indication (GI) tag in 2007 under Intellectual Property Rights (IPR). It is registered under handicraft goods and its registration is valid till August 21st, 2025. After 2007 Madhubani Painting got a status of an exclusive brand as it has been registered under the provisions of the Geographical Indications (GI) Act for patenting<sup>64</sup>.

Madhubani painting is the first item from Bihar to be registered under the GI Act for patenting.

### **MARKETING AND EMPLOYMENT OPPORTUNITIES**

With the changing time and fashion, the field of Textile demands fresh and unique designs which give artists the to use the adapted traditional motifs. All the products and designs prepared by them are preferred and used by the consumers. Thus, in the textile sector, art can be used through surface enrichment for product addition<sup>65</sup>. The market in this art is a tribute to the hard-working women of Mithila who have successfully transferred and preserved their techniques of painting through the medium of paper and have to preserve the temptation to adopt their art and culture too freely in pursuit of public taste. The artist has made one realize about the time they gave for their painting and how their lives are completely related to their painting as this is the only source of their bread and butter<sup>66</sup>. Designers have been working with the local artisans that serve both alike. Selling and promotion of this traditional textile craft by incorporation in fresh dress and accessory merchandise can go a long way in upgrading this traditional folk art on the national and international market<sup>67</sup>. Moreover, apparel and accessory which have features of Madhubani Prints in both handprinted, as well as on-screen printer techniques, are now gaining acceptance among teenagers as well as among young people. A

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<sup>64</sup>Madhubani art or Mithila Art, Kalantir( November 17,2021, 2:30 PM), <https://www.kalantir.com/blogs/art-is-us/madhubani>.

<sup>65</sup>Mohini Gupta and Swati Gangawar, ADAPTATION OF DESIGNS FOR TEXTILE PRODUCTS INSPIRED FROM MADHUBANI PAINTING, International Journal of Research Granthalaay, Gupta et. al., Vol.4 (Iss.5): May 2016.

<sup>66</sup>Ibid.

<sup>67</sup>Ibid.

range of dresses embellished with Madhubani Paintings like stoles, sarees, dupattas, Kurtis, tops, and accessories like umbrellas, footwear, handbags, jewelry, watches are increasing in the market by storm.



The artist making Madhubani Painting on Saree (Source: Wikimedia)

## **CONCLUSION**

This beautiful piece of art which began as a painting and murals on walls and floors of the villages of Bihar continues its journey with both the traditional motifs as well as the modern idioms juxtaposing each other. Nowadays one can see Madhubani Painting on walls, railway stations, public spaces, and on dress materials as well. Madhubani Painting is one of the most celebrated works of art of Bihar. Among its peers in handicrafts, Madhubani Painting is the dominant artistic expression made by natural resources like plants, bamboo, and other herbal ingredients. Arts like sujni, siki-mauni, godhna, sculptures, and other folk art forms that are closely related to the daily lifestyle of people of the Mithila region are equally vibrant of

mythological sama-chakeva as mentioned earlier, the people of the Mithila region continue to make paintings during the auspicious ceremonies. After getting the GI tag in 2007 Madhubani Painting got global recognition, it is blooming every day. E-commerce is also helping its business. The painting practice is also helping rural women of Bihar financially and making them empowered. Work like Madhubani Painting also motivates people from different regions to come up with their ingenious work, which ultimately helps in the promotion of art and crafts.





## **IP LAW VIS-À-VIS MEDIA LAW**

Ashwin singh\*

### **ABSTRACT**

Intellectual Property Right (IPR) is a criminal proper that protects the creation of a person or organization evolved by the mind or thoughts. Globalization and open marketplace policies have helped IPR to grow and affect the monetary activities in remaining three decades. The present paper essential draws a nexus between IPR and Media Law, where, Copyright is one of the vital rights and protects the rights of creators of creative works, literary works, sound, movies, and related creations. Copyright Law is an advanced domain that includes improvements, inventive creations and intellectual productions in print, audio-visual, sign & symbols or within the virtual forms.

Moreover, media platforms along with social media use photos, sounds, scripts, and lots of techniques of communication, other business and personal functions. The paper aims to highlight the basics of IPR and how it safeguards the interests of the IP holders. Further, it sheds light upon the nexus and role of IPR in the Indian Media Industry. Lastly, the paper will provide a fair and constructive analysis by means of discussing various branches of IP, the related legal provisions and various judicial pronouncements by the Supreme Court and the High Courts of India.

**Keywords:** Media Industry, Protection of IPR, Intellectual Property Laws

### **INTRODUCTION AND MEANING**

Due to a rapid increase in globalization and boost of the Indian economy, Intellectual Property has become one of the key contributors to the global and national economy. Intellectual Property Rights have turn out to be substantially conspicuous at the prison horizon of India, each in terms of new statutes and judicial pronouncements. India ratified the settlement for setting up the world change corporation through the World Trade Organisation, which contains

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the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). Indian Statutes, enforcement provisions and methods of dispute decision with admire to intellectual property (IP) protection are now completely TRIPS-compliant.

