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PAPER NAME – **INTELLECTUAL PROPERTY LAW AND INFORMATION  
TECHNOLOGY ACT, 2000**

**Unit-I** Property: Concept, Acquisition, Kinds, Intellectual Property, Definition, Concept, Development and Protection of Intellectual Property Rights at International Level

**Unit-II** The Copy Right Act 1957 – as amended

**Unit-I** Property: Concept, Acquisition, Kinds, Intellectual Property, Definition, Concept, Development and Protection of Intellectual Property Rights at International Level

**Introduction -**

The concept of property occupies an important place in human life because it is practically impossible to live without the use of material object which constitutes the subject matter of property. Property may be classified into corporeal and incorporeal property, movable and immovable property, real and personal property, public and private property.

## **Concept of Property –**

The concept of property occupies an important place in human life, because it is virtually impossible to live without the use of material objects which constitute the subject-matter of property. What is property? You might think you know what property is but surprisingly it is a difficult thing to describe adequately. Things like Books, Money, Pen, Computer, Cricket ball, Football, Clothes. All of these things are what most people think is their 'property' and what people 'own.' For lawyers these are inexact descriptions of what in law is the relationship that exists between a person and things or land. The lay person's view of what is property is acceptable and understandable in most contexts as there is usually no need to be more precise. But if the purpose is to analyse the nature of the property relationship in a legal context these categories may be inadequate. This is especially true when one attempts to apply legal definitions in a commercial context. We will be looking at 'property' in two contexts: as a noun i.e. "my property includes the following" and when describing the legal relationship existing between a person and a thing or land i.e. "i have property in that land.

## **Meaning of Property -**

The term property is derived from the Latin word '*proprietate*' and the French equivalent '*proprius*' which means a thing owned. The concept of property and ownership are very closely related to each other. The term Property is not a Term of Art. It has been used in a variety of senses. In its widest sense, Property includes all the legal rights of a Person of whatever description. In the narrower sense, the term property signifies only the proprietary rights whether *in rem or personam* and having economic value. They exclude the personal right like life, liberty. In another sense, the term property includes only those rights which are both proprietary and real.

## **Definition of Property -**

### **Salmond-**

According to Salmond "The law of property shall only mean the proprietary rights *in rem*". i.e. they are those which are available against the whole world at large.

### **Bentham- -**

According to Bentham "property is nothing more than the basis of a certain expectation of deriving thereafter certain advantages by a thing the reason of the relation in which we stand towards it. There is no image, no visible lineament which can property the relation that constitutes property. It belongs not to physics, but to metaphysics. It is altogether a conception of Mind. To it, all or any of these physical circumstances failed to assist in conveying the idea of property."

### **Locke-**

According to Locke, " Every man has a property in his own person." every individual has the right to preserve his property, that is his wife, liberty and estate."

### **Austin-**

According to Austin, the term property is sometimes used to denote the greatest right of enjoyment known as to law excluding servitudes. Sometimes, life interests are described as property. Even servitudes are described as property in the sense that there is a legal title to them. Sometimes property means the whole of the assets of a man including both the right *in rem* and *right in personam*.

## **THE SUPREME COURT'S VIEW**

*"The right of property guaranteed by Article 19(1) (f) means that rights which by themselves and taken independently, are capable of being acquired, held or disposed of as property". (Indian Constitution, 1950, Articles (i) (f) and 31(2))*

In the case of *Cormer HER Vs. Lakshmindira*, AIR1954, SC 282 it was observed *"there is no reason why the word 'property' as used in article 19(1) (f) of the constitution should not given*

*a liberal and wide connotation, and should not be extended to those well recognized types of interests which have the insignia and characteristic of proprietary right".*

In the another case (State of West Bengal Vs. Subodh Gopal (1954) SCR 587) it was said that "property" in article 31 "must be understood both in corporeal sense as having reference to all those specific things that are susceptible to private appropriation and enjoyment as well as in its judicial or legal sense of a bundle of rights which the owner can exercise under the municipal law with respect to the user and enjoyment of those things to the exclusion of all others".

In a recent case (R.C. Cooper Vs. Union of India, AIR 1970, SC 564) the following definition of property has been quoted "property means the highest right a man can have to anything being that right which one has to lands or tenements, goods or chattels which does not depend on another's courtesy. It includes ownership, estates and interests in corporeal things, and also rights such as trade-marks, copyrights, patents and even right 'in personam' capable of transfer or transmission, such as debts, and signifies a beneficial right to or a thing considered as having a money value, especially with reference to transfer or succession, and of their capacity of being injured".

## **Kinds of Property -**

Property is essentially of two kinds Corporeal Property and Incorporeal Property. Corporeal Property can be further divided into Movable and Immovable Property and real and personal property. Incorporeal property is of two kinds-*in re propria* and rights *in re aliena* or encumbrances.

### **1) Corporeal and Incorporeal Property -**

#### **(I) Corporeal Property -**

Corporeal property is the right of ownership in material things. Corporeal property is always visible and tangible. Corporeal property can be perceived by senses. It can be seen or touched. Corporeal property may be divided into two classes-

- 1. Movable property and Immovable property**
- 2. Real property and Personal property**

## **(II) Incorporeal Property -**

Incorporeal property also called as intellectual or conventional property. It includes all those valuable interests which are protected by law. Incorporeal property is intangible. It cannot be perceived by Senses. Examples - Patents, Copyrights, Trademarks etc.

### **Incorporeal property is divided into two classes-**

(a) *Jura in re propria* Over Material things (for example patents, copyrights, trademarks etc)

(b) *Jura in re Aliena* encumbrances, whether over material or immaterial things, for example, Lease, Mortgages and Servitude etc.

#### **1. Movable property:**

The definition of movable property is given differently in many acts. Some of the definitions areas follows:

Section 3 (36) of the General Clauses Act defines movable property as: 'Movable property shall mean property of every description, except immovable property.'

Section 2 (9) of the Registration Act, 1908 defines property as : 'Moveable property' includes standing timber, growing crops and grass, fruit upon and juice intrees, and property of every other description, except immovable property.'

