

**INTELLECTUAL PROPERTY: THE TALE OF COPYRIGHT
THROUGH LITERATURE**

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Abstract:

Intellectual property and copyright are the terms increasingly in use today but little understood. To many people these terms remain an obscure legal concepts of little relevance to everyday life. However, these concepts are of more importance not only to the legal community but to all members of civilized society. In this manuscript an attempt has been made to give a general idea of these terms through literature review. This gives a brief but comprehensive narrative of intellectual property, copyright, its history and copyright laws of Pakistan. This work is more of academic value to the teaching, students and legal research scholars.

Keywords: Intellectual Property, Copyright, Copyright Law

Introduction

Property is a commonly known concept which means “something owned” or “a possession”. It is a kind of thing which the owner can mortgage, sell, or transfer to anyone. In jurisprudence the term “property” is a multifaceted term which carries diverse contextual meanings. Generally, property has the meaning like proprietary “rights in rem having” different aspects. Commonly it includes all legal rights, proprietary rights, rights in rem and corporeal property. John Locke is of the view that every man has a property in his own person i.e. his life, liberty and estate etc. He is also of the opinion that the labor of his body and the work of his hands and mind are properly his property”.¹

Property whether corporeal or incorporeal has significant importance in human lives because of its economic values. Having the sense that the loss can place a detrimental effect on human lives therefore, they are

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always keen to opt for various measures to make their property more secure and safe.

On the basis of its characteristics property can be divided into two main kinds i.e. corporeal and incorporeal. Corporeal property is the ownership of material substances and incorporeal property includes proprietary rights in rem. Incorporeal property is of two kinds;

1: Jus in realiena such as leases, mortgages, securities and servitudes etc.
2: Jus in repropria over immaterial substances such as Patents, Copyrights and Trademarks, Trade Names etc.²

Intellectual Property is the form of immaterial property which includes patents, copyrights, commercial good will, trademarks and trade names etc. Patents are about inventions, copyrights are related to literary expression of facts or thoughts with skill and labor. Similarly, every businessman has a right of commercial goodwill in business and right to commercially exploit trademarks and trade names.

The idea of Intellectual Property is not new, it is as old as human civilization. The concept of Intellectual Property is even mentioned in the Holy Quran that the protection of property whether it be corporeal or incorporeal is necessary and it should be protected from theft or misappropriation. In a verse of Holy Quran we are asked “not to usurp another property by unjust means” (Surah Al Baqra: 186)³.

In other holy books of other revealed religions, great emphasis is laid upon the protection of property.

Technically intellectual property includes trademarks, patents, copyright, industrial designs, and lay out designs of integrated circuits, geographical indications and trade secret⁴

However, intellectual property is a wide term and covers the following aspects

- literary, artistic and scientific works,
- performance of performing artists,
- inventions in all fields of human life,
- scientific discoveries, theories and universal laws,
- industrial designs, maps and drawings,

- trademarks, merchandise marks, business and commercial names, designations, indication marks and
- protection against unfair competition in the above said areas and related aspects

The advent of computer and mechanical applications have brought a revolution in every field of life. The invention of printing press by Guttenberg brought a paradigm shift in book industry. This revolution placed a good impact on the fast production of books. However, the production of multiple copies of a work brought serious issues in the intellectual property domain. Because a new class of people emerged called “pirates “who intended to benefit economically from the works of others without spending a single penny, hard work or permission from the owner of a work. Misappropriation of property is a crime and it cannot be justified morally, they could do so by copying the ideas and inventions of others and to earn more money in a little time. This practice is a threat to the process of intellectual activity and it is important to protect intangible assets in the same way as tangible property.

To overcome this problem it was need of the day that rights of such intellectuals should be protected and they should be the ones to get benefits of their hard work and this way others would also be encouraged to use their intellect. In fact these are the incorporeal properties which can be converted into real form such as, inventions, writings, work of art etc. Such ownerships come under the domain of intellectual property rights. These ownerships acquire the recognition of state and proper protection within defined limits.

In today’s world economic interests has become of vital importance in human lives. Since all properties which have economic values play a major role in national economy, therefore interest in the area of intellectual property rights protection has gained much importance. With the advancement of technology it is considered essential to protect all types of intellectual property rights.

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The Copyright

Copyright is a legal term describing the legal protection given to published works, forbidding anyone but the author from publishing or selling them. Copyright is a set of exclusive rights regulating the use of a particular expression of an idea or information. At its most general, it is literally “the right to copy” an original creation. Works covered by copyright may include: literary works such as novels, poems, plays, reference works, newspapers and computer programs; database, films, musical composition, and photographs and sculpture; architecture; and advertisements, maps and technical drawings.^{6 7}

The “Copyright ordinance, 1962” narrates it as “the exclusive right to reproduce the work in any materials form i.e. publishing a work, public performance on a work, production and reproduction of a work, performance or publishing on the translation of a work, broadcasting a work, and to make any adaptation of the work”⁸

Copyright protects works which are the result of human creativity and intellect. It includes both published and unpublished works. Copyright protects expression of an idea and not idea itself. Because human thoughts are not protected under the law unless expressed in some

concrete form. It allows the holder of copyright to refrain others from the reproduction of the work for a certain specified time period.