### **MEANING:**

Intellectual property refers to creations of the mind, consisting of inventions; literary and inventive works; designs; and symbols, names and photos. Intellectual property rights provide protection for creations and inventions, to enable creators and inventors to earn recognition and economic gain from their work. Intellectual property lets human beings very own the paintings they create. It can be any of the subsequent:

- brands and symbols
- inventions
- software program
- designs
- tune/ music
- books
- poems
- paintings
- photography
- other kinds of creative paintings

Intellectual assets can be very valuable. There are businesses, along with PC, video game companies, that exist to expand intellectual property or even take advantage of it. It is critical to protect one's enterprise with the aid of securing one's intellectual assets rights. Intellectual Property (IP) is protected with the aid of legal guidelines which allow humans to earn popularity or financial advantage from what they devise or create. with the aid of putting the right balance between the pastimes of innovators and the broader public hobby, the IP gadget pursuits to foster an surroundings wherein creativity and innovation can flourish. In the honor of such protection, we celebrate World Intellectual Property Day on 26th April, every year to

promote discussion of the role of Intellectual Property in encouraging innovation and creativity.<sup>68</sup>

The types of paperwork that are created through individuals and companies with meticulous efforts in designing, research & improvement want a large quantity of funding additionally. These creations evolve after devotion of time and money want to give dividends to the creators and to emerge as a cause encouragement for all. Copyright laws help in the safety of pursuits of such creators. The prevailing article attempts to highlight Copyright and associated troubles in Indian surroundings with special emphasis on Indian media and leisure enterprise. Thus, the IP laws are based on primarily two objectives; First, to encourage creativity and/or investment for research and development by rewarding innovation, and second, to protect the rights and interests of inventors from improper and anti-competitive activities.<sup>69</sup>

### **BRANCHES OF IP LAW IN INDIA**

India has issued legal guidelines protecting numerous regions of Intellectual property belongings as enumerated herein under:

- Trade Marks
- Patents
- Copyrights and Related Rights
- Industrial Designs
- Geographical Indications
- Layout Designs of Integrated Circuits
- Plant Varieties
- Information Technology and Cyber crimes
- Data Protection

Extensively, the following acts deal with the protection of intellectual property:

- Trade Marks Act, 1999
- The Patents Act, 1970 (as amended in 2005)

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<sup>68</sup> Singh, A.P., Manchikanti, P. and Chawla, H.S., 2011. Sui Generis IPR Laws vis-à-vis Farmers' Rights in Some Asian Countries: Implications under the WTO. *Journal of Intellectual Property Rights*, 16, pp.107-116.

<sup>69</sup> Peng, M.W., 2013. An institution-based view of IPR protection. *Business Horizons*, 56(2), pp.135-139.

- The Copyright Act, 1957
- The Designs Act, 2000
- The Geographical Indications of Goods (Registration and Protection) Act, 1999
- The Semiconductor Integrated Circuits Layout Design Act, 2000
- The Protection of Plant Varieties and Farmers' Right Act, 2001
- The Information Technology Act, 2000

### **HOW TO ENSURE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS?**

There are unique approaches to protect your intellectual assets:

- Copyright is granted to the individual or enterprise that creates published inventive work. This includes writing, film tune, and computer software program. In contrast to the maximum different kinds of intellectual assets, copyright is granted routinely when the paintings are first posted.
- Patents defend inventions, inclusive of the capabilities and methods that make matters paintings.
- Trademarks are symbols that differentiate between items and offerings and maybe emblems or brand names.
- Designs can be included via registering them, and via design right
- Digital intellectual property may be protected in different approaches than using the regulation, such as encryption and the use of virtual signatures.

There are several government or affiliated firms that provide assistance for businesses with layout, innovation, intellectual belongings, size, and requirements needs.

IP may be something from a specific production technique to plans for a product launch, an alternate mystery like a chemical formulation, or a listing of the international locations wherein your patents are registered. It can assist to think about it as intangible proprietary records. The World Intellectual Property Organization's (WIPO's) formal definition of IP is creations of the mind — innovations, literary and inventive works, symbols, names, photos and designs utilized in commerce. IP is divided into categories: Business belongings includes however is not limited to patents for inventions, emblems, commercial designs and geographical symptoms. Copyright covers literary works like novels, poems and plays, films, music and artistic works,

for example drawings, paintings, photographs, sculptures, web site pages and architectural design rights associated with copyright incorporate the ones of performing specialists of their exhibitions, makers of phonograms of their accounts, and telecasters of their radio and TV programs.

### **WHAT ARE THE CHARACTERISTICS OF IP?**

Compared with conventional property rights, IP rights are intangible in nature. Furthermore, they may be one-of-a-kind, territorial and time-restrained. However, that is real best in a relative sense and does not mean that everyone varieties of IP rights have those traits. There are some exceptions. As an instance, as long because it isn't always disclosed, a trade secret can exist forever in idea, problem to no time limit.

### **WHY DO WE NAME IT AS PROPERTY?**

The idea of intellectual property pertains to the fact that positive products of human intellect have to be afforded the same protecting rights that practice to physical property, which are referred to as tangible assets. It allows people to make benefit from the statistics and intellectual items they devise. Most developed economies have felony measures in area to protect each styles of belongings. Further, IPR holds immense significance in the present times. The idea of Intellectual Property Rights is to encourage new creations, including technology, paintings, and innovations, that might give rise to growth in economic terms. Intellectual property rights boom the incentives for people to continue to produce matters that similarly create new task opportunities and new technologies, at the same time as allowing our global to enhance and evolve even faster.<sup>70</sup>

IP-intensive industries appoint over 45 million Americans and hundreds of millions of different human beings global. The common employee in an IP-enterprise additionally earns about forty six percent extra than his or her counterpart in a non-IP enterprise. Thus, IP creates and helps excessive paying jobs. America's IP is really worth approximately US\$6.6 trillion, which is greater than the nominal GDP of some other united states within the global. IP-intensive industries account for over 1/3– or 38.2%– of general U.S. GDP. Fifty two percent of all U.S. products exports are related to IP, and this amounts to nearly US\$842 billion. Thus, IP boosts an economical increase and competitiveness.