Section 22 of IPC defines property as: The words "moveable property" is intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything, which is attached to the earth. Things attached to the land may become moveable property by severance from the earth. For example Cart-loaded of earth, or stones quarried and carried away from the land become movable property.

## 2. Immovable property

The Term "Immovable Property" occurs in various Central Acts. However none of those Acts conclusively define this term. The most important act which deals with immovable property is the Transfer of Property Act (T.P.Act). Even in the T.P. Act this term is defined in exclusive terminology.

- i. According to Section 3 of that Act, "Immovable Property" does not include standing timber, growing crops or grass. Thus, the term is defined in the Act by excluding certain things."Buildings" constitute immovable property and machinery, if embedded in the building for the beneficial use thereof, must be deemed to be a part of the building and the land on which the building is situated.
- ii. As per Section 3(26) of the General Clauses Act 1897, "immovable property" "shall include land, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth". This definition of immovable property is also not exhaustive;
- iii. Section 2(6) of The Registration Act,1908 defines "Immovable Property" as under:"Immovable Property includes land, building, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth but not standing timber, growing crops nor grass".
- iv. The term "Immovable Property" is defined in other Acts for the purpose of those Acts. As per Section 269UA(d) of the Income Tax Act, 1961, Immovable Property is defined as under :a. Any land or any building or part of a building, and includes, where any land or any building or part of a building is to be transferred together with any machinery, plant, furniture, fittings or other things, such machinery, plant, furniture, fittings and other things also. Any rights in or with respect to any land or any building or part of building (whether or not including any machinery, plant, furniture, fittings or other things therein) which has been constructed or which is to be constructed, accruing or arising from any transaction (whether by way of becoming a member of, or acquiring shares in, a

co-operative society, or other association of persons or by way of any agreement or any arrangement of whatever nature, not being a transaction by way of sale, exchange or lease of such land, building or part of a building.

### **3) Real and Personal Property -**

In English law, the property has been divided into the real and personal property. This division is identical to a great extent with that of immovable or movable. The division into real and personal is not based on any logical principle but is a result of the course of legal development in England.

#### **a) Real property -**

The real property includes all rights over land with such additions and exceptions, as the law has deemed fit.

#### **b) Personal property -**

The law of personal property includes all other proprietary rights whether they are in rem or in personam.

### **4) Public property and private property -**

Having regard ownership property is either public or private -

#### **(a) Public property-**

Public property is that owned by the public as such in some governmental capacity. Public property is used as a designation of which are Public Juris and therefore, are considered as being owned by the public. The entire state or the community and not restricted to the domain of private person or that which belongs to a state or political constituents like provinces etc.

#### **(b) Private property -**

The private property is that which is owned by an individual or some other private person.

## **Acquisition of Property:**

Acquisition is the process of gaining ownership or control of real property or an interest in real property. An easement is an interest in real property that affords a person the right to make limited use of another person's real property.

## **Modes of Acquisition of Property-**

According to Salmond, there are four kinds of acquisition of property those are possession, prescription, agreement and inheritance.

### **I) Possession -**

A possession is the objective realization of ownership Possession means Physical Control over a thing or an object. It is Prima facie evidence of ownership. The property which belongs to no one i.e. Res nullius, belongs to the first possessor of it and he acquires a valid title to it against the world. A property which is already in possession of someone else, when acquired by possession, gives a good title to the possessor against all third persons except the true owner. Even as against the true owner, the possessor is entitled to maintain his possession until evicted in due course by law. In such a case of adverse possession, there are in fact two owners the ownership of one is absolute and perfect, while that of the other is relative and imperfect and often called possessory ownership by reason of its origin possession.

If a possessory owner is deprived of its possession by a person who is other than the true owner, he has the right to recover possession of the same.

If Property belongs to nobody, the person who captures and possesses it has a good title against the whole world. In this way, the birds of the air and the fish of the sea are the property of that person who first catches them.

### **II) Prescription -**

According to Salmond: "Prescription may be defined as the effect of lapse of time in creating and destroying rights; it is the operation of time as a vestitive fact. Prescriptions are of two kinds-Positive or acquisitive prescription and negative or extinctive prescription.

#### **(a) Positive or Acquisitive Prescription**



Positive Prescription means the creation of a right by the lapse of time. For example, right of way is acquired by continued de facto use of it, undisputedly and openly for a period Prescribed by law. Under Indian Easement Act, this period is 20 years.

**(b) Negative or Extinctive Prescription.**

Negative prescription is the destruction of a right by the lapse of time. Example, the right to sue for non-payment of a debt within a prescribed period is extinguished after the lapse of that Period. In India, limitation Act prescribes three years period for extinction of the right.

**III) Agreement -**

Property may also be acquired by agreement which is enforceable by law. The owner of a right can transfer his rights in property to another with or without consideration. If it is for consideration it is called a sale and if it is without consideration it is called a gift. It is one of the important principles of law based on the Maxim "Nemo dat quad habet legime", that is no one can convey a better title than he himself has, as a general rule.

According to Paton, an agreement is an expression by two or more persons communicated each other to the other of a common intention to affect the legal relation between them.

An agreement has four essential elements which are as follows -

- 1) There should be two or more parties to an agreement
- 2) Mutual consent of the parties
- 3) It should be communicated;
- 4) There should be common intention to affect the legal relationship

**IV) Inheritance**

Another method of acquiring property is by means of inheritance. When a person dies certain rights survive him and pass on to his heirs and successors. There are others which die with him. Those rights which survive him are called heritable or inheritable rights. Those rights which do not survive him are called un-inheritable rights. Proprietary rights are inheritable as they possess value. Personal rights are not inheritable as they constitute merely his status. However, there are certain exceptions to the general rule. Personal right may not die in case of hereditary titles. Proprietary rights maybe un-heritable in the case of lease for the life of lessee only or in case of joint ownership.

Succession of the property of a person may be either tested it or it may be intestate i.e. by means of a will or without a will. If the deceased has made a will,

then succession would take place according to the term to the will. But if there is not will, then succession will take place by the operation of law which is known as non-testamentary succession. In case there are no heirs of the deceased, his property shall go to the State.