The work whether literary or artistic must be original although originality is not defined but the work should not be copied. The holders of copyright are entitled to financial benefits (if any). They are protected under national and international laws.

Copyright does not protect ideas or dreams rather it would protect expression of an idea or a work in some tangible form. Originality has not been sufficiently defined anywhere but the work should not be copied and bears the reflection of author's personality.⁹

It is a right having social, economic and moral value and because of the economic value the owner gets financial gain. It is a right enjoyed by the author and can be used by him in any manner he wish to and the author has the exclusive right to authorize someone to copy or restrict others from enjoying without author's permission. Copyright is considered as an integral part of the Intellectual Property Rights.

History of Copyright

The history of copyright laws can be traced back to ancient Greece. In the Greek colony of Sybaris the chefs were granted a yearlong monopoly for creating particular culinary delights.¹⁰

The republic of Florence in June 1421 passed a statute that protected the author's rights. Under this statute the rights of authors and inventors were protected as well as it provided a platform for the Anglo American Intellectual Property protection. In Britain there were two statutes for Intellectual Property protection i.e. Statute of Monopolies (1624) and Statute of Anne (1710). These two statutes are considered as the first ever pioneer statutes of copyright¹¹ which provided legal protection to the authors of "original works of authorship" including literary, dramatic, musical, artistic, and certain other intellectual work. In both statutes authors were given a protection of 14 years of copyrights and it was allowed to renew it on a condition if the author was alive. The Statute of Anne did not give protection to other creative works such as paintings etc. which was also at that time being copied and sold when this lacunae

was raised by the people then a new law was passed in 1735 known as the Engraves Act.¹²

Developments in the context of copyrights took place in many countries such as Germany, France and USA. In 1791 an effort was made to adopt copyright law and then in 1793 a decree was adopted which protected the authors' right of reproduction. On the 27th February an order known as Saxon Order was passed in Germany which gave recognition to authors' rights.

In the beginning of 18th century in Europe copyright emerged as a legal concept for the reason that the printers had a monopoly. Copying of books was not properly regulated during the reign of Charles II, he was eager to regulate the copying of books and for that purpose an act was passed known as "The Licensing of the Press Act 1662".¹³ Between 1783 and 1787 many states in U.S.A had passed their own copyright laws. Among these states Connecticut was the first to launch its copyright law.¹⁴

In 1886 the Berne Convention was established with the purpose to protect copyright at international level. Under the rules and regulations of this convention it is not mandatory for a member nation to register a copyright work of their citizen,¹⁵ rather than when a work is prepared or written by an author copyright enforcement comes automatically and naturally. It was also unanimously agreed by the signatory states that if a copyright of a member state is violated then protection to that foreign author will be provided according to local laws. U.K became a signatory to it in 1887 but was not in favor of its implementations till 1987. To overcome the gaps in Berne Convention it has been revised almost seven times in 1896 (Paris), 1908(Berlin), 1928(Rome), 1948 (Brussels), 1967 (Stockholm), 1971(Paris) and concluded it in 1978.

The changes adopted in 1971 in Paris are very important for developing countries because according to this revised version the developing countries were allowed to make translated copies of foreign literary work only for educational purposes.

The British passed their Copyright Act in 1911. This act is generally known as Imperial copyright act of 1911. This act was recommended by a Royal Commission in 1878. The promulgation of the copyright act of 1911 repealed all legislation related to copyright law in UK. The act has the characteristics of accommodating all changes and suggestions risen from the first revision of Bern convention, 1908. This act abandoned all concerning formalities in UK¹⁶.

The U.S.A signed the convention in 1989,¹⁷ the Latin American states and the USA became signatories to the Buenos Aires Convention in 1910 a convention much weaker than Berne Convention. Under this convention it was mandatory to give notice of the work and to limit the time period of protection and to get it renewed.^{18, 19, 20}

After World War II protection of copyright universally became a grave concern and another historical copyright convention was adopted in August 1952 in Geneva, Switzerland named as Universal Copyright Convention and was revised in 1971. The main reason was that many states including two most powerful were not members of Berne Convention because of its high level of protection. Under this convention the contracting states had to provide adequate protection to the rights of authors' and other copyright proprietor. It bounds the contracting states to follow principle of National Treatment.

This convention did not replace Berne Convention but it bridged the gap between the member states of Berne Convention and those states who had reservations on the provisions of Berne Convention and opted for Universal Copyright Convention.

