

Copyright Law- A Humane Approach

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Introduction

In the contemporary informative society human rights means rights of human, that is to say, "Rights essential for human beings to live a humane life." Every individual is born with such rights and entitled to the inherent and inalienable rights, and most nations around the world have guaranteed the human rights to their particular subjects, fundamental freedoms and rights desirable in the National Constitution in the form of Fundamental Rights, basic rights, Bill of rights etc. There have been numerous controversies and debates which history reveals throughout the world what human dignity is and what is needed to uphold the human dignity. The term dignity is also included in Article 1 of the Universal Declaration of Human Rights. "All human beings are born free and equal in dignity and rights. They are endowed with reason and consciences and should act towards one another in a spirit of brotherhood". Before declaration of Universal Declaration of Human Rights freedom, dignity and equality etc was considered necessary for a human being as the Indian history discloses but stepping towards the modern times people started to realize all the human beings deserve inherent dignity regardless of their social status determined by their birth. A lot of endeavours were made to turn this concept into action and reality as emancipating and feminist movements, unconcerned happenings of the world indirectly affected the rights. The tragedy of two world wars and fascism made people aware of the necessity that value of human rights should be universally accepted and internationally protected. the United Nation created in 1945, concluded that protection of fundamental freedoms and rights are essential in achieving world



peace, and adopted and proclaimed the Universal Declaration of Human Rights in its 1948 General Assembly. The world has under gone a great transformation in recent years. The knowledge-based society has replaced the national based society. Today, the world is living in the midst of information revolution therefore intellectual property is the commercially exploitable potential. The property in the form of intellectual property which is a result of the human intelligence, has come to play a vital role in the lives of human beings of world at large. The Universal Declaration of Human Rights showed that everyone has the right to access to the benefit of science and technology.

Article 27¹, reads every one has the right, freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefit and has the right to the protection of the moral and material interests resulting from any scientific, literary or the dignity of the human person. So the word 'human dignity appears to be phrases that have come to be used as an expression of a basic value accepted in broad sense by all people of the world.

The word 'Human dignity' appeared in the second paragraph of Preamble of the Charter of the United Nation as an ideal that "we the people of the "United Nation" are "determined" "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small."

The Declaration established a common standard for the human rights that all people and all nations on the globe should accept and have without any kind of distinction such as political, economic, cultural and religious differences. The Human Rights was realized in the form of an effective international law after 1966, when the UN adopted two international Covenants on Human Rights, one is International Covenant on Economic Social and Cultural Rights and the second

¹ Universal Declaration of Human Rights.



the International Covenant on Civil and Political Rights. Afterwards the UN continued to come out with the additional international standards and laws to protect the human rights of the underprivileged class including women and children etc.

COPYRIGHT IN INDIA

In India copyright is recognized, granted and enforced by the Indian Copyright Act, 1957. It recognizes and protects copyright in original literary, dramatic, artistic and musical works, cinematograph films and sound recordings. The Act further classifies that under the present setup there is no uniformity in law of copyright¹ in India. The Act also does not require registration of copyright as a pre condition to claim its protection

INFRINGEMENT OF COPYRIGHT

Copyright is an exclusive right and its infringement consist the violation of exclusive right. Thus, a copy-right is said to be infringed only when someone else does any of the various things, the right to do infringement is deemed to have taken place when a person use another's copyright work without permission; the other way of encroachment over the right where in knowingly facilitates the unauthorized use of another's copyrighted work; draws commercial benefit from an activity involving the use of another's copyrighted work; and exercises any of the rights which only the owner of copyright is allowed to use. The means, ways and methods of infringement may be different but only common element in all situations that is the knowledge or permission must be absent to invite legal action against the user of copyright of the legitimate owner.

¹ Manojah Cine Production V. Sundaresan AIR 1976 Mad 22.



Thus, the Copyright Act, aims of punishing the primary infringer and secondary infringer both, because primary infringer actually infringes the right of copyright and the secondary infringer facilitates the primary infringement in consonance of penal permission, whoever, either prior to or at the time of commission of an act does anything in order to facilitate the commission of the act, and thereby facilitates the commission thereof, is said to aid the doing of the act¹. The copyright in any work or other subject matter is infringed when any act which the copyright owner has the exclusive right to do, is done by a person who is not owner or the authority, for instance when a work prohibited or reproduced without copyright owner's permission. It is not necessary the whole work or subject matter be reproduced or more than one copy made for infringement of copyright, as photocopying a work or part of a work shall be infringement of copyright. Further copying into the CD or DVD that contains copyright material and downloading copyright material from the Internet and printing it, copying it into a CD or saving it in to own computer may also be a form of copyright infringement. The copyright may also be infringed by authorizing or facilitating someone else to do any above referred infringing act. It is also an infringement of copyright to import infringing material for commercial gain. However, the law does provide exceptions to the definition of infringement by introducing the concept of fair use.

THE LOOK AND FEEL TEST

To determine the infringement of copyright is look and if the reader spectator after having read or seem both the works get an impression that the infringement work or film is an imitation of the other.¹ It shall be infringement of copyright. For initiating legal action, the burden of framing infringement rests on the

¹ See Explanation 2 of Section 107 of IPC.