## **Intellectual property:**

### **Introduction:**

Intellectual property is a term referring to a number of distinct types of creations of the mind for which property rights are recognized—and the corresponding fields of law.

Property does not just comprise of tangible things like houses, cars, furniture, currency, investments etc and such assets are not the only kind that can be protected by law. There are many other forms of intangible property known as intellectual property that have been recognized under the law and granted protection against infringement.

Intellectual Property (IP) has emerged as an important discipline in the study of commercial laws. There are several theories underlying the relevance of IP law in modern industrial societies driven by private investments in innovation and entrepreneurship. However, one unifying factor is that IP protects and encourages differentiation. Differentiation allows markets to solve new problems or old problems in a new way. Thus differentiated knowledge embodying products or services are subject matter of IP protection. The legal protection of IP is rooted in the philosophy to property rights as one of most efficient instrument (having partial basis in natural law or statute- based) in production and consumption of goods and services. Intellectual property is essentially driven by rights and remedies based system that aligns with traditional notions of property to a large extent, but has turned into a malleable tool which is influenced by nature of technology, temporality, territoriality, and most importantly, public policy. While there is no single definition of IP, the World Intellectual Property Organisation constructs it as “the legal rights which result from intellectual activity in the industrial, scientific, literary and artistic fields.”

The primary theme underpinning the intellectual property regime is protection of certain forms of innovation and creativity. Without intellectual property protection, creators face the risk of market failure due to free-riding of their innovations and creations and an eventual loss of incentive to produce further. IPRs are the means of incentivizing innovation and creation as a form of protection against the risk of market failure.

Similarly, without an intellectual property regime, consumers are at risk of facing information asymmetry in the form of unfair trade practices, deceptive techniques, and confusing sources of origin of a product or a service. Intellectual property protects consumers against information asymmetry.

### **Development of Intellectual Property Rights:**

IPR is not a new concept. It is believed that IPR initially started in North Italy during the Renaissance era. In 1474, Venice issued a law regulating patents protection that granted an exclusive right for the owner. The copyright dates back to 1440 A.D. when Johannes Gutenberg invented the printing press with replaceable/moveable wooden or metal letters. Late in the 19th century, a number of countries felt the necessity of laying down laws regulating IPR. Globally, two conventions constituting the basis for IPR system worldwide had been signed; Paris Convention for the Protection of Industrial Property (1883) Berne Convention for the Protection of Literary and Artistic Works (1886).

### **Development of Intellectual Property Rights in India**

The western development of intellectual property law profoundly influenced the development of intellectual property rights in India. East India Company extended to India the English Copyright Act of 1872. In 1911 the law of copyright was codified in England through legislations like the Copyright Act 1911, the Imperial Copyright Act 1911. These legislations were the 'Law in force' in the Indian Territory. The Indian Copyright Act of 1914 was a modified version of the British Copyright Act of 1911. Some of the important provisions of the act were (i) the registration of the authors work was not necessary (ii) the authors' right came into existence as soon as the work was created (iii) protection was given not to ideas but to the material forms in which the work was expressed (iv) only original works attracted the protection of copyright law although the general principle

applied was that all laws which put a restraint upon human activity and enterprise construed in a reasonable and generous spirit. (v) The term of copyright protection was fixed as the lifetime of the author and 25 years of his death. The Act of 1914 prescribed penalties for infringement of copyright which was not considered a criminal offence. With a view to consolidating and amending the old laws, the copyright Act was reenacted in 1957. The salient provision of the act of 1957 were:

1. Establishment of the copyright board;
2. Expansion of definition of copyright;
3. right of the author to reacquire his right after 7 years but before expiry of 10 years of assignment.
4. Issue of license to a library to make copy of any books;
5. Regulation of the activities of the performing arts societies including the fees or royalties charged.

### **The Concept of Intellectual Property**

Intellectual property, very broadly, means the legal property which results from intellectual activity in the industrial, scientific and artistic fields. Countries have laws to protect intellectual property for two main reasons. One is to give statutory expression to the moral and economic rights of creators in their creations and such rights of the public in access to those creations. The second is to promote, as a deliberate act of government policy, creativity and the dissemination and application of its results and to encourage fair trading which would contribute to economic and social development.

Generally speaking, IP law aims at safeguarding creators and other producers of intellectual goods and services by granting them certain time- limited rights to control the use made of those productions. These rights do not apply to the physical object in which the creation may be embodied but instead to the intellectual creation as such. IP is traditionally divided into two branches: "industrial property and copyright". The convention establishing the World Intellectual Property Organization (WIPO), concluded in Stockholm on July 14, 1967 (Art. 2(viii) provides that "*intellectual property shall include rights relating to:*

- 1) literary, artistic and scientific works;
- 2) performances of performing artists, phonograms and broadcasts;

- 3) inventions in all fields of human behaviour;
- 4) scientific discoveries;
- 5) industrial designs;
- 6) trademarks, service marks, and commercial names and designations;
- 7) protection against unfair competition and all other rights resulting from intellectual activity in industrial scientific, literary or artistic fields”.

### **Definition of Intellectual Property (IP):**

Intellectual-property can be characterized as the property in ideas or their expression. it is a creation of mind. For example- A technological innovation, A poem, or A design. it protects the rights of individuals and businesses who have transformed their ideas into property by granting rights to the owners of those properties.

### **Classification of Intellectual Property**

As discussed earlier, Industrial Property and Copyright are the two components constituting intellectual property. The reason for this differentiation can be traced back to history where copyright was associated with works of authorial creativity. As a form of intellectual property, copyright is considered to be an expression of the author’s own personality, and therefore, distinct from trade & commerce.

On the other hand, creativity expressed through technical innovations, industrial designs, names and marks distinguishing business entities, and marks signifying geographical origins of a product is related to trade & industry and that is why these forms of intellectual property are known as industrial property.

Apart from this, certain *sui-generis*, one-of-their-kind legislations also protect certain forms of creativity not sufficiently protected by the existing legislation on patents, trademarks, copyright, industrial designs, or geographical indications. Plant varieties and Layout-Designs of integrated circuits are protected by these indigenous statutes, known as *sui-generis* system of protection.