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<sup>70</sup> Baughn, C.C., Bixby, M. and Woods, L.S., 1997. Patent laws and the public good: IPR protection in Japan and the United States. *Business Horizons*, 40(4), pp.59-66.

## **BRANCHES OF IPR**

### **PATENTS:**

Patents is while you sign in your invention with the government. It is a system that could take more than a year-you advantage the legal right to exclude anyone else from manufacturing or marketing it. Patents cover tangible things. They can also be registered in overseas international locations, to help keep worldwide competition from finding out what your business enterprise is doing. When you preserve a patent, others can practice licensing your product. Generally, a Patent Registration is granted for 10 years, if not extended.<sup>71</sup>

### **TRADEMARK:**

A trademark is a name, phrase, sound, or symbol used in association with services or products. It frequently connects an emblem with a degree of fine on which businesses construct a reputation. Trademark registration lasts for 10 years after registration and may be renewed in perpetuity. This effectively marks the territory and gives the enterprise room to prosecute if other businesses try to use the equal symbol for their very own functions.

### **COPYRIGHT:**

Copyright Law in India protects written or inventive expressions fixed in a tangible medium, novels, poems, songs, or movies. A copyright protects the expression of a concept, however no longer the idea itself. The owner of a copyrighted work has the right to reproduce it, to make derivative works from it (which include a movie based on a book), or to promote, perform or display the work to the general public. You don't need to sign in your fabric to maintain copyright, however, registration is a prerequisite if you make a decision to sue for copyright infringement. A copyright lasts for the lifestyles of the author plus every other 50 years.

### **TRADE SECRETS**

A component, sample, tool, or compilation of records that grants the consumer advantage over competitors is a trade mystery. It's far included via nation, in place of federal, law. To defend the name of the game, a business should show that it adds value to the company, that it is, in truth, a secret – and that suitable measures have been taken within the corporation to shield the name of the game, including proscribing expertise to a select handful of executives. Coca-Cola, for example, has managed to maintain its components underneath wraps for greater than 117

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<sup>71</sup> Peng, M.W., Ahlstrom, D., Carraher, S.M. and Shi, W.S., 2017. An institution-based view of global IPR History. *Journal of International Business Studies*, 48(7), pp.893-907.

years.

### **INDUSTRIAL DESIGN:**

Industrial design is a method of design carried out to products which are to be synthetic via techniques of mass production. An industrial layout constitutes the ornamental or aesthetic thing of an editorial. A design may additionally consist of three-dimensional functions, inclusive of the shape or surface of an article, or of -dimensional features, inclusive of patterns, strains or shade.

### **GEOGRAPHICAL INDICATION:**

A geographical indication (GI) is a name or signal used on products that have a specific geographical region of origin (e.g., a town, area, or country). The use of a geographical indication, as a demonstration of the product's supply, acts as a certification that the product possesses sure characteristics, a recognition or traits which might be basically on account of that place of foundation. Most ordinarily, a geographical indication comprises of the name of the area of starting place of the items.

### **ROLE OF IPR IN MEDIA INDUSTRY**

IPR is a significant factor in the development of the media and entertainment field. Media is a field of inventiveness that engages, illuminates, and instructs a huge number of individuals around the world. Different news sources including TV, Radio, Cinema, Print Media, Music, Software businesses, Online and advanced platforms are improved with loads of imaginative thoughts, inventive works, and organizations. Indian Media and Entertainment Industry arises as one of the advancing areas in our country as its commitment to the GDP is felt, its job in the social trade is acknowledged and its work, torment, and interest in the production of substance are recognized. In the time of advanced media and with expanding education and monetary advancement this market with all news sources is expanding step by step.<sup>72</sup> Innovation has simplified the replicating and propagation of others' works in any configuration. IP Infringement not just debilitates the first supporters or creators to deliver more imaginative works yet, in addition, hurts their acquiring prospects since another person is taking their work.<sup>73</sup>

### **LANDMARK JUDICIAL PRONOUNCEMENTS:**

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<sup>72</sup> Gupta, V.K., 2007. Security-related Provisions in IPR Laws in India. DESIDOC Bulletin of Information Technology, 27(4).

<sup>73</sup> Gupta, V.K., 2008. India: IPR and the national security.