In order to introduce intellectual property law in international trading system, agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) was introduced in 1995. TRIPS contains agreements of Berne Convention for the protection of literary and artistic works.²¹

Despite the presence of different international conventions related to intellectual property some of the states had reservations over the content of the agreements of those conventions. In order to facilitate those nations, the Universal Copyright Convention was developed by

UNESCO as an alternate for the states which were not agreeing to Berne Convention such as U.S.A but wanted to become a signatory to a convention so that the Copyright could be protected. The signatories to Berne Convention also became signatories to Universal Copyright Convention so that their copyrights would exist in non-Berne Convention states.

The Paris Convention and the Berne Convention separately established International Bureau to perform administrative and organizational functions. In 1893, both these bureau were merged and united into an international organization namely, the International Bureau for the protection of Intellectual Property commonly known by its French acronym BIRPI.²²

With the advent of industrial revolution and the use of Intellectual Property for commercial use necessitated the need of an international organization to deal with the issues of Intellectual property. The efforts of forming an international organization continued till 1966. Subsequently, in 1967 World Intellectual Property Organization (WIPO) was created. The main objective behind the creation of this organization was to protect the intellectual property rights throughout the world.²³ It was in fact transformation of BIRPI into a new international intellectual property organization by undergoing structural and administrative changes and reforms²⁴. Nowadays WIPO is among the 17 specialized agencies of the United Nations²⁵.

Copyright Laws in Pakistan

History shows that there was no concept of Intellectual Property in the subcontinent and no specific customary practices for the protection of intellectual works were followed. After the failure of war of independence an effort was made for formal legislation on Intellectual Property mostly based on English Common Law passed by British parliament. During British Raj the oldest laws extended to the subcontinent were relating to literary copyrights and registration of patents which were later on extended to the British India. In this way all the laws related to intellectual property were having origin in English laws²⁶.

The law of land also protects the different types of Intellectual Property. The Constitution of Pakistan itself protects all the rights of a person related to any kind of property. From time to time different Ordinances and Acts have been passed to protect the Intellectual Property Right. Historically the first law on Copyright was the Copyright Act of 1914. It was based on the U.K Copyright Act of 1911. However, The Copyright Ordinance 1962 is based on the Copyright Act of 1914. The Copyright Rules 1967 was framed for the proper working of the ordinance. Major changes were made in it through the Copyright (Amendment) Act 1992 and the Copyright (Amendment) Ordinance 2000, Pakistan Intellectual Property Right Organization 2005. Apart from it an act was passed in Pakistan in 2012 to provide for the establishment of Intellectual Property Organization of Pakistan for the purpose²⁷.

It is important to note that the copyright ordinance, 1962 is still enforced with many amendments since its promulgation in the form of an ordinance in 1962. The main objective behind these amendments are to provide protection to the owners of the copyright and to make them suitable according to the changing environments at national and international levels. Copyright ordinance, 1962 has been extensively amended after the functioning of World Trade Organization (WTO) to make it compatible accordingly²⁸.

In Pakistan for registering an artistic (anything that falls in the domain of copyright) work an application is filed in the office of the Registrar. The office of the Registrar, after initial examination allot a copyright number to application. An advertisement regarding the work awaiting registration is also given in the newspaper to invite oppositions if any. Usually a time period of 30 days is given for third party claim. In case of any claim or dispute an inquiry is initiated by the Registrar to probe into the real matter. Furthermore examiner of copyright examine the logo/artistic work by legal point of view and raised objection under the relevant legal provisions of copyright Ordinance along with direction to get published/advertise his logo/artistic work in Reputed national newspaper. If attorney receives copyright objection letter, he prepared reply of objections accordingly and made arrangement to get published artistic work/logo. And submit the reply of objection along with three copies of newspaper in which artistic work/logo is published. After

examining the reply of objections if the registrar gets satisfied he may pass order for Trademark certificate or refuses the application if he don't satisfy^{29,30}.

In Pakistan the term of copyright is 50 years. The copyright ordinance of 1962 states that "except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph) published within the lifetime of the author until fifty years from the beginning of the calendar year next following the year in which the author dies"³¹.

Under the copyright law of Pakistan an author can enjoy the benefits of ownership of intellectual property. Owner of copyrights can also assign the use of their works to other persons in return for agreed compensation. Owners of the copyright has the right to restraint, claim damages for the distortion of reputation. However, it is worth important to note that No legal rights is recognized for works which are anti-state, seditious, treasonable, immoral, blasphemous, libelous, or indecent nature or other laws have declared them as punishable³².

Conclusion

Copyright is not a natural right but the creation of the law which has a direct relation with human morality and ethics. It is a right of high caliber civilized community. The main objective of Copyright law is to strike a balance between the rights of the creator and the copyright owner, so that they may manage and protect their business and works. Currently, copyright has become increasingly important, particularly in terms of accurately ensuring the source of information for research and various other academic purposes. In Pakistan the concept of copyright is not common and usually misunderstood which results in the violation of Copyright Laws. Pakistan is a signatory to the Bern Convention, Geneva Convention, World Intellectual Property Organization, and Universal Copyright Convention of 1952. Amendments are carried out from time to time in the copyright laws of Pakistan for the purpose to make it up to date and compatible with international standards³³.

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