Intellectual property is divided into two categories:

**Industrial Property** includes patents for inventions, trademarks, industrial designs and geographical indications.

**Copyright** covers literary works (such as novels, poems and plays), films, music, artistic works, etc. (e.g., drawings, paintings, photographs and sculptures) and architectural design.

Rights related to copyright include those of performing artists in their performances, Producers of phonograms in their recordings, and broadcasters in their radio and television programs.

### **What are intellectual property rights?**

Intellectual property rights are like any other property right. They allow creators, or owners, of patents, trademarks or copyrighted works to benefit from their own work or investment in a creation. These rights are outlined in Article 27 of the Universal Declaration of Human Rights, which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions. The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Both treaties are administered by the World Intellectual Property Organization (WIPO).

### **Why protect intellectual property?**

There are several compelling reasons. First, the progress and well-being of humanity rest on its capacity to create and invent new works in the areas of technology and culture. Second, the legal protection of new creations encourages the commitment of additional resources for further innovation. Third, the promotion and protection of intellectual property spurs economic growth, creates new jobs and industries, and enhances the quality and enjoyment of life. An efficient and equitable intellectual property system can help all countries to realize intellectual property's potential as a catalyst for economic development and social and cultural well-being. The intellectual property system helps strike a balance between the interests of innovators and the public interest, providing an environment in which creativity and invention can flourish, for the benefit of all.

### **Rationale of Intellectual Property Protection:**

Intellectual Property is the property created by the intellect of human mind. Intellectual Property is a nonphysical property which stems from, or is identified as, and whose value is based upon some idea. Intellectual property encompasses the

protection offered by the legal regimes of various patent, copyright, trademark, designs and trade secrets. Grant of intellectual property is a mode of providing incentive to the inventor of his invention. Further, incentive in the form of temporary monopoly rights encourages inventor to disclose his invention to the public. Moreover, intellectual property rights helps in greater commercialization of inventions.

(बौद्धिक सम्पदा संरक्षण का औचित्य: बौद्धिक सम्पदा मानव मन की बुद्धि द्वारा बनाई गयी सम्पत्ति है। बौद्धिक सम्पदा एक गैर-भौतिक सम्पत्ति की उपज है या इस रूप में पहचानी जाती है और जिसका मूल्य किसी विचार पर आधारित है। बौद्धिक सम्पदा के अन्तर्गत विभिन्न पेटेंट, कॉपीराइट, व्यापार चिन्ह, डिजाइन और व्यापार रहस्यों को प्रशासन द्वारा वैधानिक सुरक्षा दी गयी है। बौद्धिक सम्पदा का अनुदान उनके आविष्कारक के आविष्कार को प्रोत्साहन प्रदान करने का एक साधन/माध्यम है। इसके अलावा, अस्थायी एकाधिकार अधिकारों के रूप में प्रोत्साहन आविष्कारक को अपने आविष्कार का जनता के समक्ष प्रदर्शन/खुलासा करने के लिए प्रोत्साहित करता है। इसके अतिरिक्त, बौद्धिक सम्पदा अधिकार आविष्कारों के अधिक व्यवसायीकरण में सहायक सिद्ध होता है।)

### **Important international conventions related to IPRs:**

- 1- Paris Conventions for the protection of Industrial Property, 1883
- 2- Berne Convention for the protection of literary and artistic works, 1886
- 3- International Union for the Protection of new varieties of plants, 1961(UPOV, 1961)
- 4- Patents Cooperation Treaty (PCT)
- 5-Trade-Related Aspects of Intellectual Property Rights (TRIPS). TRIPS agreement is one of the fifteenth agreements listed in Annexure -I of the Marrakesh establishing World Trade Organization (WTO, 1 January, 1995).
- 6- (BIRPI, 1893) The United International Bureaux for the Protection of Intellectual Property was an international organization. It was set up in 1893 to administer the Berne Convention for the Protection of Literary and Artistic Works and the Paris Convention for the Protection of Industrial Property. (Paris and Berne Conventions merged into BIRPI). BIRPI- The United International Bureau for the protection of intellectual property. BIRPI is the Predecessor of the WIPO (world intellectual property organization)
- 7- World Intellectual Property Organization (WIPO, 1970).

बौद्धिक-संपदा को विचारों या उनकी अभिव्यक्ति में संपत्ति के रूप में चित्रित किया जा सकता है। यह मन की रचना है। उदाहरण के लिए- एक तकनीकी नवाचार, एक कविता, या एक डिजाइन। यह उन संपत्तियों के मालिकों को अधिकार देकर उन व्यक्तियों और व्यवसायों के अधिकारों की रक्षा करता है जिन्होंने अपने विचारों को संपत्ति में बदल दिया है।

बौद्धिक-संपदा को निम्नलिखित चार श्रेणियों में वर्गीकृत किया जा सकता है-

- 1- नवाचारों के लिए पेटेंट
- 2- साहित्यिक कार्यों के लिए कॉपीराइट।
- 3- ट्रेडमार्क और
- 4- व्यापार रहस्य

IPRs से संबंधित महत्वपूर्ण सम्मेलन:

- 1- औद्योगिक संपत्ति के संरक्षण के लिए पेरिस सम्मेलन, 1883
- 2- साहित्यिक और कलात्मक कार्यों की सुरक्षा के लिए बर्न कन्वेंशन, 1886
- 3- पौधों की नई किस्मों के संरक्षण के लिए अंतर्राष्ट्रीय संघ, 1961 (UPOV, 1961)
- 4- पेटेंट सहयोग संधि (पीसीटी)
- 5- विश्व व्यापार संगठन, 1 जनवरी, 1995  
बौद्धिक संपदा अधिकारों के व्यापार-संबंधित पहलू। (ट्रिप्स) समझौता डब्ल्यूटीओ की स्थापना करने वाले मारकेश के अनुबंध -I में सूचीबद्ध पंद्रह समझौतों में से एक है।
- 6-1967- पेरिस सम्मेलन, 1967 ट्रिप्स का अभिन्न अंग है।
- 7-1893- BIRPI - बौद्धिक संपदा संरक्षण के लिए संयुक्त अंतर्राष्ट्रीय ब्यूरो एक अंतरराष्ट्रीय संगठन था। इसे 1893 में साहित्य और कलात्मक कार्यों के संरक्षण के लिए बर्न कन्वेंशन और औद्योगिक संपत्ति के संरक्षण के लिए पेरिस कन्वेंशन के लिए स्थापित किया गया था।
- 8-BIRPI- बौद्धिक संपदा के संरक्षण के लिए संयुक्त अंतर्राष्ट्रीय ब्यूरो।
- 9-BIRPI WIPO का पूर्ववर्ती है (विश्व बौद्धिक संपदा संगठन, 1967)