- *Sholay Media and Entertainment Pvt Ltd. v. Parag M. Sanghavi*<sup>74</sup>: The film “Sholay” was delivered in the year 1975 and was quite possibly the most mainstream motion picture of that time. The film was known broadly, and individuals connected the title with the Sippys (Producer), thus the title had subordinate importance. In 2007, Ram Gopal Varma had delivered a film named “Ram Gopal Varma ke Sholay” and was sued for brand name encroachment. He at that point changed the name of the film to “Ram Gopal Varma ke Aag”.
- *Kanungo Media (P) Ltd. versus RGV Film Factory and Ors*<sup>75</sup>: Kanungo Media had created a Bengali film called “Nishabd”; it had won numerous honors. Yet, couldn't be delivered on a business scale. They had then petitioned for a lasting order against the utilization of their film title “Nishabd” by Ram Gopal Verma. Since the film couldn't be delivered, it was not well known, and the title gained no optional significance. The High court of Delhi thus excused the application and Ram Gopal Varma named his Hindi film “Nishabd”.
- *Krishika Lulla and Ors. versus Shyam Vithalrao Devkutta and Ors*<sup>76</sup>: The Hon’ble Supreme Court held in the previously mentioned case that copyrights don't persist in the titles of literary works, including motion pictures. Insurance for the equivalent can be allowed simply by brand names. The current reality of the said case is that the respondents professed to have composed a rundown with the title “Desi Boys” and the equivalent was sent through email to two different people. On release of the film “Desi Boyz”, the respondents recorded a suit against the appellants for the encroachment of the copyright. The issue close by under the watchful eye of Court of law was whether the respondents had a copyright proprietorship in the title of the said film. The Court expressed that according to Section 13 of the Copyright Act, 1957 titles can't be considered as ‘works’ with the end goal of copyrights.
- *Biswaroop Roy Choudhary v. Karan Johar*<sup>77</sup>: A between-time directive was looked for by the plaintiff from the Delhi High Court to utilize title of the movie which the plaintiff had enrolled with Registrar of Trademarks to limit the litigant from utilizing the tile “Kabhi Alvida Naa Kehna” for the respondent's film. The Court, nonetheless, was of the view that albeit the respondent had not enlisted the title with the Registrar of

<sup>74</sup> *Sholay Media And Entertainment vs Parag Sanghavi* CS (OS) 1892/2006

<sup>75</sup> *Kanungo Media (P) Ltd. versus RGV Film Factory and Ors.* 138 (2007) DLT 312

<sup>76</sup> *Krishika Lulla & Ors vs Shyam Vithalrao Devkatta & Anr,* CRIMINAL APPEAL No. 258 OF 2013

<sup>77</sup> *Biswaroop Roy Choudhary vs Karan Johar* 131 (2006) DLT 458.



Trademarks opposite of what was finished by the offended party, the litigant was the real client of the imprint, and had likewise finished the creation of the film which was prepared for discharge. Hence, the Delhi High Court additionally expressed that the genuine utilization of the brand name was consistently an important factor which would hinder the Court from giving injunctive alleviation. Consequently, the Court brought about the disavowal of between time help to the offended party were that “Kabhi Alvida Naa Kehna” was an expression in like manner speech and subsequently couldn't be utilized with elitence and moreover there was a delay in moving toward the Court.

### **INFRINGEMENT OF COPYRIGHT AND THE INTERNET**

Advent of Information and Communication Technology (ICT) has empowered clients to gather valuable data in a packed structure from around the world. It has expanded the episodes of encroachment cases too. Copyright Act incorporates putting away protected material into a PC and on the off chance that it is managed without the assent of the proprietor named as the infringement of copyright.<sup>78</sup> Whenever encroached material is spoken with the assistance of PC and organizations of PCs, at that point likewise goes under the infringement of the intellectual property law. Aside from conditions characterized or covered Copyright Act different segments of the IT Act, 2000, for example, Section 1(2), read with section 75 likewise ensure the privileges of the proprietor. In spite of the fact that such principles force, in a large portion of cases not prohibitive and force adaptable liabilities extraordinarily on account of ISP, BBSO, Commercial Web Page proprietors, and private clients. Notwithstanding, some choice of the court has given the best approach to get legitimate cures in the event of theft and online encroachment. On the appeal documented by film producer Prakash Jha in regard to his film Lipstick Under my Burka and by Red Chillies Entertainment for the film Jab Harry Met Sejal, Madras High Court requested to impede in excess of 2500 sites, some were suspected and some were not. This impending directive was utilized as an unpolished apparatus by the court to stop theft. 'In one more example of overbroad and unbalanced online control, 2650 whole sites have been requested by the Madras High Court to be obstructed, cross country, like a provisional measure against the encroachment of copyright of specific movies. The Madras HC, on July 21, 2017, and August 2, 2017, requested a break order against a few Internet Service Providers (ISPs), for a situation of copyright encroachment, coordinating the ISPs to

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<sup>78</sup> El-Bialy, N. and Gouda, M., 2011. Enforcing IPR through informal institutions: the possible role of religion in fighting software piracy. Available at SSRN 1950385.

handicap admittance to sites upon the offended party's solicitation, including, perplexingly, the Internet Archive, an online library of public area works, which likewise has a file of over 20 years of the World Wide Web. Any individual endeavoring to get to any of the predefined sites presently gets a message expressing that the site has been hindered according to the bearings of the Department of Telecom, Government of India. The request was advocated as the Ashok Kumar or John Doe request, a term originally utilized in the UK to clarify a choice where rival or the blamed isn't recognized. 'An 'Ashok Kumar' or a 'John Doe' request, is a request in a suit brought against obscure and anonymous respondents, to counter the likelihood that somebody, someplace, may potentially be encroaching upon the privileges of the offended party. Ashok Kumar orders have gotten the go-to instrument for exuberant offended parties looking for copyright assurance from the Court in regard of online encroachment, by guaranteeing the challenges in distinguishing the encroaching gatherings. There are a few issues with the Order of the Madras HC, which are normal to most such Ashok Kumar orders gave by courts in India.

## **INTELLECTUAL PROPERTY LAWS IN INDIA**

### **PATENT**

The history of Patent law in India begins from 1911 whilst the Indian Patents and Designs Act, 1911 was enacted. The existing governing Act in India is the Patents Act, 1970 which came into pressure inside the year 1972. The Patent Act 1970 has been amended thrice by using the Patents (amendment) Act, 1999 (First change), the Patents (change) Act, 2002 (second amendment) and Patents (modification) Act, 2005 (third modification), previous to the third change, the President of India had promulgated Patents (modification) Ordinance, 2004, which turned into later changed via the 1/3 modification.

