

305: Intellectual Property Law

OBJECTIVES OF THE COURSE:

The importance of this Branch of their law is to be sufficiently realized in the Indian Legal Education. Compendious courses on the law of copyright, trademarks and patents are offered in few law schools as optional courses, but these do not either integrate the significance of these subject matters under any comprehensive aspect of "modernization " or " development " nor do they spread even emphasis between and among the subject areas represented by these three interconnected bodies of the law.

The three areas are now internationally conceptualized as representing intellectual property. It is often the case that while the law of patents and trademarks is referred to as industrial property, the law relating to copyright is named intellectual property. While both these terms could be suitably invoked, we here speak of intellectual property as signifying all the three bodies of the law as well as the law on industrial designs.

Unlike other forms of property, intellectual property refers to regimes of legal recognition of primarily the products of the mind or imagination. The subject matter of property related rights is here pre-eminently based on mental labour the law relating to intellectual property protects the right to mental labour.

The law confers right of proprietary nature on relative intellectual labour primarily on the basis that it is in the interest of society and state to promote creativeness and inventiveness. Limited monopoly provides incentive for greater inventive and innovative efforts in society. An important aspect of the exploration in this course would be the ways in which the laws strike a fair balance between the interests and rights of the intellectual labourers on the one hand and organized industrial enterprises on the other Another dimension in a study of the ways in which this regime of laws militates against or favours, community property in national cultures.

As concerns "modernization" crucial questions arise in the field of copyright protection in computer software and hardware, interest electronic music and scientific research. Both copyright , trademarks , design and patent law here relate basically to the law of unfair competition and constitute an aspect of consumer protection and welfare not only in the context of national perspectives but also in view of the waves of globalization already set in. Both from the standpoint of human resources development, modernization and justice it is important that the curricular change takes serious notice of these areas.

Syllabus:

1. Introductory:

- 1.1 The meaning of intellectual property
- 1.2 Competing rationales of the legal regimes for the protection of intellectual property
- 1.3 The main forms of intellectual property: copyright trademarks, patents, designs
- 1.4 Other new forms such as plant varieties and geographical Indians Introductions to the leading international instruments concerning intellectual property rights: The Berne Convention, Universal Copyright Convention, Union TRIPS the World Intellectual Property Rights Organization (WIPO) and the UNESCO.
- 1.5 The status and position of IPRs in India in context with the International Regime
- 1.6 Amendments in various legislations relating to IPRs India including legislations of Patent, Copyright and Trademark in India and effects thereof

2. Select Aspects of the Copyright Law in India:

- 2.1 Historical evolution of the law
- 2.2 Meaning of copyright,
- 2.3 Availability of Copyright protection:
 - 2.2.1 Copyright in literary and Artistic work, dramatic and musical works
 - 2.2.2 Copyright in sound records and cinematograph films
 - 2.2.3 Copyright in computer programme, Internet and database
- 2.4 Author and Ownership of copyright, Term of copyright, authorities under the Copyright Act and their powers, Registration of copyright, Copyright Society and its powers, Appeal provisions
- 2.5 Rights conferred by copyright, Assignment, Transmission and relinquishment of copyright, Provisions relating to licence
- 2.6 Infringement of Copyright: Criteria, various types of infringement
- 2.7 Acts not constituting infringement, Fair use provisions, Piracy in internet
- 2.8 International copyright
- 2.8 Remedies and Penalty provisions

3. Intellectual Property Rights in Trademarks and Design:

- 3.1 The rationale of protection of trademarks as (a) an aspect of commercial and (b) Of consumer rights, Definition and concept of trademarks in goods & services
- 3.2 Registration, Distinction between trademark and property mark
 - The doctrine of honest current user, Doctrine of deceptive similarity
 - Protection of well-known marks
- 3.3 Passing off and infringement of trademarks: (Definitions, Concept and Distinction)
- 3.4 Standards of proof in passing off action
- 3.5 Remedies and Penalty provisions

3.6 Industrial Designs, Designs Act, 2000: Authorities, Procedure for registration of designs, Controller and Registrar: powers and duties, Assignment and Transmission of designs, Powers of the Central Government, Copyright on Registration of Industrial Designs: related provisions, Patents to designs, Piracy of registered designs, Remedial aspects, Appeal provisions,

4. The Law of Intellectual Property: Patents:

- 4.1 Concept of patent, Essentials, Historical view of the patents law in India
- 4.2 Patentable inventions with special reference to biotechnology products entailing creation of new forms of life including Amendments of the year 2005
- 4.3 Patent protection for computer programme and computer software
- 4.4 Process of obtaining a patent:
 - 4.4.1 Application and Examination: Procedure, Essentials for obtaining patent : Elements of Novelty, Non-obviousness
 - 4.4.2 Opposition and sealing of patent: general introduction, Grounds for opposition
 - 4.4.3. The problem of limited *locus standi* to oppose, especially in relation inventions having potential of ecological and mass disasters
- 4.5 Patent Co-operation treaty : Object, reasons and important provisions
- 4.6 Wrong fully obtaining the invention : Prior Publication or anticipation, Obviousness and the lack of inventive step, Insufficient description
- 4.7 Rights and obligations of a Patentee :
 - 4.7.1 Patents as chose in action
 - 4.7.2 Duration of patents law and policy considerations, Use and exercise rights, Right to secrecy
 - 4.7.3 The notion of "abuse" of patent rights, Compulsory licenses, Special Categories, Employee Invention Law and Policy Consideration
- 4.8 International Patents, Transfer of Technology, Know-How and problems of self reliant development.
- 4.9 Infringement, Criteria of infringement, Onus of Proof in India, Modes of infringement, Doctrine of Colorable Variation
- 4.10 Remedies in case of Infringement : Injunctions and related remedies, Defense in suits of infringement
- 4.11 Penal Provisions

Suggested Readings :

1. Cornish W.R., Intellectual Property, Patents, Trade Marks, Copy Rights and Allied Rights, Asia Law House, Hyderabad.
2. Vikas Vashishth, Law and Practice of Intellectual Property, Bharat Law House, Delhi.
3. P. Narayanan, Intellectual Property Law, Eastern Law House, Calcutta.
4. Dr. B. L. Wadehra, Law relating to Intellectual Property, Universal Law Publishing Co.

5. Chakravarty's Intellectual Property Law, Ashoka Law House, New Delhi
6. Bibeck Debroy (ed) , Intellectual Property Rights Rajiv Gandhi Foundation , Delhi.
7. E.I.F. Anderfelt, International Patent Legislation and Developing Countries
8. W.R. Cornish. Intellectual Property, Sweet and Maxwell.
9. Mata Din, Law of Passing off and Infringement Action of Trade Marks
10. P.S. Sengal and Kishore Singh, Indian Patent System and Paris Convention : Legal Perspectives
11. K. Thairani, Copyright The Indian Experience
12. W.R. Cornish, Para and Materials on Intellectual Property, Sweet & Maxwell.
13. N. K. Acharya, Textbook on Intellectual Property Rights, Asia Law House
14. Dr. S. R. Myneni, Law of Intellectual Property, Asia Law House
15. Justice P. S. Narayana's Intellectual Property in India, Gogia Law Agency
16. Manish Arora, Guide to Trademarks Law, Universal Law Book Co.
17. Iyengar's The Trademarks Act, Universal Law Book Co.
18. Pr. Ashwani Kr. Bansal, The Designs Law, Universal Book Co.
19. Dr. B. L. Wadehra, Law Relating to Patent, Trademarks, Copyright, Designs & Geographical Indication, Universal Law Publishing Co.
20. Patent Co-operation Treaty