## **COPYRIGHT-**

### **Introduction:**

Internationally the awareness has come only in the 19<sup>th</sup> century for the protection of copyright, Through the statues. In 1886 there came the Berne Convention which came to be amended many times in 1896, 1908, 1914 and 1948. The United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted the Universal Copyright Convention in 1952 (UCC 6<sup>th</sup> September, 1952 Geneva Switzerland and came into force 16<sup>th</sup> September, 1955). The World Intellectual Property Organization (WIPO) also established to protect intellectual property rights universally.

अंतर्राष्ट्रीय स्तर पर 19वीं सदी में विधियों के माध्यम से कॉपी राइट संरक्षण के लिए जागरूकता आई है। सन 1886 में बर्न अभिसमय हुआ जो कि 1896, 1908, 1914 और 1948 में कई बार संशोधित हुआ। संयुक्त राष्ट्र शैक्षिक, वैज्ञानिक और सांस्कृतिक संगठन (यूनेस्को) ने 1952 में सार्वभौमिक कॉपीराइट अधिसमय(यूसीसी) को अपनाया जो 16 सितम्बर, 1955 से लागू हुआ। विश्व बौद्धिक सम्पदा संगठन (वीपी) भी सार्वभौमिक रूप से बौद्धिक सम्पदा अधिकारों की रक्षा के लिए स्थापित किया गया है।

In India we had the 1847 British statute on copyright which provided copyright protection for lifetime of the author plus 7 years after the death of the author, with 42 years as the maximum period of protection.

भारत में ब्रिटिश शासन होने से 1847 का ब्रिटिश कॉपीराइट विधि था, जो लेखक को जीवनभर के लिए कॉपीराइट सुरक्षा प्रदान करता था और लेखक की मृत्यु की दशा में मृत्यु के 7 साल तक अतिरिक्त सुरक्षा प्रदान किया जाता था साथ ही सुरक्षा की अधिकतम अवधि कुल 42 वर्ष थी।

The Copyright Act, 1914 in India was largely modeled after the 1911 British Copyright Act. The 1914 Act continued to govern the Copyright system in India with minor amendments and modifications until the enactment of the 1957 Act and its adoption in January, 1958.

भारत में कॉपीराइट अधिनियम, 1914 मुख्य रूप से ब्रिटिश कॉपीराइट अधिनियम, 1911 के आधार पर बनाया गया था जो कि भारत में कॉपीराइट व्यवस्था को मामूली संशोधनों और उपांतरणों के साथ प्रभावी रहा जब तक कि सन 1957 का कॉपीराइट अधिनियम निर्मित किया गया जो 1958 में लागू हुआ।

Independent India enacted the first Copyright Act, 1957 on the lines of Berne Convention. With subsequent amendments in 1883, 1994, and 1999 to harmonies with the Rome Convention 1961 and the obligations under the TRIPS Agreement. The 1957 Act underwent the most significant amendment in the year 2012 to incorporate the provisions for protecting copyright in the context of digital space and to meet WIPO Copyright Treaty (WCT) and The WIPO Performances and Phonograms Treaties (WPPT).

स्वतंत्र भारत में बर्न अभिसमय के तर्ज पर पहली बार कॉपीराइट अधिनियम, 1957 का निर्माण किया गया, जो 1883, 1994 और 1999 में संशोधन किये गये जिससे कि रोम अभिसमय 1961 के साथ सामंजस्य बना सके और बौद्धिक सम्पदा के व्यापार संबंधित पहलुओं के तहत हुए समझौते के दायित्वों को पूरा किया जा सके। 1957 के कॉपीराइट अधिनियम में डीजिटल रूप में कॉपीराइट की सुरक्षा के प्रावधानों को शामिल करने के संदर्भ में वर्ष 2012 में सबसे महत्वपूर्ण संशोधन किया गया जिससे कि विपो कॉपीराइट संधि और विपो प्रदर्शन तथा फोनोग्राम संधियों को पूरा किया जा सके।

The Copyright Act, 1957 was again amended in 2017 to reflect the changes made by the Finance Act of 2017 with the Copyright (Amendment) Rules, 2016 administer the present day Copyright system in India.

वित्त अधिनियम, 2017 के परिवर्तनों को प्रभावी करने के लिए वर्ष 2017 में एक बार पुनः कॉपीराइट अधिनियम, 1957 कॉपीराइट संशोधन नियम, 2016 के साथ संशोधित किया गया था, जिससे कि आधुनिक समय में भारत में कॉपीराइट प्रणालियों का शासन सुचारू रूप से किया जा सके।

# WCT- The World Intellectual Property Organization Copyright Treaty is an international treaty on copyright law adopted by the member states of the World Intellectual Property Organization in 1996. (Signed -20 December, 1996 and effective 6 March, 2002).