### **TIME PERIOD OF A PATENT**

The time period of every patent in India is 20 years from the date of submitting the patent software, irrespective of whether it's far filed with provisional or whole specification. But, in case of programs filed beneath the Patent Cooperative Treaty (PCT), the term of 20 years starts from the international filing date.

### **TRADEMARK**

In India, trademarks are protected both under statutory law and common law. The first statutory regulation related to trademark in India became the trademarks Act, 1940 which had comparable provision just like the UK Trademarks Act, 1938. Later it changed into replaced

by Trade and Merchandise Mark Act 1958 which consolidated the provisions associated with trademark contained in other statutes like, the Indian Penal Code, Criminal Procedure Code and the Sea Customs Act. The Trademark and Merchandise Act 1958 was replaced by the Trademark Act 1999 which came into effect from 15 September 2003 which complies with the provisions of the journeys and is the contemporary governing regulation related to registered trademark.

### **TERM OF TRADEMARK**

Once the trademark is registered, it's far valid for a duration of 10 years from the date of application. The registration can then be renewed indefinitely by way of paying renewal charge after every 10 years. Non-Renewal leads to a lapse of registration.

## **COPYRIGHT**

### **PRE-INDEPENDENCE LAWS IN INDIA**

In 1847 the first Copyright Act became enacted in India, at some stage in the regime of East India Company. The Act turned into replaced with the aid of the Copyright Act of 1914. The Act of 1914 was the first 'contemporary' copyright regulation of India. It was the primary law to encompass all works of artwork and literature below the ambit of copyright. It turned into a reproduction of the English regulation of 1911. It was accomplished by means of the British to ease the passage of literature over colonial subcontinent.

### **POST-INDEPENDENCE LAWS IN INDIA**

The Copyright Act, 1957 which become supported by means of the Copyright Rules, 1958, is the governing law for copyright protection in India. Which came into pressure on 21 January 1958 and replace 1911 Act. Later sizable amendments were carried out to the Copyright Act, 2012 ("change").

### **TERM OF COPYRIGHT**

The period of copyright is the life of the writer or artist, and 60 years counted from the year following the dying of the writer.

## **TRADE SECRETS**

There are no statutes in India that especially give protection to Trade Secrets and Confidential information. On the way to defend trade secrets and confidential records, watertight agreements

ought to be agreed upon, and that they ought to be supported by sound regulations and methods. however, Indian courts have upheld exchange secret protection on the foundation of standards of equity, and at instances, upon a commonplace law movement of breach of self-belief, which in effect quantities a breach of contractual duty.

### **INDUSTRIAL DESIGN**

The initial Indian Industrial Design Law was passed in 1872. This act turned into named as “The patterns and Designs Act of 1872.” It was changed by means of the innovations and Designs Act, 1888. In addition, the Patents and Designs Act, 1911 nullified the inventions and Designs Act, 1888. The 1911 Act become amended several instances within the British colonial duration and even after India’s independence. Sooner or later, the Indian Designs Act of 2000 turned into enacted to consist of the minimal requirements for the safety of business designs. It was effective from May 11, 2001 and changed the vintage regulation of 1911. Further, this Act presents an exclusionary proper of promoting, licensing, assigning and using the identical in any product to the proprietor or owner of the registered designs.

### **TERM OF INDUSTRIAL DESIGN**

To start with a protection of 10 years is given to the owner of a registered design in regards to distinct rights to sell, make or import the articles and initiating an motion towards an infringer. But if needed, the owner can get them renewed for an additional time slot of 5 years.

### **GEOGRAPHICAL INDICATIONS**

India, in compliance with its responsibility beneath journeys, has taken legislative measures through enacting the Geographical indications of goods (Registration and protection) Act, 1999, which got here into impact on 15th September 2003 and the Geographical indicators of goods (Registration and safety) rules, 2002. The Act became exceeded with the purpose of offering protection, as a Geographical Indication to any agricultural, natural, or manufactured items, or to any items of handicraft or enterprise, inclusive of foodstuffs

### **TIME PERIOD OF GEOGRAPHICAL INDICATIONS**

The registration of a Geographical Indication is legitimate for a duration of 10 years and it could be renewed every so often for a similarly length of 10 years each.

### **CONCLUSION**

The importance of IPR and their protection is acknowledged the world over as crucial to

business. In track with the sector situation, India too has identified the impact of IP, due to which the reputation has been continuously upheld by using means such as legislators, courts and the enterprise. India is now a signatory to various IP treaties and conventions. This has helped India come to be more attuned to the sector's strategies and attitudes toward IP protection. India has already taken steps to comply with its responsibilities below journeys, and the Indian IP law regime is almost at par with the regimes of many developed international locations. Traditionally, the enforcement of IPRs in India was unadvanced and outdated, however, the current judicial pronouncements and steps taken through diverse enforcement agencies exhibit that India is gearing up for effective safety and enforcement of IPRs. The Indian Police has set up unique IP cells wherein, educated police officers have been appointed to monitor IP infringement and cybercrimes. Numerous Indian industries have emerged proactive in protecting their IPRs. As an example, the Indian song enterprise, an association of song businesses, has taken a similar stance and proactive steps to fight tune piracy. Conclusively, India has taken numerous, well-executed steps in the direction of improving its IPR regime and is expected to do a lot more in the coming years to streamline itself with the fine practices in the subject of Intellectual Property Rights



## **CORPORATE GOVERNANCE THE JOURNEY OF INDIAN CORPORATE WORLD**

Shrey Sahai\*

### **INTRODUCTION**

In the year 1991 privatization started in India. As this news spread out like fire in the global economy. And then India was ready to open up the global integration for its economy.