¹ Anand v. Deluxe Films AIR 1978 SC 1613.



plaintiff to establish that the defendants had reproduced the infringing copy from the plaintiff's copyright work. Furthermore, for the plaintiff to maintain his suit for infringement must also establish that his own work was original as copyright protects only the original work.

The element of mens-rea is also required for the offence under section 63 of the Copyright Act, 1957. Every person who knowingly infringes or abets the infringement of the copyright in any work or any other right conferred by the Copyright Act, committing the offence of infringement under the Act. However these acts are protected by the exception provided under section 52 of the Act, and the court while interpreting section 63 held that the words used are "knowingly infringes"² which implies that there has to be knowledge in the part of the accused that the other has copyright over the work to constitute the offence which is indicative of mens-rea.

RELATION OF COPYRIGHT AND HUMAN RIGHTS UNDER TRIPS

World of today is world of change, fast moving, scientific and of technological advancements. It is dominated by "Intellectual Capital that holds the key of socio- economic, technological advancement of the society. The human society can be broadly divided into people who have knowledge and those who have not.

Trade Related Aspects of Intellectual Property Rights (TRIPS) is outcome of the Uruguay Agreements, 1994. Almost all the Intellectual Property Rights were protected by the TRIPS agreement which is inclusive of several forms of intellectual property, i.e. Copyright, Trademarks, Geographical Indication, Industrial Designs, Patents, Integral Circuits and undisclosed information. Article 9 to 14

² Sheoratan v. V.G.C. Nepali AIR 1965 All 274.



TRIPS of the agreement are directly related to copyright which could not have unanimity from all quarters. This agreement was opposed by developing countries notably India, Brazil, Egypt, Argentina and Yugoslavia which were in favour of framing rules on trade in counterfeit goods but were against those on TRIPS in general. These countries feared that greater protection under the TRIPS would strengthen the monopoly power of multinational companies and adversely affect the poor by increasing the price of food and medicine.¹

Most of the people on the developing or under developed countries do not have access to cure for HIV/AIDS in a situation where the spread of AIDS is virtually threatening of significant part of the world. The reason, people affected by HIV/AIDS cannot be taken care for the disease, is the high priced drugs for which companies are charging in the name of exercising their patent right. In 1944 under TRIPS agreement patent, copyright, computer programming, performers right (Prohibition on Unauthorised "broadcasting" and prohibition on production of unauthorized phonograms) Trade Marks, Plant Breeder Rights, protection to designs and protection of undisclosed information were taken in the consideration. It was the first time that undisclosed information had been specially protected in an intellectual property by the member countries. India being a member of W.T.O. has to implement the TRIPS Agreement in totality irrespective of the distinct local conditions. The Indian intellectual property laws inclusive of trade mark, copyrights, design are almost in conformity with the provision of TRIPS Agreement.

The TRIPS Agreement, which came into force w.e.f. 1 January, 1996 till date is the most comprehensive multinational agreement entered into, as one of the new areas under the GATT and TRIPS Agreement have far reaching provision on intellectual property. TRIPS Agreement affecting

¹ Jayanta Bageli- WTO 2000 p. 47.



patent laws which would certainly over burden the Indian economy and endanger the indigenous economic structure.

After the TRIPS Agreement every country developing or developed would be put under the same umbrella of equal application and protection but not equitable because every country categorized as developing or developed, have its own distinct reservation, connection and varying conditions that alike with certain concession in terms of time of embarrassing the TRIPS agreement.

In the present changed conditions it is notable that a tendency to possess copyright is getting strong throughout the world copyright is/becoming an investment protection law. Loosing its original intention. The World Trade Organization agreement on Intellectual property is outcome of demands of advanced countries, which have competitively in the information and culture industry. The agreement was set in favour of developed countries and forced other countries to follow the same copyright system failing to setup policies of knowledge and culture that are fit for each country.

CONCLUDING REMARK

Since, human beings are rational beings all human beings by virtue of their being human possess certain inalienable rights which are commonly referred as human rights and extremely necessary for the existence, survival, growth and development of a human being. All such rights, a human being enjoy only due to the reason that he/she is born as human being.

Similarly copyright can also supposed to be the fundamental right which provides the protection to the owners of creative work. Intellectual property rights are as important as human rights because these rights not merely help in growth and development of an individual but these rights play a vital role in the scientific and technological progress of the whole society. The Universal Declaration of Human Rights



itself safeguards the copyright through its various provisions. Article 19 of Universal Declaration of Human Rights provides that everyone has the right to freedom of opinion and expression, this right also includes freedom to hold opinion without interference and to seek, receive and impared information and ideas through any media and regardless of any frontiers.

The given right is capable enough to include performers right. Similarly Article 12 of Universal Declaration of Human Rights ensures privacy and gives a right to a copyright holder to prohibit any other person from transmitting his creation.

Since intellectuals of the country constitute a distinct class and they cannot be equated with general people. Therefore, the rights enjoyed by the general human beings in the form of human rights must be different in nature than that of intellectual class. Hence the submission is that the people who are entitled to enjoy copyright over their original creation their rights must be given in the name of " special human rights", so that the very rights of copyright holders could be protected with the same intensity as human rights.