# विश्व बौद्धिक सम्पदा संगठन/विपो कॉपीराइट संधि एक अंतर्राष्ट्रीय संधि है, जो 20 दिसम्बर, 1996 में विश्व बौद्धिक सम्पदा संगठन के सदस्य देशों द्वारा अपनाई गई तथा 6 मार्च, 2002 से प्रभावी हुआ है।

# WPPT- The WIPO Performances and Phonograms Treaty (or WPPT) is an international treaty signed by the member states of the World Intellectual Property Organization. (adopted in Geneva on 20 December 1996 and It came into effect on 20 May 2002)

# विश्व बौद्धिक सम्पदा संगठन/विपो प्रदर्शन और फोनोग्राम संधि एक अंतर्राष्ट्रीय संधि है, जो 20 दिसम्बर,1996 में विश्व बौद्धिक सम्पदा संगठन के सदस्य देशों द्वारा अपनाई गई तथा 20 मई, 2002 से प्रभावी हुआ है।

THE COPYRIGHT ACT, 1957 (Act No. 14 of 1957 1957 का अधिनियम संख्यांक 14 (whole of India w.e.f.21.01.1958 enactment date 4<sup>th</sup> June, 1957)

Preamble: This act is to amend and consolidate the law relating to copyrights. प्रतिलिप्याधिकार से संबद्ध विधि को संशोधित और समेकित करने के लिए विधि।

The whole of the act, can be divided into 15 chapters with 79 sections which can be charted as follows-

Chapter	Section	Title
1	1-8	Preliminary प्रारंभिक
2	9-12	Copyright office and copyright Board प्रतिलिप्यधिकार कार्यालय और प्रतिलिप्यधिकार बोर्ड
3	13-16	Copyright प्रतिलिप्यधिकार
4	17-21	Ownership of copyright and rights of the owner प्रतिलिप्यधिकार का स्वामित्व और स्वामी के अधिकार
5	22-29	Term of copyright प्रतिलिप्यधिकार की अवधि
6	30-32B	Licenses अनुज्ञप्तियां
7	33-36A	Copyright Societies प्रतिलिप्यधिकार सोसाइटियां
8	37-39A	Rights of broadcasting organization and of performers प्रसारण संगठन के अधिकार और प्रस्तुतकर्ताओं के अधिकार
9	40-43	International Copyright अंतर्राष्ट्रीय प्रतिलिप्यधिकार
10	44-50A	Registration of copyright प्रतिलिप्यधिकार का पंजीयन
11	51-53A	Infringement of copyright प्रतिलिप्यधिकार का अतिलंघन
12	54-62	Civil Remedies सिविल उपचार
13	63-70	Offences अपराध
14	71-73	Appeals अपीलें
15	74-79	Miscellaneous प्रकीर्ण/विविध

**Chapter- 1 -Preliminary, section 1 to 8 (अध्याय-1- प्रारंभिक, धारा 1 से 8 तक):-**

<b>Section</b>	<b>धारा</b>	<b>Title</b> शीर्षक
1		Title and Extent संक्षिप्त नाम एवं विस्तार,
2		Interpretation निर्वचन खण्ड:
3		Meaning प्रकाशन का अर्थ-
4		No publication कृति को कब प्रकाशित या सार्वजनिक रूप से प्रस्तुत नहीं समझा जाएगा-
5		1 <sup>st</sup> Publication in India कृति को कब भारत में पहले प्रकाशित समझा जाएगा-
6		Disputes by copyright board कतिपय विवादों का प्रतिलिप्यधिकार बोर्ड द्वारा विनिश्चय किया जाना
7		Extension of Nationality of Author जहां अप्रकाशित कृति का रचनाकाल काफी विस्तृत है वहां रचयिता की राष्ट्रियता
8		Domicile of Corporation निगमों का अधिवास-

**Title and Extent (Section 1) (संक्षिप्त नाम एवं विस्तार, धारा 1):-**

It has come into force from 21-01-1958 and the insertions that were put by the amendment act of 2012(27 of 2012) have come into force on 21-06-2012, though the different amendments have come into effect on the dates as stated in those amendments acts.

(21 जनवरी, 1958 को यह लागु हुआ जिसका विस्तार संविधान में परिभाषित भारत यथा सम्पूर्ण भारत पर है। इसमें कुछ प्रविष्टियां संशोधित अधिनियम 2012 द्वारा डाले गये जो कि 21.06.2012 से प्रभाव में है। इसके अतिरिक्त भिन्न प्रकार के संशोधन उस तारीख से प्रभावी होता है जो कि संशोधित अधिनियम में उल्लेखित होता है।)

Copyrights act deals with the prevention of copyright of physical material in the field of literature and artistic (art), protecting the author and artists alike from the illegal reproduction of their work.

This act inspires and encourages the creation of original work and their monopolizing the inventors, to reap financial and other advantages, for their own as well the legal heirs, assigns etc at least for some period.

(यह अधिनियम साहित्य और कला के क्षेत्र में भौतिक सामग्री के कॉपीराइट की रोकथाम से संबंधित है, जो कि लेखक और कलाकारों को उनके द्वारा रचित या सम्पादित कार्य के अवैध रूप से पुनः उत्पादन से सुरक्षा प्रदान करता है। यह अधिनियम मूल कार्यों के निर्माण और उनके आविष्कारकों को उनके एकाधिकार को प्रेरित एवं प्रोत्साहित करते हैं, जो कि स्वयं के साथ –साथ विधिक उत्तराधिकारियों के लिए वित्तीय और अन्य लाभों आदि कम से कम कुछ अवधि के लिए निश्चय ही प्रदान करती है।)

### **Interpretation clause (section-2):**

This section defines as many as 37 words giving them specific meanings with which they are used throughout the Act unless the context otherwise requires.

(निर्वचन खण्ड: यह धारा उन 37 शब्दों को परिभाषित करता है जो कि उन्हें विशिष्ट अर्थ देते हैं जिसके साथ उनका उपयोग पूरे अधिनियम में किया जाता है जबतक कि संदर्भ के लिए अन्यथा आवश्यकता न हो।)

However, certain terms are defined here only.

S.N.	Terms	Particulars
1.	Calendar Year	
2.	Composer संगीतकार	
3.	Computer	
4.	Computer program	
5.	Delivery वाक् प्रस्तुती	
6.	Engraving उत्कीर्णन	
7.	Indian work भारतीय कृति	
8.	Lecture व्याख्यान	
9.	Literary work	
10.	Musical work संगीतात्मक कृति	
11.	Producer निर्माता	
12.	Reprography	
13.	Rights management information	
14.	Visual recording	
15.	Stand recording	
16.	Work of joint authorship संयुक्त लेखकों की कृति	
17.	ALL OTHER TERMS ARE DEFINED WHERE EVER THEY HAVE OCCURRED. (अन्य सभी शब्द जहां भी उपयोग हुआ है वहीं परिभाषित है। )	

Meaning of the word ‘**Publication**’ (**Section-3**) “Publication” is taken to mean to make a work available to the public. This availability may be in either of the two ways-

i. Issue of the copy to the public or ii. Communicating the work to the public.