Due to this a large inflow of capital from the world to our country took place. As a large capital inflow took place, a lot of capital managers also came to India. As there was a large inflow of capital, to manage this the demand for the cash managers increased in our country. Numerous local cash managers raised them into a higher circle. As the inflow of money was handled by the corporates, so the money was only accessible to the top level management. And to access this in a better way they took the service provided by the money managers'. In order to impress the top level management the money managers developed some unconventional and creative techniques. Which resulted in unethical practices. In order to control the unethical practices taking place, Corporate Governance was formed. Corporate Governance is basically a set of rules and regulations/ guidelines that were framed to control the unethical practices used by the money managers.

The main idea of Corporate Governance is to focus on a company's structure so that it can ensure a transparent, fair and an accountable behavior of the corporate in the processes that are taken up by the company. Corporate Governance basically represents the business management that is in charged for the creation of value in the long term process.

If we look after the concept of corporate governance in a broader sense then we can define it as a system that revolves around the relationship that exists between the shareholders. For

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\* Shrey Sahai

instance corporate governance deals with the relationship shared between the top level management, the board, promoters, shareholders and other external stakeholders.

### **CORPORATE GOVERNANCE- MEANING**

Corporate governance can be said to be a mixture of rules, regulations, laws, and processes by which businesses are operated, regulated, and controlled. If corporate governance is used wisely keeping in view the internal and external matters then it will not only be beneficial for the shareholders but it also be beneficial for the stakeholders as well. Stakeholders include Customers, employees, investors, suppliers and vendors etc.

The main motive of corporate governance is to facilitate effective, entrepreneurial and prudent management which can give the company a long term success. Corporate governance is a mixture of activities that helps to bring transparency to the company's management due to which it attracts the costumers. So basically corporate governance helps in governing the business.

In 1999 an Organization named Economic Co-operation and Development (OECD) issued the first set of guidelines which was named as 'Principles of Corporate Governance' and later it was modified in the year 2003. In 2004 it was finally agreed by the members of OECD.

It states "Corporate governance involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined."<sup>79</sup>

#### **Why good corporate governance is important?**

Having a good corporate governance is of utmost importance for a company as it ensures to bring transparency to the operations of the company which in future will help to attract the customers and will increase the goodwill of the company. Good Corporate governance will also result in better accountability of the shareholders.<sup>80</sup> Further it will result in fairness and dealing which means the company will not be engaged in any unfair trade practices which will help the company to uplift their goodwill.

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<sup>79</sup> OECD & OCDE, *OECD Principles of Corporate Governance - 2004 Edition* (2004), <https://www.oecd.org/corporate/ca/corporategovernanceprinciples/31557724.pdf> (last visited May 15, 2021).

<sup>80</sup> YOGESH GUPTA, *Corporate Governance- All you want to know*, TAXGURU (2018), <https://taxguru.in/sebi/corporate-governance.html> (last visited May 15, 2021).

## **EVOLUTION OF LEGAL FRAME WORK OF CORPORATE GOVERNANCE IN INDIA**

The Companies act was enacted in the year 1866 and further it was amended three times. And that were done during 1882, 1913 and then in 1932. Before which the Indian companies and associations used to follow the colonial guidelines. A large part of the rules and guidelines were majorly favoring the impulses and likes of the British employers. Further in the year 1932 Partnership Act was enacted. The enactments enacted had a different approach, as it majorly focused on the working of a legitimate contract with companies and associations. “This period was an era of misuse/abuse of resources and shunning of obligations by managing specialists because of scattered and unprofessional proprietorship.”<sup>81</sup>

After India got its independence, there were many industrialists that were interested to take up the production of the essential items for which the government of India had directed and dictated fair prices for the same. During this point of time the government of India was setting up the “Tariff Commission and the Bureau of Industrial Costs and Prices”. During the 1950s introduction of the “Industries (Development and Regulation) Act and Companies Act” was done to the legal system.<sup>82</sup> The setting up of heavy industries was done during the time of 1960s. The time of 1970s-1980s was the point at which people starting giving importance to the accounting activity.

### **REFORMATION IN CORPORATE GOVERNANCE**

During the starting phase of India’s corporate governance reforms were majorly aiming at giving powers and making the Boards and Audit Committees more independent, focused and powerful supervisor of the team. They also gave powers to shareholders, including institutional and foreign shareholders/investors, in the motive of to supervise the management. Both “Ministry of Corporate Affairs (MCA) and the Securities and Exchange Board of India (SEBI)” played an important role in channelizing these reforms.<sup>83</sup>

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<sup>81</sup> Devika Sharma, *Evolution of Corporate Governance in India* | SCC Blog, SCC BLOG , <https://www.sconline.com/blog/post/2019/11/13/evolution-of-corporate-governance-in-india/> (last visited May 15, 2021).

<sup>82</sup> Corporate Governance in India – Practices, Framework | Deloitte India, , DELOITTE INDIA , <https://www2.deloitte.com/in/en/pages/risk/articles/governance-101.html> (last visited May 15, 2021).

<sup>83</sup> SEBI | Recommendations of the Narayana Murthy Committee on the Revised Clause 49 - Corporate Governance - Press Release, , SECURITIES AND EXCHANGE BOARD OF INDIA (2003),



### 1. COST INFLATION INDEX (CII)- 1996

During 1996 the Indian Financial industry took their first major step with regards to corporate governance. The main motive behind this was to promote and generate a code for the companies. Irrespective of the company being a private sector or a public sector, banks or financial institutions, all corporate entities were included in this. “The steps taken by CII addressed public concerns regarding the security of the interest and concern of investors, especially the small investors; the promotion and encouragement of transparency within industry and business, the necessity to proceed towards international standards of disclosure of information by corporate bodies, and through all of this to build a high level of people’s confidence in business and industry. The final draft of this Code was introduced in April 1998.”<sup>84</sup>

### 2. REPORT OF KUMAR MANGALAM BIRLA ON CORPORATE GOVERNANCE

Mr Kumar Mangalam Birla was a well-known industrialist and he was further appointed as the Chairman by SEBI<sup>85</sup> in order to provide a comprehensive report concerning the insider trading in order to save the rights of the investors. The ideas demanded the recorded organizations for introductory and proceeding with divulgements in a staged way inside determined dates, through the posting arrangement. The companies were asked to disclose their annual reports separately, this was done to check whether or not the companies have acted according to the recommendations of the company. The main motive behind doing this was to enable the shareholders have the idea where the company is, and in what they have invested, this resulted in ensuring proper corporate governance.

### 3. CLAUSE 49

During 2003 the committee realized the importance of proper auditing body so they have specific suggestions regarding the same to the Constitution and functions of Board of Audit Committees. SEBI at that point of time reviewed its listing contract so that it could add the

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[https://www.sebi.gov.in/media/press-releases/dec-2003/recommendations-of-the-narayana-murthy-committee-on-the-revised-clause-49-corporate-governance-press-release\\_17040.html](https://www.sebi.gov.in/media/press-releases/dec-2003/recommendations-of-the-narayana-murthy-committee-on-the-revised-clause-49-corporate-governance-press-release_17040.html) (last visited May 15, 2021).

<sup>84</sup> SMITA JAIN, *Corporate Governance-National and International Scenario* , <https://www.icsi.edu/media/webmodules/programmes/33nc/33souvearticle-smitajain.pdf> (last visited May 15, 2021).

<sup>85</sup> REPORT OF THE COMMITTEE APPOINTED BY THE SEBI ON CORPORATE GOVERNANCE UNDER THE CHAIRMANSHIP OF SHRI KUMAR MANGALAM BIRLA, REPORT OF THE KUMAR MANGALAM BIRLA COMMITTEE ON CORPORATE GOVERNANCE, , <https://www.nfcg.in/UserFiles/kumarmbirla1999.pdf> (last visited May 15, 2021).

recommendations. The above made rules were listed in Clause 49.<sup>86</sup> It was a new section that created in the listing agreement of 2000 and 2003.

4. MARCH 2001- “REPORT OF THE ADVISORY GROUP ON CORPORATE GOVERNANCE.”

This report mainly did a comparison between the corporate governance on India with that of the world’s best standards. And further suggested to improve the standards of corporate governance in India.<sup>87</sup>

5. APRIL 2001- “REPORT OF THE CONSULTATIVE GROUP OF DIRECTORS OF BANKS.”

The Reserve Bank of India (RBI) constituted a corporate governance of directors of banks and financial institutions in order to evaluate the role of boards of banks and financial institutions and to get feedback on the activities of the boards with respect to transparency, audit committee, disclosure etc. so that they could get suggestions and feedbacks which help the board of directors to be more efficient and reduce the risk.

6. DECEMBER 2002- “REPORT OF NARESH CHANDRA ON CORPORATE AUDIT AND GOVERNANCE COMMITTEE.”

This committee took the responsibility to “analyse, and suggest changes in different areas like—the statutory auditor and company relationship, procedure for appointment of Auditors and determination of audit fee, restrictions if required on non-auditory fee, measures to ensure that management and companies put forth a true and fair statement of financial affairs of the company.”<sup>88</sup>

7. FEBRUARY 2003- “SEBI REPORT ON CORPORATE GOVERNANCE BY N.R. NARAYAN MURTHY”

To study the role of independent director, risk management, related parties, codes of

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<sup>86</sup> SEBI | Recommendations of the Narayana Murthy Committee on the Revised Clause 49 - Corporate Governance - Press Release, *supra* note 8.

<sup>87</sup> Reserve Bank of India - Reports (2001), , RESERVE BANK OF INDIA (2001), <https://www.rbi.org.in/Scripts/PublicationReportDetails.aspx?ID=219> (last visited May 15, 2021).

<sup>88</sup> NARESH CHANDRA COMMITTEE REPORT, 2002 , (2002), <https://www.finmin.nic.in/sites/default/files/chandra.pdf> (last visited May 15, 2021).

conduct and financial disclosures, directorship and director compensation SEBI constituted a committee so that it can improve the standards of corporate governance.<sup>89</sup>

#### 8. JANUARY 2003- “REPORT OF NARESH CHANDRA COMMITTEE II ON REGULATIONS OF PRIVATE COMPANIES AND PARTNERSHIPS.”

As during that point of time the number of private sector companies were increasing rapidly so there was a need to revisit the old laws. In January 2003 the government formed a committee to look upon this framework. This was done to ensure a rational and scientific environment. This report mainly focused on the “Companies Act, 1956 and the Partnership Act 1932.”<sup>90</sup>

#### 9. AMENDMENT OF CLAUSE 49- MURTHY COMMITTEE

In accordance with that of the recommendations given by Murthy’s Committee, in the year 2004 SEBI did some changes in Clause 49. But due to the incapability of the industry to accept the vast change they decided to postpone the implementation until 01.01.2006. “While there were many changes to Clause 49 as a result of the Murthy Report, governance requirements with respect to corporate boards, audit committees, shareholder disclosure, and CEO/CFO certification of internal controls constituted the largest transformation of the governance and disclosure standards of Indian companies.”<sup>91</sup>

### **LANDMARK CASES RELATED TO CORPORATE GOVERNANCE**

#### 1. Satyam Computers Scam Case.<sup>92</sup>

Satyam Computers scam is regarded as the greatest scam. It was a corporate scandal that affected the Indian company named Satyam Computer Services in the year 2009. In

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<sup>89</sup> SEBI | The Report of Shri N R Narayana Murthy Committee on Corporate Governance [For Public Comments], , [https://www.sebi.gov.in/reports/reports/mar-2003/the-report-of-shri-n-r-narayana-murthy-committee-on-corporate-governance-for-public-comments-\\_12986.html](https://www.sebi.gov.in/reports/reports/mar-2003/the-report-of-shri-n-r-narayana-murthy-committee-on-corporate-governance-for-public-comments-_12986.html) (last visited May 15, 2021).

<sup>90</sup> NARESH CHANDRA, *Report of the Committee on Regulation of Private Companies and Partnerships (2003)* (2003), [http://reports.mca.gov.in/Reports/3-Naresh Chandra committee report on regulation of private companies and partnerships, 2003.pdf](http://reports.mca.gov.in/Reports/3-Naresh%20Chandra%20committee%20report%20on%20regulation%20of%20private%20companies%20and%20partnerships,%202003.pdf) (last visited May 15, 2021).

<sup>91</sup> SEBI | Recommendations of the Narayana Murthy Committee on the Revised Clause 49 - Corporate Governance - Press Release, *supra* note 8.

<sup>92</sup> Susmit Pushkar & Susanah Naushad, *What Changed In The Legal Landscape Post Satyam Scam*, <https://www.moneycontrol.com/news/opinion/what-changed-in-the-legal-landscape-post-satyam-scam-2480623.html> (last visited May 15, 2021).

1987, P Ramalinga Raju and his brother established a business named Satyam Computers. It was a Hyderabad based IT company. It was listed by the BSE in the year 1990-91. This company was regarded as a jewel in the IT industry. But in reality it was an outcome of a financial crime.

In 2009 the chairman P Ramalinga Raju admitted that he manipulated the company's accounts. The scam was of 7000 crore. On 7<sup>th</sup> January 2009 SEBI received an e-mail from P Ramalinga Raju in which he confessed that he manipulated the books of accounts of his company.

On 9<sup>th</sup> April 2015 P Ramalinga Raju along with 10 of his members were convicted of their crime. P Ramalinga Raju and three of his members were imprisoned for 6 months.

## 2. ICICI Videocon Scam Case.<sup>93</sup>

In this case ICICI Bank provided a Loan of rupees 3,250 crore to Videocon out of which 2810 crore was declared as non-performing asset.

The Board is considered to be guilty as they gave a passed the loan to its CEO without taking proper measures. And after the investigation got released in the public domain it is regarded as the case of nepotism, and they further refuse to take any further questions regarding this.

## 3. Vanishing company Scam.<sup>94</sup>

This scam was majorly seen during April 1992 – March 1996. During this period 4,057 public issues were done which amounted to Rs.54, 250 crore. Not only small but big companies were caught doing this. As they were not only guilty of aggressive pricing but they were guilty of miss using the funds. Due to this case people started knowing the importance of good corporate governance.

## 4. Kingfisher Airlines

Due to lack of funds and illegal internal corporate funding to parties Kingfisher lost its

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<sup>93</sup> Rachit Garg, *ICICI v. Videocon case analysis - iPleaders*, <https://blog.ipleaders.in/icici-v-videocon-case/> (last visited May 15, 2021).

<sup>94</sup> Pranav Haldea, *Revisiting vanishing companies*, <https://www.financialexpress.com/archive/revisiting-vanishing-companies/107386/> (last visited May 15, 2021).

flying license. “It was entirely evident that assets had been transferred from United Spirits Ltd. (USL) to subsidize Kingfisher, that United Breweries (UB) Holdings was utilized as a channel for raising loans and giving them to his group, that intercorporate credits were given to related groups without the Board’s approval, accounts were inappropriately expressed, reviews were stage overseen, etc. during the period Mr Vijay Mallya was responsible for USL.”<sup>95</sup>

### **CONCLUSION AND SUGGESTIONS**

As indicated by the issues given above, there is an immense scope of responsibilities upon the Directors of the company to agree with the principles and best practices given in various rules and regulations. Besides the rules and regulations that are suggested by different organizations, it is expected that the companies will act sensibly and maturely towards the society. As the companies play a very vital role in the society therefore it is expected that will act responsibly. The load is already reduced for the organizations as a set of rules are fixed and there are hardly any expectations that those will be amended. So, due to this the companies can function smoothly. Stakeholders showing their interest and taking part actively in the decision making process is also of utmost importance. All big authorities such as Government, RBI, Statutory authorities, and independent directors must come together and develop the laws if needed.

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<sup>95</sup> Devika Sharma, *supra* note 6.