**Note-** It shall always be a question of fact as to whether the work is so issued “to the public” and what number of the people will constitute a public. It shall depend upon which work the publication is. It may also be kept in mind, issue to the public is important; hence private circulation not a publication.

( प्रकाशन का अर्थ— प्रकाशन से आशय जनता को कोई कृति या प्रतियां उपलब्ध कराने से है। यह दोनों में से किसी एक माध्यम से हो सकती है— जनता को कृति की प्रतियां देकर, या जनता को कृति की संसूचना उपलब्ध करवा कर।

**नोट**—यह हमेशा तथ्य का प्रश्न होगा कि जैसा कि कृति ‘जनता के लिए’ जारी किया गया है और जनता का गठन करने के लिए कितने व्यक्तियों की संख्या होगी। यह निर्भर करेगा कि प्रकाशन किस कृति का है। यह भी ध्यान में रखा जा सकता है कि जनता को जारी महत्पूर्ण है, इसलिए निजी प्रचलन प्रकाशन नहीं है। )

**No publication or performance in public (Section-4)-** This section states when the publication or performance is in public, it is not a publication or performance in public, if it is without the licence of the owner, but in case it is an infringement then these acts shall amount to the publication and performance in public.

( कृति को कब प्रकाशित या सार्वजनिक रूप से प्रस्तुत नहीं समझा जाएगा— धारा 4 यह बताती है कि कब प्रकाशन और प्रदर्शन सार्वजनिक है, यह प्रकाशन या प्रदर्शन सार्वजनिक रूप से नहीं मानी जाएगी, यदि यह स्वामी की अनुमति के बिना उस स्थिति के अलावा जिसमें प्रतिलिप्याधिकार के उल्लंघन से संबंधित हो, सार्वजनिक रूप से प्रकाशित या प्रस्तुत/प्रदर्शित नहीं समझा जाएगा।)

**First publication in India (Section-5)-** This section deals with two cases which can be dealt with as under:

(कृति को कब भारत में पहले प्रकाशित समझा जाएगा— यह खण्ड दो परिस्थितियों से संबंधित है जो कि इस प्रकार है—)

The publication may be in India or beyond India, or simultaneously in both, then when it should be taken as a first publication. This is replied by this section.

(भारत में या भारत के बाहर या दोनों में एक साथ प्रकाशित कृति को कब प्रथम बार प्रकाशित समझा जाएगा। इसका उत्तर इस धारा में दिया गया है।)

The first rule is when a work is published in India and simultaneously in other country then the first publication shall be the date of the publication in India, unless such other country provides a shorter term of copyright for such work.

(पहला नियम यह कि जब कोई भारत में और साथ ही साथ अन्य देश में भी प्रकाशित होता है तब पहला प्रकाशन भारत में प्रकाशन की तिथि होगी, जब तक कि उस विदेशी देश ने जहां साथ-साथ कृति प्रकाशित हुई हो प्रतिलिप्याधिकार की लघुत्तर अवधि उपबंधित नहीं की हो।)

However, if it is shown for such a work in India it was earlier in a foreign country then the Act rules that we cannot say the work was first published in India.

(हालांकि, यदि इस तरह की कृति को भारत में दिखाया जाता है जो कि पहले एक विदेशी देश में था तो फिर इस अधिनियम के नियमानुसार यह नहीं कह सकते कि कृति भारत में पहली बार प्रकाशित हुआ था।)

Secondly, it provides for a simultaneous publication in India as well as in foreign country then if the time of publication in India and in other country does not exceed 30 days duration or such other period which the central Government may determine in relation to any specified countries then date of publication shall be the first publication in India.

(दूसरा नियम, किसी कृति को भारत में और अन्य देश में साथ-साथ प्रकाशित तब समझा जाएगा जब भारत और अन्य देश में प्रकाशन के बीच का समय 30 दिन या ऐसी कालावधि से अधिक नहीं हैं, जिसे केन्द्रीय सरकार द्वारा किसी विनिर्दिष्ट देश के लिए अवधारित किया जाए।)

The date of first publication at times becomes important.

(कई बार पहले प्रकाशन की तिथि महत्वपूर्ण हो जाती है।)

**Jurisdiction of the Copyright Board for certain disputes (Section-6)**

-(कतिपय विवादों का प्रतिलिप्यधिकार बोर्ड द्वारा विनिश्चय किया जाना) Many disputes may arise e.g.-  
(कई विवाद उत्पन्न हो सकते हैं, जैसे—)

- i. Whether there is a publication or (चाहे प्रकाशन हो या)
- ii. What is the date of publication or( प्रकाशन की तिथि क्या है या )
- iii. Whether the term of copyright in a particular country is shorter than in India.

(क्या किसी कृति के लिए प्रतिलिप्यधिकार की अवधि किसी अन्य देश में भारत की तुलना में छोटा है। )

Such questions are to be referred to only to the Copyright Board formed under this Act; the Civil Court has no jurisdiction therefore. The decision of the Board is final. If the Board feels that issuance of the copies or communication to the public are of a trivial/negligible nature then it shall not be treated as publication.

(इस तरह के प्रश्न केवल इस अधिनियम में गठित प्रतिलिप्यधिकार बोर्ड को ही भेजे जाते हैं और बोर्ड का निर्णय अंतिम होता है क्योंकि दीवानी न्यायालय को क्षेत्राधिकार नहीं है। किंतु यदि बोर्ड की राय में प्रतियों या संसूचनाओं का जनता को दिया जाना महत्वपूर्ण प्रकृति का नहीं है तो यह प्रकाशन नहीं समझा जाएगा।)

**Nationality of the Author of unpublished work (Section-7)-**

(जहां अप्रकाशित कृति का रचनाकाल काफी विस्तृत है वहां रचयिता की राष्ट्रियता)

This section deals with the unpublished work, we know everyone has got a citizenship as well as domicile.

(यह धारा अप्रकाशित कार्य से संबंधित है, हम जानते हैं कि सभी को नागरिकता के साथ-साथ अधिवास भी मिला है।)

The work might be unpublished work. It is provided when the work is unpublished and the work is extended over considerable period. The author is from more than one country then this section gives a presumption that he shall be a citizen or domicile of that country in which he was domiciled for a substantial period.

(कोई कृति अप्रकाशित कार्य हो सकता है। जब अप्रकाशित कृति का रचनाकाल बहुत अधिक हो वहां उस अप्रकाशित कृति का लेखक उस देश का नागरिक या वहां अधिवासित हुआ माना जाएगा जिस देश में उस कृति के रचनाकाल के दौरान पर्याप्त समय बिताया है)

**DOMICILE OF CORPORATION (SECTION-8)-** A Body corporate shall have the domicile of India provided it is incorporated in India according to the laws of India.

(निगमों का अधिवास— एक निगमित निकाय भारत में अधिवासित समझा जाएगा यदि वह भारतीय विधियों के अधीन निगमित है।)



## LEADING CASES

### 1- **Manu Bhandari v. Kalankas Pictures Pvt. Ltd., AIR (1987) Del. 13.**

#### **Facts:**

P (Mannu Bhandari) was the author of novel '*Aap ka Bunty*'. She assigned the filming rights of her movie to the D (*Kala Vikas Pictures Pvt. Ltd.*). P has led a case so as to restrain the screening of the film made by D. In P's opinion while her novel was a literary work, the film has been heavily mutilated and commercialized and if released will lower her reputation of a research scholar in the eyes of public and her admirers as they are likely to conclude that she has fallen prey to big money in the film world and has consented to such mutilation and distortions.

#### **Procedural History:**

The case was first filed in the District court where the learned Additional District Judge, denied P permanent injunction against the screening of the film as in his opinion P suffered no loss of reputation. The case was settled by an out of court settlement between the two parties and the court merely ruled on question of law due to lack of precedent on power of court and rights of author under Section 57 of the copyright act.

#### **Issues:**

- 1) What is the extent of the powers of the court under Section 57?
- 2) Whether assignee of a copyright can claim any rights or immunities based on the contract which is inconsistent with the provisions of Section 57?
- 3) Whether the movie can be filmed as it is with the changes?

#### **Holding:**

For the purpose of Section 57, the modification allowed should not be so serious that the modified form of the work looks quite different work from the original.

-The assignee of a copyright cannot claim any rights or immunities based on a contract which is inconsistent with the provisions of Section 57.

-Section 57 protects social interest in art and culture and not merely the interest of the author.

-The court directed to remove the scenes which were too crude, brash and nauseating and not part of the original movie.

**Rationale:**

The Court held that when it passes a judgment under Section 57 it does not sit as a sentinel of public morals. Accordingly, the court cannot impose its views on the works of art. The concern of the Court is to merely examine how for the new 'avatar' is true and authentic and what changes are necessary due to constraints of a medium. § Section 57 confers additional special rights on the author which can be seen by the fact that the right exists even after the assignment of the copyright and accordingly a contract cannot negate the special rights and remedies guaranteed by Section 57.

**Rule:**

In an enquiry under Section 57, the Court does not sit as a super-censor. It's only function is to see whether there are "mutilations" or "distortions". A contract cannot negate the special rights conferred upon an author under Section 57 of the Copyright Act.

## **2- R.C. Anand v. Messers Deluxe Films, AIR 1978 SC 1513. p. 1627**

### **Facts:**

The Plaintiff (P) wrote a script for a play of the name "Hum Hindustani" in 1953 and it was enacted in New Delhi theatres in that year. The play was based on the concept of Provincialism, and was well received so P started considering the possibility of filming it. The Defendant (D) approached P in 1954 after an eminent scriptwriter told him about the play when D was considering making a movie on the topic of Provincialism. On hearing the script D told P that he would inform P of his decision upon return to Mumbai. In 1955 D announced the production of a movie called "New Delhi", after watching the movie, one of the artists in the play told P that it was similar to the play. P wrote to D about his concerns that the movie was a copy of the play, and D told P that the movie was on the topic of Provincialism but it was not based on the play as the play in itself wasn't enough for a movie and the characters and story treatment, etc. was very different from the play. P read newspaper comments about the movie and then later watched the movie himself and felt that the movie was entirely based on the play. He found that the movie had one character with the same name as in his play. P therefore filed a suit of the infringement of his copyrights.

### **Procedural history:**

The Delhi High Court held that the similarities between the movie and the play were insignificant and although both the copyrightable subject matters were based on provincialism, the stories and portrayal in the movie were completely different from the play. Dissatisfied with the holding, P appealed to the Supreme Court.

**Issues:**

- 1- Whether the cinematographic lm was colourable imitation/ substantial or material copy of the play?
- 2- 2. Whether a name of a person in a copyrightable subject matter can also be copyrighted?

**Holding:**

1. The Supreme Court held that the movie although based on the same concept, wasn't a copy of the play. Therefore, there was no copyright infringement by D.
2. The court also held that the name "Subramaniam" which appeared in both the movie and the play wasn't copyrightable; therefore the use of the name wouldn't result in copyright infringement.

**Rationale:**

The similarities and coincidences as observed by the court were insignificant and were not sufficient to raise an inference of colourable imitation. The play relied heavily on the idea of provincialism; it did not touch the other aspects of "caste" and "sati" that the movie had explored. The Supreme Court also observed that the three aspects in the lm were completely integral to the movie and could not be divorced from each other without affecting the beauty and the continuity of the script. The story in the movie also went beyond the plot represented in the play. The dissimilarities in the between the movie and the play were so material that it was not possible to say that P's copyright had been infringed.

**Rule:**

The Supreme Court laid down 7 rules, after considering the precedents, to determine if there was a copyright infringement:1. "There can be no copyright in an idea, subject matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyright work."2. "In order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy."3. "Seeing the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original." If the answer is in the positive then it can be concluded that there is a copyright infringement.4. "Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises."5. "If there are also material and broad dissimilarities which negate the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence."6. "It must be proved by clear and cogent evidence after applying the various tests laid down by the case laws."7. "Although unlike a stage play a film has a much broader prospective, a wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. But if the viewer gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved."