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“Journal of Unique Laws and Students” (JULS) which shall provide law students, young lawyers and legal professionals to deliberate and express their critical thinking on impressionistic realms of Law. The JULS aims to provide cost free, open access academic deliberations among law students and young lawyers. The ISSUE II of Volume 1 focuses on three themes i.e. (i) Artificial Intelligence and Block chain in Law (ii) Intellectual Property Rights and Media, and (iii) Laws applicable to the intermediaries.

The journal strives to contribute to the community with quality papers on a vast number of legal issues and topics written by authors from various groups that have been reassessed and revised by our editorial team to reach the highest possible standard.

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<https://www.uniquelaw.in/volume-i-issue-ii>

**Short-note: THE ROLE OF IPR IN MEDIA INDUSTRY***Author - Arya Mirgane\****INTRODUCTION**

The Media Industry in India is considered as one of the biggest industries in the world and it is growing day by day. With the growth of the media industry, the amount of people claiming other's work as their own or disturbing the exclusive rights of the creator are on the rise.

Intellectual Property Rights play a huge role in media industry these days. Media Industry here, is inclusive of videos, movies, music and other content produced by creators. The huge competition that is going on in the media industry makes it necessary for the authors or the creators to copyright their content so that only they have exclusive rights over their work. Also, by doing this, their original work remains their work and no one can fake claim on it. To sum up, the basic work of a copyright, trademark and other IPRs is to safeguard the work of the creator/ author. This way, the artist can work better without any fear of being pirated.

Now, let us get an insight of some basic concepts of Intellectual Property Rights such as the meaning of IPR, Copyright, Piracy, sections related to IPR which are mentioned in our Constitution, civil and criminal remedies mentioned, and the punishments prescribed for the law-breakers.

**WHAT IS IPR?**

The intangible rights which protect and prevent the creative works and expressions from being exploited are cooperatively known as Intellectual Property Rights (IPR). These are the rights that give the exclusive claim and credit of the content created to the creator. These works include film, storyline, music, artwork, and literary works.<sup>1</sup>

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<sup>1</sup>Kartik Bohra, *Copyright and the entertainment industry*, Blog Ipleaders, [May. 10,2021, 3:37 P.M], <https://blog.ipleaders.in/copyright-and-the-entertainment-industry/#:~:text=Copyright%20and%20all%20the%20other,innovative%20works%20or%20unique%20creations.&text=Such%20works%20need%20protection%20from%20piracy%20in%20the%20market/>

Briefly, in relation to our topic, the division of intellectual property rights can be made into two categories –

1. Industrial property- Industrial property includes literary work, artistic work, scientific work, live performance of the artists, industrial designs, trademarks, service marks, inventions and discoveries, etc.
2. The Copyright – This also includes various forms of literary and artistic works such as literature, paintings, drawings, photographs, videos, music, sculptures, architectural designs, radio programmes, cinema etc.

Each year more than 1800 films get produced in approximately 20 languages in India. Taking this number in consideration, one may also make a genuine mistake of re-publishing or re-producing what has already been produced. In this case, how can one be sure that what is produced by him is not re-produced and no one can ever re-produce it without his/her consent again?

When the whole media industry is seen from a legal perspective, many laws like cyber law, contract law, labour laws come into picture. But when dealing with Intellectual Property Rights in the media industry, copyrights and trademarks which come under industrial property, as mentioned below are the two essential things to take into consideration to tackle this issue.

The key statutes which protect intellectual property in the Indian media and broadcasting industry are:

- The Copyright Act 1957; and
- The Trademarks Act 1999.

These acts are important and does the work of identifying whether a certain piece of work is an original content or not. It identifies the owner's rights pertaining to his/ her original work. It sees as to the remedies that one can pursue in case of an infringement of rights through piracy. When it comes to media industry, broadcasting, performance rights and moral rights are protected through this. It also provides for various defences which can be used. In this way, the acts ensure the fair use of the work created and which is to be used.



These laws can be complex and sensitive as they deal with issues such as the transfer of rights to the producer, etc.

## **WHAT IS COPYRIGHTING?**

Now, let's move on to the next important question posed here. What is copyrighting? In simple terms, copyrighting is an exclusive right of the creator over the material or work that he/she has created and right to do or authorize the doing of any work. It is defined under Section 14 of Copyright Act, 1957.

Now, what does the right to do or authorize the doing of the work mean? Any person may need the already produced work for innumerable reasons. The work is created for the people's use. But we want to make sure that the work is not used by any person for the purpose of re-producing i.e. using his/her name as the creator for selfish reasons. Therefore, copyrights safeguards people's work by giving due credit to the original creator. It also protects people from genuinely making the mistake of copying someone's work by prescribing rules.

Copyright infringement can be defined as the unauthorized use of someone's copyrighted work. Section 51 of the Copyright Act specifies the infringement of copyright. 'Copyright infringement' and 'piracy' are the different terms meaning the same thing. Piracy means unauthorized use of original work without the permission or authorization of the producer which is protected by copyright. The motion pictures, a big platform in the media industry once stated that India is the biggest hub for piracy videos and audios in the world! This should make us think twice about our perspective towards work and art.

There can be no copyright in the following:

- An idea
- subject- matter
- Themes
- Plots

➤ Historical or legendary facts.<sup>2</sup>

Ideas or concepts per se cannot be protected via copyrighting but if the author/creator converts his content into something tangible like a tagline or a music composition, an email or script, the documentation can prove the date of origin and the identity of the owner is also proven. In this way, it can be protected and its vulnerability is reduced to some extent.

In case a same idea is represented differently somewhere else, the court has the final decisions on such matters. Due to the common occurrence of the source, similarities are bound to occur. There are thousands and millions of works which are developed and developing, therefore, it is common that this may happen. A person cannot have a totally different thought or idea that has never occurred in history before. Therefore, in this case, the court shall determine whether it is a copyrighted work or not.

The case of copyright infringement can occur where it prima facie appears to be that there are two works and it is undoubtedly true that the later work appears to be pirate of the original one or it is exactly similar to the original one.

No issue of copyright infringement arises where the theme of the work appears to be the same but is expressed differently. The reason being, when expressed differently, it becomes a new work.

The question of copyright infringement will not arise if it is proved that the two works are circumstantial and hence, it is clearly coincidental. This is an answer to the previous question that was posed earlier which says, what if two works are similar and it is totally coincidental, what remedy do we have then? Well, this is the answer to that because a person cannot have a totally different thought or idea that has never occurred in history before.

In the Defendant's case, even if a work is found where there are just some variations done here and there, and the rest of it is the nothing but a literal imitation of the copyrighted work, it would surely amount to the infringement or violation of copyright.

To prove that someone is guilty, there should be a clear copy that will lead to the conclusion that the Defendant is guilty of an act of piracy.

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<sup>2</sup> Advocate Akolkar, *Copy Right Issues in the Media Industry*, Blog Ipleaders, [May 10, 2021, 4:12 P.M], <https://blog.ipleaders.in/copy-right-issues-in-the-media-industry/>

To prove that someone is guilty of the violation of copyrights:

- One should safeguard his/ her original work through copyrighting first.
- The copyrighted work should be used unauthorized. Whether in form of re-producing it in the person's own name, or without the permission of the producer.
- There should be a substantial copy of the unauthorized use of the copyrighted work.
- With some changes here and there, the work should be the exact copy of the original work.

In this case, the court shall decide whether copyright infringement has been done or not. If done, suitable punishment including damages shall be paid to the creator of the content.

Sec. 55 of the Copyright Act provides for Civil Remedies whereas, Sec. 63 of the Act provides for Criminal Remedies in case of Infringement. The remedies provided are – Injunction, Damages to the aggrieved party, accounts, or other remedies mentioned therewith, of which the owner has absolute rights.

The punishment ranges from 6 months to 2 years along with a fine of INR. 50,000 to INR 2,00,000.

### **HOW IS IPR SIGNIFICANT IN MEDIA INDUSTRY?**

Many such instances take place where there is a need of Intellectual Property Rights in Media Industry, Music Industry.

A re-created movie is called a 'remake' and a re-created song is called a 'remix'. There are many remakes and remixes of the original movies and songs that we see nowadays. 'Coolie no.1', 'Judwa', 'Himmatwala', 'Agneepath', are some remade movies. 'Saki Saki', 'DilbarDilbar', 'Kisne O Sanam', 'Sara Jamana', 'ChaltiHai Kya 9 se 11' are the remixed songs to name a few. But we get to see that so many of the good songs and movies made these days are the remakes and remixes of the old ones. Then, how are the copyrights of the original work protected? The answer to that is, filmmakers are obligated to pay appropriate dues for using songs made by other lyricists or musicians in their film. In this case, both the music composer and filmmaker respectively, have

to pay dues to the original creator. If they fail to do so, they can be sued for copyright infringement.

The film body that generates and regulates laws relating to the literary creations is the Censor Board of India. As a benefit offered by being a part of Asian entertainment industry, India has many alternatives to solve disputes arising from them like Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR). The work of planning of setting up a 'Copyright Board' is currently going on. The Ministry of Information and Broadcasting is handling this issue. The work of this Board will be to ensure firm implementation of the intellectual property rights laws in the Indian entertainment industry, especially the film industry.<sup>3</sup>

From where did this concept of generating income from movies and their characters come? (Of course, apart from the theatrical releases) For example, selling the Avengers T-shirts or making and selling balloons in the face of a Mickey Mouse. Apparently, Walt Disney was the one who saw the potential for generating ancillary income from these characters. Back in 1928, Mickey Mouse, the most recognizable cartoon character in the world, was registered as a trademark. It was making crazy money back then, and still grows to show potential.<sup>4</sup>

In this way, IPRs have proven beneficial to the media industry from time to time.

## **CASES RELATED TO IPR IN MEDIA INDUSTRY**

R. G. Anand Vs. M. S. Delux Films &Ors<sup>5</sup>:

This Supreme Court case judgment is a landmark one in case of copyright laws. In this case, a play was copied by a movie which leads to infringement as per Section 51. It was this case that clarified what cannot lead to a copyright.

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<sup>3</sup>Manish Verma, Tanushree Mukherjee, Vijish G. Kurup, *Intellectual Property Rights and Indian Entertainment Industry: An Overview*, Research Gate, [May 10, 2021, 4:28 P.M], [https://www.researchgate.net/publication/318122730\\_Intellectual\\_Property\\_Rights\\_and\\_Indian\\_Entertainment\\_Industry\\_An\\_Overview](https://www.researchgate.net/publication/318122730_Intellectual_Property_Rights_and_Indian_Entertainment_Industry_An_Overview) /135.

<sup>4</sup>Cathy Jewel, *From Script to Screen: What Role for Intellectual Property?* WIPO, [May 10, 2021, 4:57 P.M], ([https://www.wipo.int/pressroom/en/stories/ip\\_and\\_film.html](https://www.wipo.int/pressroom/en/stories/ip_and_film.html) /

<sup>5</sup>R.G Anand vs M/S. Delux Films &Ors, [AIR 1978 SC 1613], (India)

A case of de minimis?

An order of the Delhi High Court in *India TV Independent News Service Pvt. Ltd. &Ors. Vs. Yashraj Films Pvt. Ltd.*<sup>6</sup>, states that where there is a small amount of usage of songs in a television program, it does not amount to infringement because it consists of a case of de minimis.

*Zee Telefilms vs. Sundial Communications Private Limited* (2003):<sup>7</sup>

This case was brought upon by the plaintiffs against the defendants for the breach of copyright and misuse of confidential information according to Section 13 of the Copyright Act, 1957. It was concluded that a copyright infringement was done. The facts consisted of copying a serial script of the title, “Krish Kanhaiyya.”

“Agent Vinod” movie, released in 2012, had a very famous song called “Pungibaja” sung by Mika Singh. Soon after the release of the song, the music director Pritam got entangled in copyright violation issues under IPR laws. Though the proceedings were not initiated, he was alleged to have copied the song from an Iranian music band named Barobax Corp. A simple legal notice was issued to Pritam and the production house of the film. The notice stated: “We demand that the music director, producers and directors refrain from releasing the song in the movie or use it to promote the movie. Failing to do so, the band shall be compelled to initiate proceedings to seek a restraining order and necessary compensation.”<sup>8</sup>

## **CONCLUSION**

It is so important for a person to have an official identity to avail all the rights and privileges, legal remedies offered by the law of one’s country and to be able to recognize him as a citizen. Therefore, ensuring that one has a legal and valid claim or a certificate stating these facts is very important. In the same way, your creation/ product should have an identity of its own to be able to have the rights and legal remedies. It is as simple as this!

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<sup>6</sup>India TV Independent News Service Pvt. Ltd. &Ors. Vs. Yashraj Films Pvt. Ltd., [MANU/DE/3928/2012], (India).

<sup>7</sup>Zee Telefilms vs. Sundial Communications Private Limited, 2003 (5) BomCR 404, (India).

<sup>8</sup>Manish Verma, *Supra* note 4 at 6

Research Title: **INTELLECTUAL PROPERTY RIGHTS AND MEDIA LAW  
IN FILM INDUSTRY**

Authors - **GitikaMahawar\***  
**Rakshit Gupta\***

**ABSTRACT**

In India, a host of pressing issues relating to media, entertainment industry has surfaced. With rapid growth and investment, new players on the rise, and swift technological advancements, Intellectual Property Rights (IP) security and regulation has become significant in this sector.

This research paper will be focusing majorly on two components, the first amongst them is IP protection which is a civil right that safeguards a person's creation and grants a control over it, to investigate potential gains if used by others and thus, has arisen as a significant concern. As the paper proceeds, it sheds light on its second component, that the Indian entertainment and film industry has experienced rapid growth in recent years and is now considered one of India's fastest-growing industries. The paper further highlights the legal provisions that governs the creation and usage of media. Some of the examples covered under the media regulation are broadcast television, the internet, and print media.

Finally, the paper gives a fair and constructive idea on the scope and coverage of various IP principles, such as patents, copyright, designs, and trademarks. It further discusses how media law and IP are interlinked, along with a segment on computer devices, databases, Internet, and cyber laws, are discussed in this paper.

**Key words:** *Digital Media, Copyright, Intellectual Property, Enforcement, Media and Entertainment Law*

**INTRODUCTION**

In terms of content creation, number of channels, and use of advanced technologies, the Indian media and entertainment industry has advanced by leaps and bounds. However, when it comes to

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content creation and distribution, the questions that arises are, how original the contents are and how confident can we be that they were created in accordance with the rules and regulations of IP. IP rights are a significant protection against any form of violation of the makers' originality and imagination, as well as a means of recognising the authors' abilities and guaranteeing the widespread propagation of original and authentic content.

Intellectual Property Rights are collectively defined as the intangible rights that shield and prohibit certain artistic works and phrases. Copyright is a major aspect and an essential branch of IP that safeguards authors' rights to their artistic works. Movies, storyline, music, artwork, and literary works are among these works. However, it is becoming more difficult to keep track of all copyright infringements. In the film industry, copyright infringement is a challenge to creative creations and expressions. One such challenge is piracy, which is the unauthorised use of a producer's original work that is protected by copyright. According to the film industry, India is the world's largest centre for piracy videos and audios. It is estimated that, by 2022, copyright infringement would cost the global film industry \$51.6 billion in the form of internet platforms. The film industry in India is thought to be failing as a result of India's less reformatory IP laws.<sup>9</sup>

India's film industry is regarded as one of the largest in the world. This sector has seen rapid growth in recent years and is now considered one of India's fastest-growing sectors. In the current setting, copyright and all other intellectual property rights are very common in the film industry. They offer legal rights and prevent the production of creative or one-of-a-kind works. In the entertainment industry, copyright serves as a link between video, painting, sculpture, illustration, and recordings, among other things. Creative works and phrases are not a modern concept in society; the distinction now is that the security of these terms and expressions is given more importance.

Along with the success stories of the Indian media and entertainment industry's healthy growth and expansion comes the question of the industry's commitment to legal and ethical standards, and how effective it has been in doing so. The Indian media and entertainment industry is often confronted with a variety of legal issues, including infringement of intellectual property rights,

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<sup>9</sup>Lakshmi Kumaran & Sridharan, *Protecting intellectual property in media and entertainment*, i-am-media.com, [21 April 2021 6:34 P.M], <https://www.iam-media.com/copyright/protecting-intellectual-property-media-and-entertainment>.

cyber rules, copyright, and trademark laws. The Indian film and media industry has developed at an unprecedented rate in recent decades and often embodies global legal problems such as piracy and copyright infringement. The solution that stands is that such traditional means of redress must be replaced by cutting-edge techniques such as Online Dispute Resolution and Alternative Dispute Resolution.

Along with the rise of the entertainment industry, another notable development has been the increased importance of the internet and social media as a forum for alternative media. Despite the advent of the Digital Millennium Copyright Act since 1998, this development has seen an uptick in IP violations, copyright piracy, and content ownership conflicts. While having a solid justice structure as a pillar, the regulatory process needs to be improved and updated. The legal challenges and problems facing the Indian media and entertainment industry are vast, and numerous ways of infringement of intellectual property rights are frequently a topic of debate and discussion<sup>10</sup>.

Another aspect to protect the IP rights of individuals is the involvement of the Information Technology sector that must ensure applicability of mandates such as 'cyber due diligence' and other aspects of the Information Technology Act, 2000. The bulk of business cases include Intellectual Property Rights (IPRs) and their infringement. Such abuses are a detrimental feature of the Indian media industry's activity and contribute to its dysfunction. India, as part of the Asian film industry, has a number of tools at its disposal to resolve these conflicts, including Alternative Dispute Resolution and Online Dispute Resolution. The World Intellectual Property Organization is a successor entity of organisations including the United Nations (WIPO). The worst thing is that we don't favour these techniques or devices for resolving our problems; instead, we prefer conventional methods. Rather than ADR and ODR, we choose the sluggish and time-consuming traditional approaches.

## **OBJECTIVES OF THE STUDY**

1. To obtain a better understanding of the different types of IPR violations in the Media as well as the Indian film industry.

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<sup>10</sup>Dr. Rajiv Desai, Entertainment, Drrajivdesaimd.com, [21 April 2021 7:24 P.M], <https://drrajivdesaimd.com/2012/04/05/entertainment> .



2. To critically analyse how IPR violations are impacting the film industry's most fundamental characteristic, its innovation.
3. To get a better understanding of the different problems and challenges associated with IPR breaches based on a few examples.

## **RESEARCH METHODOLOGY**

The research methodology adopted by the researcher for carrying out this dissertation is purely Doctrinal Legal Research Methodology, thus to a large extent the research undertaken by the researcher is based on the libraries, archives and online sources. Secondary sources like thesis available on the internet have been used to understand the various problems, the reasons and analyse various reforms suggested by some learned authors and experts in the field.<sup>11</sup>

## **THEORETICAL FRAMEWORK**

The fourth pillar of democracy, the media, is supposed to play a vital role in the formation of public opinion, thought, and ideas by serving as an impartial disseminator of important information and news. The importance of the Social Responsibility Theory cannot be overstated. It emphasises the media's civic roles and duties. The philosophy emphasises the importance of striving for excellence in media's deliberations and that honesty should not be compromised at every expense. As a result, the principle seeks to protect media interests and journalistic integrity, thus raising the standard of journalism. The theory explains how the media plays a vital part in influencing and educating people, informing them of their rights and responsibilities, actively endorsing social issues, and opposing oppressive government decisions and policies. However, the current situation indicates that the Indian media and entertainment industry is beset by scandals and instances of immoral conduct<sup>12</sup>.

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<sup>11</sup> Nishith Desai Associates, <https://www.nishithdesai.com/information/areas-of-service/industry/media-entertainment.html>, [last visited 22 April 2021]

<sup>12</sup>Manish Verma, Tanushri Mukherjee & Vijish J Kurup, *Intellectual Property Rights and Indian Entertainment Industry: An Overview*, Research Gate, [22 April 2021 5:54 P.M], [https://www.researchgate.net/publication/318122730\\_Intellectual\\_Property\\_Rights\\_and\\_Indian\\_Entertainment\\_Industry](https://www.researchgate.net/publication/318122730_Intellectual_Property_Rights_and_Indian_Entertainment_Industry).

Artists in the Indian film industry, have been accused of violating intellectual property rights in a variety of ways. The question that is instilled is how do we trust the media to play an ethical part and genuinely function as means of information distribution, producers of original knowledge, or creators of artistic art under those circumstances. Indian media has been accused of breaking several laws and regulations, and copyright has always been one such place where Indian artists have been accused of piracy, creating significant questions about IP rights security. The Indian film industry's violation of IP rights calls into question its societal responsibilities and commitment to the Social Responsibility Theory.

### **IPR AND ITS IMPORTANCE IN MEDIA AND ENTERTAINMENT SECTOR**

It is important to understand the significance of intellectual property laws. The Indian media industry has experienced phenomenal growth, and it is expected to continue to do so in the coming years.

The Indian Media & Entertainment industry has seen strong growth in recent years, and according to the FICCI-KPMG study on the Indian Media & Entertainment Industry, the industry is projected to expand at a compound annual growth rate of 15% over the next five years, reaching INR 1.4 trillion in 2016.

The Government of India has given the broadcasting sector (DTH, cable networks, etc.) much needed impetus for growth by opening up and lowering entry barriers for foreign investors in some main areas of the industry, including the recent relaxation norms for the broadcasting sector (DTH, cable networks, etc.). Several segments of the industry such as television, films, sports, and gaming, have seen unprecedented progress on several levels. The use of cutting-edge technology in the manufacturing process, content digitization and globalization, the availability of multiple revenue sources, financial transparency, and corporatization have all led to the M&E industry's paradigm shift in India over the last decade.<sup>13</sup>

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<sup>13</sup>Sougata Chattopadhyay, *Intellectual Property Rights in Digital Environment*, Research Gate, [ 22 April 6:19 P.M], [https://www.researchgate.net/publication/320585766\\_Intellectual\\_Property\\_Rights\\_in\\_Digital\\_Environment](https://www.researchgate.net/publication/320585766_Intellectual_Property_Rights_in_Digital_Environment)

The primary driver of this expansion is undoubtedly content innovation, as it is often said that 'Content is King'. The media industry as a whole, is built on this aspect of innovation, which it can be proud of. As a result, it's critical to preserve and promote the aspect of innovation that underpins the entertainment industry's operation. This is where IP laws become even more critical as the sole protector of one's indigenous and artistic work, ensuring that the media industry runs smoothly and that artists receive the credit and appreciation they deserve for their original work.

The promise of this industry in India has been recognized globally, and it has drawn international players interested in tapping into it. This is shown by the fact that, despite the economic downturn, this industry received approximately INR 32.64 billion in Foreign Direct Investment (FDI) in 2011, which is 72 percent higher than the FDI received in 2010-11<sup>3</sup>. Some of the most relevant examples are; Walt Disney Company's acquisition of an additional 41 percent stake in UTV Software for a value estimated to be over USD 300 million (bringing its shareholding in UTV to approximately 90 percent), Providence Equity Partners' private equity investment in UFO Moviez India (\$58 million), and HSBC's private equity investment in Avitel Post.<sup>14</sup>

As established above, a creative mind is only able to unleash its creativity and create a masterpiece of creative art when certain laws or judicial mechanisms exist in society and are vigorously implemented. Indian films have long served as torch bearers, highlighting numerous social problems and issues in the hopes of gaining public support. However, it is necessary to have such strict laws in place to preserve the creators' originality and innovation, and in this situation, IP security becomes extremely important.

Currently, the Ministry of Information and Broadcasting is planning to establish a 'Copyright Board' to ensure that intellectual property rights laws are strictly enforced in the Indian entertainment industry, especially in the film industry. It has already begun talks with the Ministry of Commerce and Industry about the new board's modalities.

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<sup>14</sup>Saylordotorg, [https://saylordotorg.github.io/text\\_understanding-media-and-culture-an-introduction-to-mass-communication/s16-economics-of-mass-media.html](https://saylordotorg.github.io/text_understanding-media-and-culture-an-introduction-to-mass-communication/s16-economics-of-mass-media.html), [last visited on 22 April 2021]

## **CONTEMPORARY DEVELOPMENTS IN DIFFERENT JURISDICTION**

In terms of content development and technology, the Indian media and entertainment industry has progressed. In India, intellectual property rights must be controlled in order to protect the owner's rights in terms of content and copyright infringement. IP rights play an important role in society because they prohibit and preserve the creator's original work, as well as ensuring the propagation of legitimate work. The media and entertainment industry are the world's fastest growing and significant contributors to the Indian economy, with revenues of approximately INR 2.35 trillion (US\$33.6 billion) expected in India by 2021.

The media and entertainment industry has also contributed significantly to global employment growth. The Copyright Act of 1976 governs copyright in the United States. There are several treaties and agreements in place around the world to secure owners' interests against copyright infringement. Such conventions are generally regarded as providing safeguards against copyright infringement around the world. One of the most relevant treaties to protect against copyright violations is the Berne Convention for the Prevention and Défense of Literary and Artistic Works, to which most of the countries are signatories. As a result, in the film and media industries around the world, these treaties and agreements safeguard the interests of original owners against Intellectual Property Rights' infringement.

## **INTELLECTUAL PROPERTY RIGHTS VIOLATION IN MEDIA INDUSTRY**

IP is a critical component of the media and entertainment industry's development. Media is a creative field that entertains, inspires, and educates millions of people all over the world. Various media sources, such as television, radio, cinema, print media, music, software companies, online and digital platforms, are brimming with artistic works and formats. This is a mechanism used by the film and media industries to protect their initial work over time so that no one else can use it without their permission. Moreover, because of the increased competition in the entertainment industry, it is now possible to obtain copyright to the original content. In today's world, technological advancements have resulted in an increase in piracy of original works, resulting in financial loss to the owner. As a result, there is a need to protect the owner's original work from copyright infringement, so that no one can access the owner's original work without their

permission or authorization. In the film industry, it is also important for the owner to have exclusive rights to the work or content.

Apart from the film and television industries, the IP Laws have also protected other forms of media. In general, any original character created by the author, or any taglines registered by a radio station for a specific segment, is properly covered by Copyright laws, regardless of the type of media.

To be eligible for Copyright protection, an artistic work must be original, be in any literary, musical, sound, or cinematographic film medium, and be registered for the purposes of proof in any legal battles, if any. The originality of any product advertising created by the maker of the advertisement's music or the person who has written any lyrics for that specific product may also be covered under Copyright laws. The distinctive features of any video game or the tagline of any well-known website can be registered and protected under Copyright laws, preventing infringers from using them for commercial benefit.<sup>15</sup>

As its contribution to the GDP is recognized, its position in cultural exchange is acknowledged, and its labour, pain, and investment in content production is acknowledged, the Indian Media and Entertainment Industry has emerged as one of our country's progressing sectors. This market for all media outlets is growing day by day in the age of digital media and with rising literacy and economic growth. Copying and reproducing others' works in any format has never been easier thanks to technological advancements.

### **CASES OF INTELLECTUAL PROPERTY RIGHTS VIOLATION**

Infringement not only discourages original contributors or authors from producing more artistic works, but it also jeopardizes their earning potential when someone else is stealing their work. Infringement of intellectual property rights can be found in a variety of media and in a variety of forms. Following are the disputes elaborating the infringement principle and safeguarding the interests and rights of IP holders:

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<sup>15</sup>Raghavendra Sharma, *INTELLECTUAL PROPERTY RIGHTS AND MEDIA IN INDIA: COPYRIGHTACT*, Research Gate, [ 22 April 2021 7:11 P.M], [https://www.researchgate.net/publication/342491125\\_INTELLECTUAL\\_PROPERTY\\_RIGHTS\\_AND\\_MEDIA\\_IN\\_INDIA\\_COP](https://www.researchgate.net/publication/342491125_INTELLECTUAL_PROPERTY_RIGHTS_AND_MEDIA_IN_INDIA_COP).

### **1. *T-Series v. Guruji.com***

The music label T-Series and the website Guruji.com were involved in a big case involving music piracy.

The team of T-Series, Mr. Neeraj Kalyan, VP Digital Content, T-Series, and Mr. Vinod Bhansali, President-Marketing Media Publishing (TV), Guruji.com had a nexus with other music pirated websites such as songs.pk, musicplug.in, bollymobile.in, and others, and was infringing on T-Series' copyright contents while masquerading as a search engine.

The final decision was that Guruji.com had to delete the music and song search engine links from its website. The domain was eventually shut down in 2011, indicating T-Series' triumph over all copyright infringers.

### **2. *Twentieth Century vs. SohailMaklai Entertainment***

Twentieth Century filed a lawsuit against SohailMaklai Entertainment in 2010 for the unauthorized and illegal remake of the Twentieth Century thriller Phone Booth into a Hindi film titled Knock Out.

A court in India ruled that Bollywood had violated copyright laws and paid SohailMaklai Entertainment \$340,000 in damages to the Twentieth Century.

Such attempts have not only forced Indian filmmakers to pay large sums of money in damages and compensation to globally acclaimed filmmakers, but they have also tarnished the Indian film industry, which still has a few talented and innovative filmmakers.

### **3. *Pritam Chakraborty vs. Iranian Music Band*<sup>16</sup>**

Another well-known example is the Indian music industry, where music was stolen and then used without the creator's permission.

Sriram Raghav Anand directed the film "Agent Vinod," which was released in 2012. Mika Singh sang the song "Pungibaja" in the film, which became a hit. Pritam, the music director, became embroiled in copyright violations under IP laws shortly after the song's publication. He was accused of plagiarizing the song from the Iranian band Barobax Corp, which was formed in 2003.

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<sup>16</sup>DNA INDIA, <http://www.dnaindia.com/entertainment/report-agent-vinoddistributors->, [last visited 22 April 2021]

Pritam Chakroborty and Eros Internationals Pvt. Ltd, Illuminate Films Pvt. Ltd, and Shree Castles Pvt. Ltd received notice from the High Court.

#### ***4. Kunal Kohli vs. Jyoti Kapoor<sup>17</sup>***

Jyoti Kapoor, a Karnal-born scriptwriter, had secured a copyright infringement and breach of confidence case against well-known filmmaker Kunal Kohli.

The storylines of Kohli's film 'Phir Se' and Kapoor's script 'RSVP' were found to be identical by the Supreme Court.

Finally, the court's decision was a moral and legal victory against plagiarism in the Indian film industry. Kohli was required to pay Kapoor a fee of Rs. 25 lakh and give her credit for the film's plot, according to the Supreme Court.

### **RECENT DEVELOPMENTS**

Due to the growth of the industry and technology, there has been a huge demand for intellectual property rights in India in recent years. In the area of intellectual property rights, India has been working to establish a strong administrative framework. The film and media industries are attempting to develop their relations in accordance with international intellectual property standards. This can be seen in India's most recent reforms and advances in intellectual property rights. Centered on the US patents model, the Indian government has been attempting to set up computerized offices for IPs. The government recently made amendments to the patent procedure that will make filing patents in India easier and faster<sup>18</sup>.

India is putting a lot of emphasis on globalization and liberalizing foreign trading practices. It is making steady progress toward joining the World Trade Organization under the Trade-Related Intellectual Property Rights Agreement. In India, some changes were made to the functioning of copyright laws to make them more user-friendly and compliant. The changes were made to India's copyright laws to bring them into compliance with the WIPO Copyright Treaty. The Indian

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<sup>17</sup>DNA INDIA, <http://www.dnaindia.com/entertainment/report-high-court-s-interimstay-> [last visited 22 April 2021]

<sup>18</sup>Lexology, <https://www.lexology.com/library/detail.aspx?g=3a5a4a8a-ce0d-42c4-9b88-d1e317aa5841>, [last visited 22 April 2021]

copyright act was amended to help deter continued piracy in India, especially in the entertainment industry.

Further improvements and amendments have been made to ensure that the area of Intellectual Property Rights continues to expand. Changes were made to the copyright laws to combat piracy and infringement by enacting more strict laws and regulatory structure. In addition, improvements were made in the areas of expediting criminal prosecutions, raising the penalty for infringement, and destroying infringing goods.

## **CONCLUSION**

To summarize, the aim of Intellectual Property Laws is to protect and safeguard the creator's work while also providing some financial benefits in the long run where, its protection has been expanded to the film and media industries. IP is extremely important in the film industry because it preserves the creator's rights and allows him to bring more value to the original work without fear of piracy. The legislative and executive branches have created rules and regulations which are much too complex to keep up with society's technical capabilities. It is thus, pertinent to strike a balance between the rights of all stakeholders.

Unscrupulous practices are growing at an unprecedented pace in this rapidly growing society, and the media and entertainment industry needs to be covered under this ambit. To combat the threat posed by piracy, both industries must take some preventative steps. As a result, the effective and efficient enforcement of copyright laws in these industries should be prioritized. Current IP violation laws must be strictly adhered to, with no exceptions. Judicial penalties against internet piracy should be implemented, since this is one successful way to stop these activities. It is necessary to raise awareness of Intellectual Property Laws and Cyber Laws in India and to improve the IP regime with focus to cover digital media and advancements under their ambit. Thus, this expansion of intellectual property rights in the entertainment and media industries is desirable for the industry to continue to produce artistic and innovative work.



Research Title: **REMIX CULTURE AND ASSOCIATED COPYRIGHT LAW  
IN INDIA**

*Author - Ishika Sarraf<sup>ab</sup>*

**ABSTRACT**

The human brain, or intellect, is regarded as one of mankind's most gifted contributions, as are the works and ideas that arise from or are the product of his mind's development. One such development is, Composition of music, which is an example of a person's growth or formation that necessitates a great deal of dedication and hard work.

However, in this age of technology, where people prefer smart work to hard work, there has been a rise in the number of remix songs, which are a transformation of old classic songs that were a major hit in their respective eras. When the popularity of remix songs grew, so did conflicts over the copyrights of musical works and songs between original authors and remix makers.

Thus, this paper discusses a number of problems that have arisen in recent years concerning copyright on musical works and songs, as well as it focuses on the legal status of creating remix songs, the rights and obligations of the copyright owner and the maker of remix songs, and associated copyright laws that govern the remix songs in Indian music industry.

**Key words-** remix, copyright, music, infringement

**INTRODUCTION**

Due to its versatility, the Indian music industry is amongst the most popular music industry around the world, and it has evolved tremendously from an age of traditional Veenas and Sitaars to western pop and EDMs. According to the EY estimates, The M&E sector of India is expected to reach INR1.73 trillion (US\$23.7 billion) and then to grow at a CAGR (compound annual growth rate) of 13.7% to reach INR2.23 trillion (US\$30.6 billion) by 2023<sup>19</sup>.

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<sup>19</sup> FICCI-EY report 'Playing by new rules' pg.10, (2021)

With the evolution of India's music industry, one particular trend that has emerged in the last decade is the composition of remix songs from old songs from the same music industry by adding new beats or an essence of contemporary music to make them more cool and famous, as the youth in India now prefers.

The word remix is nowhere defined in any of the Indian statutory laws, but in simple words it means, when any additional elements are recorded and mixed with different music or beats, the result is a remix of the original album. Any part of a song for instance, lyrics, beats, melody etc of the original song is taken and then those forms or elements of music which are trending in the current scenarios like rap, electronic dance music (EDM) etc. are merged with them. One of the biggest advantages of making these remix songs is that the original album was already a hit song at a time, so the lyrics are similar, and it quickly catches everyone's attention and becomes famous. The remix makers, being smart enough, keep the catch part or the hook part in the remixed version same as that of the original one. Some iconic hit songs which have been used by contemporary composers include TammaTamma, Lift Teri Band Hai, Masakali, YehJawaniHaiDeewani, HummaHumma and the list goes on.

This practice of creating remix music often leads to a conflict between the original writers and the contemporary composers, the main issue being the violation of copyright by the composers of remix music of the musical work of the original authors.

The right subsisted in the author i.e., copyright in musical, dramatic or literary work is one of the important rights that come into picture as soon as it is created and given a material form<sup>20</sup>. India, as a member of the international conventions<sup>21</sup> on copyright laws, has given due consideration to the work of the authors of these works.

## **RESEARCH OBJECTIVE**

The aim of undertaking this study and choosing this topic as the theme of the research paper is to get a clear picture of the copyright laws in relation with the remix music or songs in India.

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<sup>20</sup> Asian Paints (I) Ltd v. M/s Jaikishan Paints & Allied Products, 2002(4) Mh L J 536

<sup>21</sup> *Berne Convention for the Protection of Literary and Artistic Works, 1886; universal copyright convention, 1951; WIPO Copyright Treaty (WCT), 1986; WIPO Performances and Phonograms Treaty (WPPT), 1996*

Following are the main objectives of this research paper:

- 1) To understand the concept of remix or recreated version of songs or musical works.
- 2) To find out the rights and obligations that is provided to the remix composers and copyright owners in this act.
- 3) To find out the loopholes in this act in relation with the laws governing remix music.
- 4) To comprehend the steps that can be taken to improve the laws to make it beneficial for both the parties i.e. old and the new composers.

## **RESEARCH QUESTIONS**

The paper will aim to address the following questions, which will be the foundation for the following paper's research analysis. The following are the questions-

- 1) What are the copyright laws that govern remix music in India?
- 2) What are the rights of the copyright owners of the music?
- 3) What leads to copyright infringement and what are its exceptions?
- 4) What are the suggestions or scope of amendments in the current laws?

## **COPYRIGHT LAWS IN RELATION TO MUSIC INDUSTRY**

In layman's language, the word copyright means, “the exclusive legal right to reproduce, publish, sell, or distribute the matter and form of something (such as a literary, musical, or artistic work)”<sup>22</sup>

“Copyright protects and rewards creativity by providing certain basic safeguards for the author’s rights over their works. The copyright protection provided to the efforts of musicians, artists, dramatists, designers, architects, writers, and makers of computer software, cinematograph films

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<sup>22</sup> Merriam Webster, <https://www.merriam-webster.com/dictionary/copyright> , [last visited 13 May]

and sound records, and fosters a creative environment that encourages them to create more and inspires others to create as well”.<sup>23</sup>

The law regulating copyright in India was first introduced in 1847 with the establishment of east India Company by the Britishers. A subsequent development of this law was introduced in 1914 when Indian Copyright Act, 1914<sup>24</sup>, when the Indian legislature enacted this act under British raj. Finally, The Copyright Act, 1957<sup>25</sup> came into force on 4<sup>th</sup> June 1957 which replaced the Copyright Act of 1914 which was an extension of the British Copyright Act, 1911.

To understand the laws regarding music it is necessary to understand the concept of music or the constituents of a music work. The original act of 1957 did not clearly defined as to what the essentials or constituents of music are but with the amendment of 1994<sup>26</sup>, major changes in Copyright Act were introduced including change in the definition of musical work i.e.-

“Musical work means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music”.<sup>27</sup> Even after amendment in 1994, “the definition stirs ambiguity about the protection of the lyrics and the legitimacy of the inspired versions of the songs with the same lyrics which can be created with a different composition or music”.<sup>28</sup>

Copyright in relation to a musical, literary or dramatic work includes, “reproduction or storage of the work, making or issuing copies in public, to perform or communicate the work in public, to make any sound recording or cinematograph film in relation to the work and translation or adaptation of the work”<sup>29</sup>

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<sup>23</sup>A handbook of copyright law by copyright office, Department of Higher Education, Ministry of Human Resource Development, <https://copyright.gov.in/documents/handbook.html>, [last visited 13 May]

<sup>24</sup> Act no. III of 1914

<sup>25</sup> ACT NO. 14 OF 1957

<sup>26</sup> Copyright (Amendment) Act, 1994 (Act No. 38 of 1994) - WIPO

<sup>27</sup> The Copyright Act, 1957 § 2(p),

<sup>28</sup> Khushi Sharma, *Masakali 2.0 And Many More...: Copyright Infringement In Indian Film Industry Continues*, IIPRD, [May 13 2021 5:26P.M], <https://www.iiprd.com/masakali-2-0-and-many-more-copyright-infringement-in-indian-film-industry-continues/> [last visited 13 May]

<sup>29</sup> The Copyright Act, 1957 § 14(a),

The tenure of copyright in case of musical work subsists in the author during his lifetime and an additional span of 60 years after his death which is counted with the next following year in which the musical work was published.<sup>30</sup>

Assignment of copyright- 'The original author of the musical work which has copyright over it can assign the copyright in favor of any person either wholly or partially under section 18'<sup>31</sup>. The assignee is referred to as the owner of the copyright for the rights granted to him under this provision for the purposes of the act.

Thus if a remix maker makes a contract with the original owner regarding the assignment of copyright of the musical work under his favor, and then makes the remix of the original work, it shall not be counted under copyright infringement.

In the case of *Saregama India Ltd vs. Puneet Prakash Mehra&Ors*<sup>32</sup> The appellants were assigned rights in the literary, dramatic, musical and artistic works and the soundtrack and recording of the songs of the movie 'Laawaris' by the respondents, including the song '*Apni To JaiseTaise*'. The license was given by the plaintiff to Nadiadwala Grandson Private Ltd for synchronizing the song in their movie, 'Housefull'. The defendants contended that the appellants had infringed their copyright in the song as they did not have any right to give the license for the same and their right does not extend to re-recording and synchronization of music. The court gave the judgment in favor of the appellant and upheld their rights of granting license and synchronizing the music.

## **LEGALITY OF REMIX MUSIC**

Everyone has been witnessing the creation of remix music one after the other, and the first thing that comes to mind for a listener is whether these composers are able to remix any piece of music or song they want. Or whether making remixes in Indian music is not a criminal offence? The answer to these questions is a qualifying yes.

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<sup>30</sup>The Copyright Act,1957 § 22,

<sup>31</sup> The Copyright Act,1957 § 18,

<sup>32</sup>Saregama India Ltd vs. Puneet Prakash Mehra&Ors ,2011(1) CHN (Cal) 341

Music composers are free to remix any piece of music, song, or sound recording, provided they have obtained prior permission or consent from the original composer. If the original author denies them permission for the album or sound recording and the opposite party still continues to make the remixed version then it would be considered illegal under this act.

In the case of, *The Gramophone Company of India Limited. V. Super Cassette Industries Ltd.*<sup>33</sup> The defendant sent a letter to the plaintiff stating their intent to make version recordings of the original work of the plaintiff along with a cheque of Rs. 2230 for making 5000 cassettes. But the plaintiff denied them permission and rejected the proposed offer. However, the defendant continued to make version recordings, claiming that by submitting the said check, they had immediately gained the right to make the sound recordings. This defendant's submission was dismissed by the court, and the defendants were held responsible for copyright infringement because the plaintiff had not given permission or consent, and the defendants were barred from releasing any other version.

Although, there are no specific provisions regulating remix music in India, and the amendment act of 2012<sup>34</sup> has amended section 52(1)(j) which contained exceptions of copyright and substituted it with section 31D<sup>35</sup> which includes cover versions of sound recordings. Now, whether remixes are covered under the cover versions or not is not yet clear.

The legal formalities that the remix maker has to go through before creating the remix music are as follows-

- Notice- the person has to give a prior notice to the owner of copyright of music work expressing his intention to remix the original song.
- Royalty- The person will have to pay a royalty amount to the copyright owner in advance in respect of all copies made by him, the rate of royalty shall be fixed by the appellate board.
- Expiration of 2 years- The public should not be confused about the identity of the original owner if the new version of the sound is not marketed, and remixing should not be done until the original sound has been made for at least two years.

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<sup>33</sup>The Gramophone Company of India Limited. V. Super Cassette Industries Ltd, (1999) PTC 2

<sup>34</sup>Copyright(Amendment)Act, 2012, No. 27 Of 2012

<sup>35</sup> The Copyright Act,1957§ 31D,

- Books of accounts- it is the right of the original author to check the records or books of accounts belonging to the remix music.

Along with these prerequisites the conditions of section 51 has to be fulfilled otherwise the remix maker will be held liable for copyright violation. However, if the remix maker had a reasonable ground to believe that communication to the public of the musical work will lead to copyright infringement on which the original author has exclusive right then such act shall not be called as copyright infringement.<sup>36</sup>

**Copyright infringement-** section 51 of Copyright Act, 1957 deals with copyright infringement and states the situation in which copyright will be said to be infringed. Following would be said to be infringement in the copyright of the original owner if-

- a. Without obtaining a license from the copyright owner or registrar of copyright, a person conducts an act that is the exclusive right of the copyright owner or authorizes for profit any place to be used for the public communication of the work when such communication is a violation of the work's copyright.
- b. makes for sale or hire, or offers for sale or hire, or sells or lets for hire, or distributes either for trade or to such an extent as to disadvantage the copyright owner, or imports into India or by way of public trade exhibits, any infringing copies of the work<sup>37</sup>

## **RIGHTS OF THE ORIGINAL AUTHORS PROTECTED UNDER COPYRIGHT ACT**

### **1. Economic rights**

In the case of a song or musical work the composer is deemed to be the author in accordance with this act<sup>38</sup>. The copyright subsists in the author of a musical work including rights to reproduce the work, issuing of copies in public, communication of the musical work to public, to translate it and to make any adaptation thereof.<sup>39</sup> The author is considered to be the first

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<sup>36</sup> The Copyright Act, 1957 §51(a)(ii),

<sup>37</sup> The Copyright Act, 1957 § 51,

<sup>38</sup> The Copyright Act, 1957 Section 2(d)(ii)

<sup>39</sup> Supra note 11

owner of the musical work, but the position of the first owner can be changed if the musical work has been used in a film.

There has been a lot of debate regarding the rights of the music composers, lyricist and singers over the rights of producers of the cinematographic films. Under section 17, the person who is deemed to be the first owner of the copyright is specified, i.e., in the case of cinematographic films, the producer is considered to be the first owner of the sound recording used in his film.

In the case of *Indian Performing Right Society vs. Eastern India Motion Pictures association*<sup>40</sup>, which faced a lot of criticism, the main issue was whether the producers can defeat the rights of music composers of the copyright subsisted in the musical work which has been included in the film. The court gave the judgment in favor of film producers and held that the copyright in relation to the musical work shall be vested in the cinematographic film as a whole. Also in this case, the Hon'ble judge made a specific remark as a need to protect the right of the singers as the only people who could sought protection were music composers defined in section 2(a) of this act.

Although the producer has the first right over the musical work as per section 17(b)<sup>41</sup>, but he cannot altogether take away the rights of authors, singers and lyricists over the song or musical work. According to section 18, author's right to receive royalty on an equal basis with the assignee of copyright has been protected through the amendment act of 2012<sup>42</sup>.

Singer's right-It was after this judgment the need to protect the rights of music composers and singers were recognized and with the 1994 amendment act, major changes were introduced in the act, and that included the introduction of the right of a singer in the capacity of performer defined in this act:

“Performer, includes an acrobat, singer, musician, juggler, conjurer, dancer, snake charmer, actor a person delivering a lecture or any other person who makes a performance”<sup>43</sup> And the rights protected of a performer in this act included reproduction, selling, communicating it to the public, or broadcast of the performance of sound recording or the visual recording. The

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<sup>40</sup>Indian Performing Right Society vs. Eastern India Motion Pictures association, AIR 1977 SC 1443

<sup>41</sup>The Copyright Act, 1957 Section 17(b),

<sup>42</sup>Supra note 16.

<sup>43</sup>The Copyright Act, 1957 § (qq),



right shall be vested for a time span of fifty years after the performance is made. But, the performer cannot interfere with the rights of a producer of a film if the song has been displayed in his film. Also it is the right of a performer to receive royalty for making the commercial use of his performance.<sup>44</sup>

## 2. Non-economic rights

Other than economic rights enumerated in section 14, of this act the author is entitled to certain moral rights which are also protected by the Berne convention which states that independent of economic rights, the author is also entitled to the moral rights to restrain a person who attacks on the honor or reputation of the original work.<sup>45</sup> In India, the same have been given to him under section 57 of this act, also known as author's special rights which can be claimed by the author even if he had assigned the copyright wholly or partially. The rights include, "claiming the authorship of the work and restraining a person or claiming damages in respect of any, mutilation, distortion, modification or other act in relation to the said work if such distortion, modification, mutilation, or other act would be prejudicial to his honor or reputation."<sup>46</sup>

Thus, if it seems to the author that his work is not being treated in a reputed manner after assigning the copyright, he can claim his moral right which is a perpetual right within this act. Also similar moral rights have been granted to the performer under section 38B<sup>47</sup> along with the right to get identified as the performer in his performance.

In the case of *Amar Nath Sehgal vs. Union of India (UOI) And Anr*<sup>48</sup> the court stated the importance of moral rights of the author by referring to them as "the soul of the author's work", and upheld the right of an author to nurture, preserve and protect his creations through the moral rights given to him under section 57.

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<sup>44</sup>The Copyright Act, 1957 § 38A (2),

<sup>45</sup>Article 6<sup>bis</sup>, Berne Convention for the Protection of Literary and Artistic Works, 1886

<sup>46</sup>The Copyright Act, 1957 § 57(1),

<sup>47</sup>The Copyright Act, 1957 § 38B,

<sup>48</sup>*Amar Nath Sehgal vs. Union Of India (UOI) And Anr*, 117(2005)DLT717

## **RECENT CASES OF COPYRIGHT INFRINGEMENT IN BOLLYWOOD INDUSTRY**

### **1. *Trimurti Films Pvt. Ltd. V. Super Cassettes Industries Pvt. Ltd. & Others*<sup>49</sup>-**

In this case a popular song named “*KehDoonTumhe*” from the movie ‘Deewar’ was recreated by the defendants which raised the issue of copyright violation by them. The plaintiff was granted the right to create and sell gramophone records, as well as mechanical reproduction rights for the restricted purpose of creating and selling gramophone recordings, through an agreement between the parties. It was held that plaintiff did not permit the defendants to use the lyrics and musical or score or song in the movie ‘Baadshaho’<sup>50</sup>, and thus were restrained from releasing the movie with the song.

### **2. *Saregama India Limited vs. Balaji Motion Pictures Limited &ors.*<sup>51</sup>-**

In this case a famous Marathi song called “*Var Dhagla Lagi Kal*” was remixed by the defendants and was to be released in the movie “dream girl”. The defendants in this case were themselves advertising the song by stating “revive dhagla dream girl style”, thereby clearly acknowledging that defendants were inciting interest in their upcoming film by referring the subject song in which plaintiff has the copyright. Also defendants did not even argue about having right to the title of the disputed song. Thus, the defendants were restrained to include the song in their movie.

### **3. *Ram Sampath vs. Rajesh Roshan & Others*<sup>52</sup>-**

In this case, Ram Sampath, the plaintiff, sued the defendants for four music tracks from the movie “Krazzy 4”. The defendants allegedly copied plaintiff's original work, "the thump," according to plaintiff. The matter was resolved and exchanged between the parties for a sum of 2 Crores, and the Bombay high court halted the release of the film until the infringing portion was removed.

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<sup>49</sup>Trimurti Films Pvt. Ltd. V. Super Cassettes Industries Pvt. Ltd. & Others, Notice of Motion no. 515 of 2017 in C.S(L) no. 459 of 2017

<sup>50</sup>Legit Quest, <https://www.legitquest.com/case/trimurti-films-pvt-ltd-v-super-cassettes-industries-pvt-ltd-others/FAECA>, [last visited 13 May]

<sup>51</sup>Saregama India Limited vs. Balaji Motion Pictures Limited &ors CS(COMM) 492/2019

<sup>52</sup>Ram Sampath vs. Rajesh Roshan & Others, 2009(40) PTC 70 (Bom).

## **CONCLUSIONS AND SUGGESTIONS**

Thus, based on the above review of remix music and copyright laws, it can be concluded that creating a remix song or musical work is perfectly legal under this act, as long as all of the required rules are followed, such as obtaining permission, paying royalties, and so on. Despite the fact that the act has been continually revised to include copyright holders' rights, it still has certain gaps that need to be addressed in order to secure the rights of those who put a lot of effort into creating their literary, artistic, or other works.

Since this is the age of remix songs and music, it is necessary to identify what constitutes a remix production, as well as whether cover versions or remix music are the same or not and would be governed under the same section of the act.

Also, the time span of two years is much too short for the benefit of original authors; it should be increased to five or six years so that people do not quickly forget the original work and it receives due recognition. Despite its extensive legal framework, one major defect India faces is that its copyright laws are not well enforced. The interests of both remix makers and original writers will continue to clash unless and until we have a systematic implementation and a better enforcement mechanism.

**Research Title: BASICS OF IP AND MEDIA LAW***Author - Kajol Kamat\****ABSTRACT**

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

The paper aims to highlight the basics of IPR and how it safeguards the interests of the IP holders. Further, it sheds light upon the nexus and role of IPR in the Indian Media Industry. Lastly, the paper will provide a fair and constructive analysis by means of discussing various branches of IP, the related legal provisions and various judicial pronouncements by the Supreme Court and the High Courts of India.

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

**Research Objectives**

1. To understand the meaning of Intellectual Property and the procedure of safeguarding one's Intellectual Property.
2. To understand the role does IPR play in Media Industry.
3. To identify the main branches of IP and related laws in India.
4. To critically examine and analyze the judicial pronouncements by various Courts in India.

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## **INTRODUCTION AND MEANING**

Due to a rapid increase in globalization and boost of the Indian economy, Intellectual Property has become one of the key contributors to the global and national economy. Intellectual Property Rights have turn out to be substantially conspicuous at the prison horizon of India, each in terms of new statutes and judicial pronouncements. India ratified the settlement for setting up the world change corporation through the World Trade Organisation, which contains the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). Indian Statutes, enforcement provisions and methods of dispute decision with admire to intellectual property (IP) protection are now completely TRIPS-compliant.

### **Meaning:**

Intellectual property refers to creations of the mind, consisting of inventions; literary and inventive works; designs; and symbols, names and photos.

Intellectual property rights provide protection for creations and inventions, to enable creators and inventors to earn recognition and economic gain from their work.

Intellectual property lets human beings very own the paintings they create. It can be any of the subsequent:

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

Intellectual assets can be very valuable. There are businesses, along with PC, video game companies, that exist to expand intellectual property or even take advantage of it. It is critical to

protect one's enterprise with the aid of securing one's intellectual assets rights. Intellectual Property (IP) is protected with the aid of legal guidelines which allow humans to earn popularity or financial advantage from what they devise or create. with the aid of putting the right balance between the pastimes of innovators and the broader public hobby, the IP gadget pursuits to foster an surroundings wherein creativity and innovation can flourish. In the honor of such protection, we celebrate *World Intellectual Property Day* on 26th April, every year to promote discussion of the role of Intellectual Property in encouraging innovation and creativity.

The types of paperwork that are created through individuals and companies with meticulous efforts in designing, research & improvement want a large quantity of funding additionally. These creations evolve after devotion of time and money want to give dividends to the creators and to emerge as a cause encouragement for all. Copyright laws help in the safety of pursuits of such creators. The prevailing article attempts to highlight Copyright and associated troubles in Indian surroundings with special emphasis on Indian media and leisure enterprise.

Thus, the IP laws are based on primarily two objectives; First, to encourage creativity and/or investment for research and development by rewarding innovation, and second, to protect the rights and interests of inventors from improper and anti-competitive activities.

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

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

- Trade Marks
- Patents
- Copyrights and Related Rights
- Industrial Designs
- Geographical Indications
- Layout Designs of Integrated Circuits
- Plant Varieties

- Information Technology and Cyber crimes
- Data Protection

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

- Trade Marks Act, 1999
- The Patents Act, 1970 (as amended in 2005)
- The Copyright Act, 1957
- The Designs Act, 2000
- The Geographical Indications of Goods (Registration and Protection) Act, 1999
- The Semiconductor Integrated Circuits Layout Design Act, 2000
- The Protection of Plant Varieties and Farmers' Right Act, 2001
- The Information Technology Act, 2000<sup>53</sup>

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

There are unique approaches to protect your intellectual assets.

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

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<sup>53</sup>Vijay Pal Dalmia, *India: Intellectual Property Laws In India- Everything You Must Know*, Mondaq, [13 May 2021 4:41 P.M], <https://www.mondaq.com/india/trademark/654712/intellectual-property-laws-in-india-everything-you-must-know>

- Digital intellectual property may be protected in different approaches than using the regulation, such as encryption and the use of virtual signatures.

There are several government or affiliated firms that provide assistance for businesses with layout, innovation, intellectual belongings, size, and requirements needs.<sup>54</sup>

IP may be something from a specific production technique to plans for a product launch, an alternate mystery like a chemical formulation, or a listing of the international locations wherein your patents are registered. It can assist to think about it as intangible proprietary records. *The World Intellectual Property Organization's (WIPO's) formal definition of IP is creations of the mind — innovations, literary and inventive works, symbols, names, photos and designs utilized in commerce.*

IP is divided into categories: Business belongings includes however is not limited to patents for inventions, emblems, commercial designs and geographical symptoms. Copyright covers literary works like novels, poems and plays, films, music and artistic works, for example drawings, paintings, photographs, sculptures, web site pages and architectural design rights associated with copyright incorporate the ones of performing specialists of their exhibitions, makers of phonograms of their accounts, and telecasters of their radio and TV programs.

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

Compared with conventional property rights, IP rights are intangible in nature. Furthermore, they may be one-of-a-kind, territorial and time-restrained. However, that is real best in a relative sense and does now not mean that everyone varieties of IP rights have those traits. There are some exceptions. As an instance, as long because it isn't always disclosed, a trade secret can exist forever in idea, problem to no time limit.<sup>55</sup>

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<sup>54</sup> Business Gateway, <https://www.bgateway.com/resources/intellectual-property-the-basics>, [last visited 13 May 2021]

<sup>55</sup> WIPO, [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_1056.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1056.pdf), [last visited 13 May 2021]



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

The idea of intellectual property pertains to the fact that positive products of human intellect have to be afforded the same protecting rights that practice to physical property, which are referred to as tangible assets. It allows people to make benefit from the statistics and intellectual items they devise. Most developed economies have felony measures in area to protect each styles of belongings.

Further, IPR holds immense significance in the present times. The idea of Intellectual Property Rights is to encourage new creations, including technology, paintings, and innovations, that might give rise to growth in economic terms. Intellectual property rights boom the incentives for people to continue to produce matters that similarly create new task opportunities and new technologies, at the same time as allowing our global to enhance and evolve even faster.

IP-intensive industries appoint over 45 million Americans and hundreds of millions of different human beings global. The common employee in an IP-enterprise additionally earns about forty six percent extra than his or her counterpart in a non-IP enterprise. Thus, IP creates and helps excessive paying jobs.

America's IP is really worth approximately US\$6.6 trillion, which is greater than the nominal GDP of some other united states within the global. IP-intensive industries account for over 1/3– or 38.2%– of general U.S. GDP. Fifty two percent of all U.S. products exports are related to IP, and this amounts to nearly US\$842 billion.<sup>56</sup> Thus, IP boosts an economical increase and competitiveness.

## **BRANCHES OF IPR**

### **PATENTS:**

Patents is while you sign in your invention with the government. It is a system that could take more than a year-you advantage the legal right to exclude anyone else from manufacturing or marketing it. Patents cover tangible things. They can also be registered in overseas international

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<sup>56</sup>InQuartik, <https://www.inquartik.com/blog/basic-intellectual-property-rights/>, [last visited 14 May]

locations, to help keep worldwide competition from finding out what your business enterprise is doing. When you preserve a patent, others can practice licensing your product. Generally, a Patent Registration is granted for 10 years, if not extended.

### **TRADEMARK:**

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

### **COPYRIGHT**

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

### **TRADE SECRETS**

A component, sample, tool, or compilation of records that grants the consumer advantage over competitors is a trade mystery. it's far included via nation, in place of federal, law. To defend the name of the game, a business should show that it adds value to the company, that it is, in truth, a secret – and that suitable measures have been taken within the corporation to shield the name of the game, including proscribing expertise to a select handful of executives. Coca-Cola, for example, has managed to maintain its components underneath wraps for greater than 117 years.<sup>57</sup>

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<sup>57</sup> Internet Advisor, <https://internetadvisor.net/2014/04/protecting-intellectual-property/>, [last visited 14 May 2021]

## **INDUSTRIAL DESIGN**

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

## **GEOGRAPHICAL INDICATION**

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

## **ROLE OF IPRIN MEDIA INDUSTRY**

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

## **Landmark Judicial Pronouncements:**

### **1) *Sholay Media and Entertainment Pvt Ltd. v. Parag M. Sanghavi***

The film “Sholay” was delivered in the year 1975 and was quite possibly the most mainstream motion picture of that time. The film was known broadly, and individuals connected the title with the Sippys (Producer), thus the title had subordinate importance. In 2007, Ram Gopal Varma had delivered a film named “Ram GopalVarmakeSholay” and was sued for brand name encroachment. He at that point changed the name of the film to “Ram GopalVarmakeAag”.

### **2) *Kanungo Media (P) Ltd. versus RGV Film Factory and Ors. 138 (2007) DLT 312***

Kanungo Media had created a Bengali film called “Nishabd”; it had won numerous honors. Yet, couldn't be delivered on a business scale. They had then petitioned for a lasting order against the utilization of their film title “Nishabd” by Ram GopalVerma. Since the film couldn't be delivered, it was not well known, and the title gained no optional significance. The High court of Delhi thus excused the application and Ram Gopal Varma named his Hindi film “Nishabd”.

### **3) *KrishikaLulla and Ors. versus ShyamVithalraoDevkutta and Ors***

The Hon’ble Supreme Court held in the previously mentioned case that copyrights don't persist in the titles of literaaly works, including motion pictures. Insurance for the equivalent can be allowed simply by brand names. The current reality of the said case is that the respondents professed to have composed a rundown with the title “Desi Boys” and the equivalent was sent through email to two different people. On release of the film “DesiBoyz”, the respondents recorded a suit against the appellants for the encroachment of the copyright. The issue close by under the watchful eye of Court of law was whether the respondents had a copyright proprietorship in the title of the said film. The Court expressed that according to Section 13 of the Copyright Act, 1957[6], titles can't be considered as ‘works’ with the end goal of copyrights.

### **4) *Biswaroop Roy Choudhary v. Karan Johar***

A between-time directive was looked for by the plaintiff from the Delhi High Court to utilize title of the movie which the plaintiff had enrolled with Registrar of Trademarks to limit the litigant from utilizing the tile “KabhiAlvidaNaaKehna” for the respondent's film. The Court, nonetheless,

was of the view that albeit the respondent had not enlisted the title with the Registrar of Trademarks opposite of what was finished by the offended party, the litigant was the real client of the imprint, and had likewise finished the creation of the film which was prepared for discharge. Hence, the Delhi High Court additionally expressed that the genuine utilization of the brand name was consistently an important factor which would hinder the Court from giving injunctive alleviation. Consequently, the Court brought about the disavowal of between time help to the offended party were that “KabhiAlvidaNaaKehna” was an expression in like manner speech and subsequently couldn't be utilized with eliteness and moreover there was a delay in moving toward the Court.<sup>58</sup>

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

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

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<sup>58</sup> [Anubhav Pandey](https://blog.ipleaders.in/protection-of-movie-titles-through-intellectual-property-laws/); *Protection of movie titles through Intellectual Property laws*, ipleaders, [last visited 14 May 2021 6:27 P.M], <https://blog.ipleaders.in/protection-of-movie-titles-through-intellectual-property-laws/>

unbalanced online control, 2650 whole sites have been requested by the Madras High Court to be obstructed, cross country, like a provisional measure against the encroachment of copyright of specific movies. The Madras HC, on July 21, 2017, and August 2, 2017, requested a break order against a few Internet Service Providers (ISPs), for a situation of copyright encroachment, coordinating the ISPs to handicap admittance to sites upon the offended party's solicitation, including, perplexingly, the Internet Archive, an online library of public area works, which likewise has a file of over 20 years of the World Wide Web. Any individual endeavoring to get to any of the predefined sites presently gets a message expressing that the site has been hindered according to the bearings of the Department of Telecom, Government of India. The request was advocated as the Ashok Kumar or John Doe request, a term originally utilized in the UK to clarify a choice where rival or the blamed isn't recognized. 'An 'Ashok Kumar' or a 'John Doe' request, is a request in a suit brought against obscure and anonymous respondents, to counter the likelihood that somebody, someplace, may potentially be encroaching upon the privileges of the offended party. Ashok Kumar orders have gotten the go-to instrument for exuberant offended parties looking for copyright assurance from the Court in regard of online encroachment, by guaranteeing the challenges in distinguishing the encroaching gatherings. There are a few issues with the Order of the Madras HC, which are normal to most such Ashok Kumar orders gave by courts in India.<sup>59</sup>

## **INTELLECTUAL PROPERTY LAWS IN INDIA**

### **PATENT**

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

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<sup>59</sup>[Raghavendra Mishra;INTELLECTUAL PROPERTY RIGHTS AND MEDIA IN INDIA: COPYRIGHT ACT](https://www.researchgate.net/publication/342491125_INTELLECTUAL_PROPERTY_RIGHTS_AND_MEDIA_IN_INDIA_COPYRIGHT_ACT), Research Gate,[last visited 14 May 7:24 P.M ],  
[https://www.researchgate.net/publication/342491125\\_INTELLECTUAL\\_PROPERTY\\_RIGHTS\\_AND\\_MEDIA\\_IN\\_INDIA\\_COPYRIGHT\\_ACT](https://www.researchgate.net/publication/342491125_INTELLECTUAL_PROPERTY_RIGHTS_AND_MEDIA_IN_INDIA_COPYRIGHT_ACT)

of India had promulgated Patents (modification) Ordinance, 2004, which turned into later changed via the 1/3 modification.

### **Time period of a Patent**

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

## **TRADEMARK**

In India, trademarks are protected both under statutory law and common law. The first statutory regulation related to trademark in India became the trademarks Act, 1940 which had comparable provision just like the UK Trademarks Act, 1938. Later it changed into replaced by Trade and Merchandise Mark Act 1958 which consolidated the provisions associated with trademark contained in other statutes like, the Indian Penal Code, Criminal Procedure Code and the Sea Customs Act. The Trademark and Merchandise Act 1958 was replaced by the Trademark Act 1999 which came into effect from 15 September 2003 which complies with the provisions of the journeys and is the contemporary governing regulation related to registered trademark.

### **Term of trademark**

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

## **COPYRIGHT**

### **Pre-Independence laws in India**

In 1847 the first Copyright Act became enacted in India, at some stage in the regime of East India Company. The Act turned into replaced with the aid of the Copyright Act of 1914. The Act of

1914 was the first ‘contemporary’ copyright regulation of India. It was the primary law to encompass all works of artwork and literature below the ambit of copyright. It turned into a reproduction of the English regulation of 1911. It was accomplished by means of the British to ease the passage of literature over colonial subcontinent.

### **Post-Independence laws in India**

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

### **Term of copyright**

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

### **TRADE SECRETS**

There are no statutes in India that especially give protection to Trade Secrets and Confidential information. On the way to defend trade secrets and confidential records, watertight agreements ought to be agreed upon, and that they ought to be supported by sound regulations and methods. however, Indian courts have upheld exchange secret protection on the foundation of standards of equity, and at instances, upon a commonplace law movement of breach of self-belief, which in effect quantities a breach of contractual duty

### **INDUSTRIAL DESIGN**

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<sup>60</sup>Ravi Singhania , Dipak Rao , Sonil Singhania and Nishi Shabana, *India: India Copyright Guide (Frequently Asked Questions – Indian Copyright Act 1957)*, Mondaq ,[ last visited 14 May 8:05 P.M]  
<https://www.mondaq.com/india/copyright/447532/india-copyright-guide-frequently-asked-questions-indian-copyright-act-1957>



The initial Indian Industrial Design Law was passed in 1872. This act turned into named as “The patterns and Designs Act of 1872.” It was changed by means of the innovations and Designs Act, 1888. In addition, the Patents and Designs Act, 1911 nullified the inventions and Designs Act, 1888. The 1911 Act become amended several instances within the British colonial duration and even after India’s independence.

Sooner or later, the Indian Designs Act of 2000 turned into enacted to consist of the minimal requirements for the safety of business designs. It was effective from May 11, 2001 and changed the vintage regulation of 1911. Further, this Act presents an exclusionary proper of promoting, licensing, assigning and using the identical in any product to the proprietor or owner of the registered designs.

### **Term of Industrial design**

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

### **GEOGRAPHICAL INDICATIONS**

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

### **Time period of Geographical Indications**

The registration of a Geographical Indication is legitimate for a duration of 10 years and it could be renewed every so often for a similarly length of 10 years each.<sup>61</sup>

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<sup>61</sup>Palak Gupta and Sadin Karki, *Purpose of Patent Law*, The Law Gazette, [ 14 May 2021 8:48 P.M], <https://www.thelawgazette.org/post/purpose-of-patent-law>

## **CONCLUSION**

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

Research Title: **INTELLECTUAL PROPERTY RIGHTS AND SOCIAL MEDIA**

Author - **Khushi Makwana\***

**ABSTRACT**

In general, intellectual property rights relate to a collection of intangible assets held and legally protected by an individual or corporation from outside use or implementation without approved approval, such as invention, creativity, and contributions to the relevant area of expertise. The economic process, financial incentive, and motivation for advanced innovations engrained in the appropriate legal protection of Intellectual Property Rights demand expert, guided, and constantly updated assistance in the field of Intellectual Property Rights. With the tremendous rate of technical, scientific, and medical innovation that we are experiencing today, intellectual property has become increasingly crucial. Furthermore, developments in the global economic climate have had an impact on the creation of business models in which intellectual property is a key component in building value and prospective growth. Several new intellectual property legislations have been passed in India in order to fulfil international commitments under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. As a result, intellectual property has become one of the world's largest and fastest-growing disciplines of law, necessitating the need for specialists to deal with IP.

Copyright is a broad sphere that encompasses innovations, creations, intellectual products in print, audio-visual, sign & symbol, and digital formats. Copyright is a tremendous stimulant for the social media industry, which is full of invention and innovation. Media platforms, including social media, employ creative ideas, pictures, sounds, scripts, and a variety of other tools and ways of communication for professional, commercial, and individual aspirations. All of these forms, which are generated by individuals and businesses with rigorous efforts in design, research, and development, need a significant expenditure.

These projects were built through the dedication of one's time and money has yielded a profit to the creators and it has become a source of encouragement for everybody.

***Key Words:*** *Intellectual property rights, media law, copyright, media*

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## **INTRODUCTION**

Since 1991, the period of economic liberalisation and globalisation began as a result of which the system of trade and commerce has indeed altered dramatically. Nowadays in the age of competition and constantly evolving technology, intellectual property has become a critical aspect for market survival, managing demand patterns, and adding additional consumers to the services and ideas that are being created and delivered.

The goal of IPR is to protect others from benefitting improperly from one's innovations or ideas. 'Intellectual Property Rights (IPR) are legal rights that apply to particular types of information, ideas, or other intangibles in their represented versions.'<sup>62</sup>

IPR acknowledges cognitive ideas as property, thereby broadening the definition of property. The term "property" refers to a person's or business's ownership of something. Property is classified into two types: tangible and intangible. Tangible property is present in physical form, such as a structure or home, land, automobile, currency, jewellery, and so on, whereas intangible property is not present in physical substance for example knowledge, goodwill, patent etc.

With the passage of time, we have built systems and laws to safeguard tangible goods, yet it was previously impossible to safeguard things available in unsubstantial forms. IPR protects such things and acknowledges a person's or enterprise's ownership over them. It enables people to profit from their efforts to create or develop new intellectual creations. 'Intellectual property rights are similar to other types of property rights. They enable patent, trademark, or copyrighted content creators or owners to gain from their own effort or investments in a project'.<sup>63</sup> In our nation, intellectual property rights (IPR) is not a new discussion Thousands of excellent discoveries, ideas, and methods in all disciplines of knowledge have been provided by our great academics throughout the history of civilization. Everything in the public domain was made possible by these great people. Whatever our great intellectuals created was passed on to society.

Upon the arrival of industrialization and Western influence, we began to take steps to protect the rights of intellectual property by following the strategies established by regulatory bodies and the rules implemented by the government. 'In the year 1856, George Alfred De Penning is said to

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<sup>62</sup>Adukia. S.R. [2012]. *Handbook of Intellectual Property Rights in India P-3.*

<sup>63</sup> WIPO Publication no. 450 (E) P-3.

have filed the first patent application in India. The Government of India issued a proclamation on February 28, 1856 legislation to grant “exclusive privileges for the encouragement of inventions of new manufacturers” i.e., the Patents Act<sup>64</sup>.

The world's mass media infrastructures vary according to the economics, politics, religion, and culture of various civilizations. There were restrictions on what the media should be allowed say about the government in nations that followed communism, such as the former USSR. For fear of a revolt, almost anything expressed opposing the state was prohibited. On the other hand, in nations with a Bourgeois Democracy, such as the United States, practically everything is permitted. Journalism is free in India and its Parliamentary Democracy system, however it is subject to some reasonable restrictions provided by the Constitution of India, 1950. Prior to the effect of globalisation, the mass media was completely controlled by the government, which permitted the media to represent just one side of events. However, the situation has changed dramatically as a result of globalisation and privatisation.<sup>65</sup>

## **BASICS OF INTELLECTUAL PROPERTY**

Intellectual rights are granted to the inventor or innovator in order for them to reap the economic gains of their invention or production. Intellectual property rights are exclusive rights that allow the owner to sell, purchase, or licence his Intellectual Property in the same way as real property can be sold, bought, or authorized. To seek benefits, one must file IPR with a legal body in a presentable or observable way. Each form of IPR grants a unique set of rights to the inventor or developer in order to preserve and reap economic benefits, which in turn encourages talent and social advancements. On the basis of type of invention and creation of human mind and their applications the intellectual property rights are classified as follows: i) patents, ii) trademarks, iii) industrial designs, iv) layout design of semiconductor integrated circuit, v) geographic indications of source, vi) copyright rights be it literary or artistic works, music, photos, motion pictures or short films, memes, computer programmes and performing arts and broadcasting work.

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<sup>64</sup>Adukia. S.R. (2012).P. 11

<sup>65</sup>Legal Services India, <http://www.legalserviceindia.com/> [last visited May 10,2021]

## **PROTECTION OF INTELLECTUAL PROPERTY IN INDIA**

The right to intellectual property Infringement is described as the use of another person's intellectual property without the permission of the owner of that intellectual property. When an individual violates the law by acting Ultra Vires, he is violating the statute. Infringement is described as "a crime less serious than a felony." Intellectual property rights infringement is called a tortious violation of property. In cases including the misuse and/or breach of intellectual property rights, Indian courts have the authority to provide relief. The numerous intellectual property laws in India have provisions for civil and criminal redress for enforcing intellectual property rights. India has laws covering different aspects of intellectual property and the rights and the consequences if the rights get infringed, as mentioned below:

- Trademarks - Trade Marks Act, 1999
- Patents - The Patents Act, 1970 (as amended in 2005)
- Copyrights and Related Rights - The Copyright Act, 1957
- Industrial Designs - The Designs Act, 2000
- Geographical Indications - The Geographical Indications of Goods (Registration and Protection) Act, 1999
- Layout Designs of Integrated Circuits - The Semiconductor Integrated Circuits Layout Design Act, 2000
- Plant Varieties - The Protection of Plant Varieties and Farmers' Right Act, 2001
- Information Technology and Cybercrimes - The Information Technology Act, 2000
- Data Protection

## **ROLE OF IPR ON SOCIAL MEDIA**

With the growing use of social media, many people are sharing their creativity and posting their works, thoughts and innovations be it music, films, photos or anything else. Along with the growing usage of social media there has been a growth in the number of people or organizations that copy or steal someone else's work as if it were their own. The Registrar of Copyrights recently addressed the need of amending the Copyright Act 1957, acknowledging that "innovative

industries are performing and changing in light of developments brought on by internet use, digital transformation, and an increasingly globalised demand for modern content.” Social media is now an essential component of communications campaigns and marketing of both big and small companies. Connecting with consumers is the current norm. But this pattern impacts all original content producers and those who want to repost something that wasn't created by them. This growth gives India the chance to realign its goals for the future. It is important to secure the owner's original work from piracy, so that no one can use it without the owner's consent or permission.<sup>66</sup>

### **WHAT CONSTITUTES COPYRIGHT INFRINGEMENT?**

Copyright is one of the types of intellectual property (IP) rights and is intended to secure the creator's, owners, or holder's proprietary privilege to assert an original project as their own—when the work is fixed in a tangible form. Copyright infringement occurs where one uses another person's work or a copyrighted work without authorization. If the content, or a significant portion of it is used without the owner's consent, copyright is infringed. That is the misuse or breach of a person's intellectual property. Copyright infringement is also known as theft of the art and the originator's exclusive and authentic work, as well as taking advantage of the content. Infringement of copyright is specified in Section 51 of the Copyright Act.

### **PROTECTION OF CONTENT CREATED ON SOCIAL MEDIA AND INTELLECTUAL RIGHTS INVOLVED**

Marketing on social media is not new; in fact, social media has become one of the most common means of communicating with the general public. As a result, any communications specialist should be well-versed in the convergence of intellectual property law and social media. Copyright covers original works of authorship that are fixed during the process of expressing themselves in a physical form. Everybody is a creator of art, such as pictures, songs, visual graphics, animations, computer apps, and website displays.

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<sup>66</sup> VARUN RAMDAS, SHWETA VENKATESAN, *Why India needs to modernise its copyright laws for the digital era*, [May 10 2021 6:21P.M], <https://theprint.in/opinion/why-india-needs-to-modernise-its-copyright-laws-for-the-digital-era/550243/>

If it is an original work, it is protected as a literary work under the Copyright Act. No one has the right to copy or use it without the author's consent, just like no one has the right to copy or use any other literary work in the offline environment.

Let's say if it is a cartoon illustration or photograph, the post will be covered as an artistic work. If the post was viewed as a film, it will be protected as cinematographic work. According to Section 14 of the Copyright Act, no one has the freedom to edit, print, or communicate a work to the public without the consent of the work's author.<sup>67</sup> Infringements on intellectual property rights occur on a regular basis. The material shared by users on social media platforms, mostly videos and images, music, animations, and so on, is used on a daily basis by third parties, whether or not they are social media users, without prior authorization from the holders of the copyright. This activity meddles and infringes with the originator's rights.

### **COPYRIGHT POLICIES OF SOCIAL MEDIA**

Users adhere to the website's specific terms of use when they establish a social media account. These terms also include a disclaimer certifying that the poster owns all intellectual property rights to the material posted to the web. For example, let's take Instagram's terms of use and other legal information explain who owns your posted material, how others can use it, and how you can legally post content on Instagram. In the Instagram's Terms of use it mentions how you cannot use Instagram. It says that one should not publish anyone else's private or sensitive information without their consent, nor may you do something that infringes on their interests, including intellectual property rights (e.g., copyright infringement, trademark infringement, counterfeit, or pirated goods). Whenever you share your work on social media, you establish ownership of the copyright if the work is qualified, such as a photo/meme posted on Instagram. No one may use your work without your consent, and the website does not claim ownership. There is one exception: when sharing to a website like YouTube, Instagram or Twitter, you are agreeing to the site's terms of use, which often grant the site a permission to use the work. More specifically, you are enabling other people to share your work on the website. As a social media customer, you

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<sup>67</sup> N. Mahabir, *India: Copyright Protection Of Online Content*, Litmus Legal, [May 10 2021 7 P.M], <https://www.mondaq.com/india/copyright/607438/copyright-protection-of-online-content>



must consider and understand the terms of service and comply with them. Simply posting your work on social media would not grant anyone the right to use it without attribution. For instance, if you make a meme and share it on Instagram, other users will reshare it. However, if anyone just steals the meme without credit and shares it on their own feed or anywhere else other than social media, it would not actually constitute equal use and is most certainly in violation of the law and the terms and conditions of the platform. Users can only publish artistic works that are in the public domain, work that qualifies for fair use, work that they have authorization to share or their personal creation.

### **HOW TO PROTECT YOUR CONTENT ON SOCIAL MEDIA**

Since copyright is created as soon as you create work, you are not required to have a copyright notice alongside your work. However, if you're sharing your work on social media, it's a good idea to add a copyright warning although registering your work under copyright is advisable but you can also put a disclaimer or like ©2020 Lola Evans, as a notice to others that you own the work. One can also take these necessary precautions while posting their content online:

- I. Post content from your company's or your official website or page to ensure your content is tightly tied to your brand. As a result, whether you or your audience share your material, your brand's website will feature in the post's connection display as a non-editable label, branding the content as yours.
- II. Use your logo as the featured graphic in your content. This ensures that whoever posts your content, and if your logo is displayed on the content the link to your work will still appear.
- III. Portraying your photographs or making a design that clearly reflects your brand so that your photos are easily identifiable.

### **HOW TO REMOVE DUPLICATE CONTENT FROM SOCIAL MEDIA?**

- 1) The first thing you can do is, if you suspect someone has stolen your material, contact them. Most of the websites or the page has a contact number, email address, or a link to another profile. Gather proof of the content, look for the websites or the page's founder and check where it is registered and its operations. Inform the site that the material has been copied,

include a link or a screenshot to the original piece of content and the date when it was posted, and request that it be removed as soon as possible to prevent an official DMCA lawsuit.

- 2) The second option you have is to send it to the social media site that they copied and uploaded it. You could file a complaint under The Digital Millennium Copyright Act (DMCA) or a copyright violation, also known as an intellectual property Takedown notice, and say, "YouTube, Instagram, I own this stuff, this individual copied it" or if this person copies your content every time you can get the handler of the page banned. That's the quickest way of getting the content off of someone's profile.
- 3) There are few third-party takedown services available which help artists, content writers to safeguard their work and help them remove the stolen content. It is cheaper and attainable.
- 4) You can also serve someone with a cease-and-desist letter. You must: (a) apply for copyrights, (b) sue them, and (c) demonstrate that you either lost revenue as a result of them copying your material, or that they improperly obtained profits from using your artistic works.

You legally hold a copyright as soon as you make a film, photograph, or artistic work. And, to some degree, you are right. You hold what are known as common law copyrights, which means you have the power to prevent anyone from using your work, so you must first go through the legal process. There may be legal stumbling blocks, such as whether you haven't applied for copyright rights on your images, films, or artistic work, your cease-and-desist letter may lack legal backing.<sup>68</sup>

- 5) Don't make the error of not knowing whether the material has been copied, duplicated or stolen. It is easy and inexpensive as compared to the costs that can be incurred if left unchecked. To further avoid the duplication there are various tools that help like copyscape, DMCA.com and google alerts.<sup>69</sup>

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<sup>68</sup> The Social Media Law Firm, <https://thesocialmedialawfirm.com/services/intellectual-property/copyrights/>, [last visited May 10 2021]

<sup>69</sup> Greg Secrist, *Is Your Content Stolen? Here's What You Can Do*, Search Engine Journal, [May 10 7:38 P.M.] , <https://www.searchenginejournal.com/3-ways-find-stolen-content-take-action/162831/>

## **SUGGESTIONS**

- Be vigilant.
- Use your logo or the name of the company and mention it in every post you share.
- Understand your intellectual property rights.
- Connect with a professional who has expertise on the subject.
- Check to see if the concept is unique. If it is, you can rely fairly on your copyrights and patents, and employ an investigator to differentiate between registered and non-registered ones.
- Maintain a track of all that is connected to the work.
- Protect and register your IP as soon as possible.

## **CONCLUSION**

With the changing and growing social media and content creation on media, it is very important to know that if you did not create the content you are sharing on social media, copyright laws likely prohibit you from using it without the owner's consent. The common practices of copying and pasting excerpts of content, playing music in the background of your YouTube video, copying images and pasting them in your posts or on your page, and copying html to use on your own site, are all copyright infringing activities—unless you created the content, have a license to use it, or your use falls under one of the exceptions in the statute.

**Research Title: THE LAWS OF MEDIA BROADCASTING***Author - Manini Kaur\****ABSTRACT**

The broadcast industry has its own share of various controversies between different parties – broadcast providers, the government, public interest organisations, community radio and television stations, and an ever-increasingly varied audience that has been narrowly defined as the ‘public’ – as a result of rapidly evolving technology and growing business investments. The legal enforcement of both current and new technology is an essential part of this fight. This paper aims to analyse the existing legal system that relates to different broadcast technologies being used in India.

*Keywords: Digital media, Regulations, television, radio, film, Social media*

**INTRODUCTION**

Broadcasting, as opposed to private signals aimed at individual receivers, is the automated delivery of radio and television signals designed for general public viewing. Broadcasting is described as the systematic transmission of entertainment, information, educational programming, and other features for simultaneous reception by a dispersed audience with adequate receiving apparatus in its most basic form. Broadcasts may be audio-only (as in radio) or visual (as in television) or a mixture of both. In the same manner, sound broadcasting began in around 1920, while television broadcasting began in the 1930s.<sup>70</sup> With the introduction of cable television in the early 1950s and the use of satellites for transmission in the early 1960s, television coverage grew significantly, as did the availability of the number of programmes.

In today’s world, broadcasting is one of the most important means of disseminating information and spreading awareness among the general public. Until recently, there were no strict rules governing the broadcasting of content over television, which given the growth of broadcasting, is the need of the hour.

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<sup>70</sup> Broadcast Media definition, *open PR worldwide public relation*, <https://www.openpr.com/wiki/broadcast-media> [last visited 11 May 2021]

India desired to provide a national regulatory system to support its efforts and the common good. The Supreme Court ordered the government to establish an independent autonomous body that would be free of government interference and ensure conditions that would enable everybody to enjoy meaningful and efficient freedom of speech and expression. “The right to freedom of speech and expression also requires the right to teach, inform, and entertain, as well as the right to be learned, informed, and entertained,” according to the Supreme Court. It expanded the scope of the right to free speech and expression: “The government has no monopoly over electronic media, and a person has the right to telecast and transmit to audiences by electronic media under Article 19(1) (a) of the Constitution.”

Around the world, broadcasting is referred to as a central source of news and intelligence. It has a propensity to influence the views of the general population as a result of this trait, and it is a subject of unconstitutional repression<sup>71</sup>.

The Cable Networks Act of 1995 and the Prasar Bharti Act of 1990 provide for the body that is responsible for governing India's television and entertainment industry. The Ministry of Information and Broadcasting and Prasar Bharti are in charge of the abovementioned governing bodies.

## **RESEARCH METHODOLOGY**

This research paper has followed empirical research design. The study has been done through a secondary source of data. The paper has used Qualitative Primary databases. A survey was conducted on broadcasting for the paper's research. The use of books, articles, newspapers and magazines has also been done for data collection. This research aims to learn more about broadcasting and laws related to broadcasting in India. The paper also elucidates the role of digital media in broadcasting and how it has affected the youth. Case laws have been quoted, wherever applicable.

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<sup>71</sup>Manvell, Roger and Camacho, Jorge A.. "Broadcasting". *Encyclopedia Britannica*, 10 Aug. 2018, <https://www.britannica.com/technology/broadcasting>. [last visited 11 May 2021]

## **RESEARCH QUESTIONS**

1. How does broadcasting affect society?
2. What steps has the government taken to control broadcasting?
3. Does digital media play any role in supporting broadcasting media?
4. Are youth negatively affected by broadcasting platforms?

### **1. BROADCASTING IN INDIA**

Indian mass media today, includes over 300 TV channels that cover over 112 households, 50,000 newspapers and magazines with a readership of over 250 million, over 300 radio stations, over a thousand feature films produced annually in 18 languages, and a variety of visual, print, multimedia, and telecommunications media. Doordarshan is a public broadcasting service in India. Prasar Bharti, an independent company, manages the national television network service with 22 stations, the national broadcaster, and All India Radio. In FY 2020, the Indian Broadcasting and Cable TV industry was estimated at USD 11.61 billion, and it is expected to grow to USD 19.06 billion by FY 2026. Cable TV, DTH channels, terrestrial services (Doordarshan), Internet Protocol Television (IPTV), and radio all have broadcasting services in India (FM, AM, Community Radio)<sup>72</sup>. Broadcasting laws are notable for providing signals to distributors without discrimination and for including protections for national and ethnic languages. The Indian broadcasting and cable television industry is expected to rise at a robust pace during the projected period, according to recent estimates. One of the main factors supporting the growth of this market is the rising demand for television sets, especially in rural areas of the country. The entertainment industry is expected to boom by 2025, with rising demand for foreign TV channels and shows the propelling expansion of the Indian broadcasting and cable TV markets.

The Telecom Regulatory Authority of India (TRAI) sets the rates that television channel viewers and service providers pay in the broadcasting industry. In 2019, the Broadcast Audience Research

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<sup>72</sup> See *supra* note 3 at 3

Council estimated that over 197 million Indian households had access to television. The Union Ministry of Information and Broadcasting (MIB) had approved 920 TV channels as of July 31, 2020. Broadcasters, distributors, and viewers are the three main players in the TV broadcast ecosystem. Broadcasters create television programming, which is then distributed to viewers by one of four technologies: cable, direct to home (DTH), head-end in the sky (HITS), or internet protocol (IPTV).

### ***1.1 BRINGING OTT PLATFORMS UNDER GOVERNMENT CONTROL***

In India, the OTT network is less limited when compared to its offline counterparts, such as films and television. This provides the platform with artistic independence, therefore allowing them to appeal to the demands of the masses by bringing films from all over the world to the platform. In terms of international programs and Indian materials, OTTs are not subject to any special rules or legislation. There is no discrimination, and the same codes and regulations apply around the board in terms of program quality control.

According to a national survey, the online content industry is worth INR 4000 crores and has a viewership of over 17 crores from OTT channels alone, all of which are supervised with little or no oversight. In October 2020, the Supreme Court issued a notice to the Centre via a PIL in which the petitioners requested the establishment of an independent regulatory framework for online content. The judicial approach has evolved over time to the point that web content does not come under the Cinematography Act of 1952. Several OTT channels and providers, such as Hotstar and Netflix, are implementing self-regulation codes at the same time<sup>73</sup>.

The Electronic Media Management Centre, which was founded in 2008, is currently in charge of monitoring television content. It publishes information on Program Code breaches.

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<sup>73</sup> Rachit Garg. *Regulation of Broadcasting of Media in India*. iPleaders .February 28, 2021.  
<https://Blog.Ipleaders.In/Regulation-Of-Broadcasting-Of-Media-In-India/> [11 May 2021, 3:35 P:M]

## 1.2 FOREIGN PRODUCTIONS

Liberalization in the 1990s enabled international and private broadcasters to enter the market. The number of outlets has increased drastically. Within neighborhoods, entrepreneurs established small cable TV networks and started broadcasting local video services, including music videos. Global Multi-System Operators (MSOs) and local cable operators came into the picture as a result of satellite television and the introduction of channels by CNN, Zee, and STAR (LCOs)

Foreign participation in the television industry is restricted by market caps and regulatory requirements that can be imposed at any time. The United Kingdom, Italy, Brazil, Germany, France, and New Zealand have all signed film co-production agreements with India. The Ministry of Media and Broadcasting is in charge of enacting and enforcing laws, rules, and regulations concerning information, film broadcasting, and the newspapers<sup>74</sup>. On behalf of the Indian government, it also oversees international co-operation in television, radio, and its foreign counterparts. The programs must not be in violation of the Program Code established under the Cable Television Network (Regulation) Act of 1995. The Indian Broadcasting Foundation issued the "Content Code and Certification Rules, 2011," which establishes a BSP (Broadcast Service Provider) to ensure that all programs are self-certified by each broadcaster as follows:

- 1) 'G' stands for 'Generally Available.'
- 2) Restricted Access (abbreviated as 'R')

The former can be aired at any moment, while the other only has a timeframe from 11 p.m. to 5 a.m. to do so. The Broadcast Service Provider is required to receive prior approval from the Central Board of Film Certification for all films, including international films, music videos, songs, trailers, and other similar works, and to broadcast them on television or radio only after receiving such certification.

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<sup>74</sup> Broadcasting in India. *Nature* **142**, 948 (1938). <https://doi.org/10.1038/142948c0>



## **2. REGULATION OF MEDIA IN INDIA**

In India, the media is largely self-regulatory. Established media regulatory agencies, such as the Press Council of India, which is a constitutional agency, and the News Broadcasting Standards Authority, which is a self-regulatory agency, provide standards that are more akin to guidelines.

The government of India had full control over the broadcast media and just the promotional ads and service sponsorships were under the purview of private companies. However, *in SECRETARY, MINISTRY OF I & B V. CAB.*, the Supreme Court distinguished itself from the monopolistic stance described above, emphasizing that any person has the right to telecast and broadcast any significant event to viewers/listeners through electronic media, such as television or radio, given that the government does not have a monopoly on such electronic media, as such control does not have any backing of laws in the country. This decision resulted in a significant shift in the broadcast media's status, and the market became more open to the general public.

When it comes to laws regulating broadcast mediums, the Broadcasting Code, which was introduced by the Fourth Asian Broadcasting Conference in 1962 and lists some cardinal rules to be practiced by electronic media, is of paramount importance. Since the Broadcast Code was primarily developed to regulate All India Radio, all broadcasting and television organizations should adhere to the following cardinal principles:

- To ensure the news is presented objectively, with balanced and impartial commentary
- To advance the fields of education and culture
- In all programs, to lift and uphold high levels of courtesy and decorum.
- To foster interfaith unity, religious diversity, and global awareness.
- To approach contentious policy topics of impartiality and objectivity.
- Respect for human dignity and rights

### ***2.1 THE CABLE TELEVISION NETWORKS (REGULATION) ACT, 1995***

The Cable Television Networks (Regulation) Act, 1995 governs the service of cable television networks in India, as well as the subscription prices and the overall number of total subscribers

accessing basic tier programming. The Central Government can, in accordance with the Cable Television Network (Regulation) (Amendment) Bill, 2002, make it mandatory for any cable operator to transmit or retransmit every pay channel program via an addressable device as and when the Central Government so notifies. The number of free-to-air channels to be included in the basic service tier bundle can also be specified in the notice.

## ***2.2 DIRECT-TO-HOME BROADCASTING***

Direct-to-Home (DTH) Broadcasting Service refers to the delivery of multi-channel TV programs in Ku Band by a satellite system, with TV signals sent directly to subscribers' homes without the use of an intermediary such as a cable operator. In India, the Union Government has agreed to allow Direct-to-Home TV service in the Ku band.

## ***2.3 FILM***

India is one of the world's leading motion picture manufacturers. The sector, which includes three main fields of activity: manufacturing, delivery, and exhibition, is spread across the country, hiring thousands of people and entertaining millions of people each year. The most critical legislation governing the production and distribution of films is:

The Cinematograph Act of 1952 – The Cinematograph Act of 1952 was enacted to provide for the registration of cinematographed films for cinematographed film exhibits. A Board of Film Censors (now called Central Board of Film Certification) with advisory panels at regional centers is authorized under this Act to review any film and approve it for unregulated or restricted-to-adults exhibition. The Board also has the authority to refuse to approve a film for public screening.

In *K. A. Abbas v. Union of India*, the petitioner challenged the constitutionality of censorship as a violation of his fundamental right to free speech and expression for the first time. The Supreme Court, on the other hand, stated that pre-censorship of films under the Cinematograph Act was justified under Article 19(2) because films must be viewed differently than other types of art.

Since a motion picture could elicit more intense emotional responses, it was decided to divide films into two categories: 'A' (for adults only) and 'U' (for everyone).

In *Bobby Art International v. Om Pal Singh Hoon*, the Supreme Court reaffirmed the above opinion and upheld the order of the Appellate Tribunal (under the Cinematograph Act), which had violated the guidelines under the Cinematograph Act and awarded a film a 'A' certificate.

## 2.4 SURVEY REPORT

The survey was based on broadcasting and the relevant laws in India. It was an online survey and was circulated among law students. The result of the survey was positive.

I started the survey by asking the meaning of broadcasting and 78.6% knew the meaning.



The next question was related to the press council of India. The Press Council of India Act of 1978<sup>75</sup> created the Press Council of India. Its aim is to protect press freedom while both maintaining and improving the quality of newspapers and news organizations in India. The result was 100% Positive.

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<sup>75</sup> The Press Council Act, 1978

The 3<sup>rd</sup> question was about Central Board of Film Certification (CBFC)<sup>76</sup>. It is a statutory body under the Ministry of Information and Broadcasting of the Union of India. Under the terms of the Cinematograph Act, which awards certificates to oversee the public display of films in India. Films can only be publicly shown in India after they have been accredited by the Central Board of Film Certification. The Cinematograph Act of 1952 was enacted to provide for the registration of cinematographed films exhibits. A Board of Film Censors (now called Central Board of Film Certification) with advisory panels at regional centres is authorized under this Act to review any film and approve it for unregulated or restricted-to-adults exhibition. The Board also has the authority to refuse to approve a film for public screening.

The next question talks about the process of self-regulation by television channels. Today's news outlets are regulated by self-regulatory processes. The News Broadcasters Association has established one such mechanism. To control television content, the NBA has created a Code of Ethics. For violations of the Code, the NBA's News Broadcasting Standards Authority (NBSA) has the authority to advise, admonish, censure, express criticism, and fine the broadcaster up to Rs. 1 lakh. The Broadcast Editors' Association is another such body. The Advertising Standards Council of India has also established guidelines for ad quality. These organizations are governed by conventions rather than by statute.

In the next question Draft Broadcasting Services Regulation Bill, 2006<sup>77</sup> is mentioned. The bill included legislation to control broadcasting networks, such as private television and radio stations, as well as covers issues revolving around content, media ownership, and subscriptions.

A landmark case *Shiv Cable TV System v. State of Rajasthan*<sup>78</sup> was asked about in one of the questions. In *Shiv Cable TV System v. State of Rajasthan*, the truth of cable networks was put to test. The case stemmed from a district administration order ordering local police to shut down cable TV networks because the cable providers lacked the necessary licenses. In the Rajasthan

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<sup>76</sup> Central Board Of Film Certification (Cbfc), <https://www.ibfindia.com/Central-Board-Film-Certification-Cbfc>, [last visited 11 May 2021]

<sup>77</sup> PRS India, [https://www.prsindia.org/uploads/media/Vikas\\_Doc/Docs/1241499767~~A\\_Draft\\_Of\\_The\\_Proposed\\_Broadcasting\\_Services\\_Regulation\\_Bill2006.Pdf](https://www.prsindia.org/uploads/media/Vikas_Doc/Docs/1241499767~~A_Draft_Of_The_Proposed_Broadcasting_Services_Regulation_Bill2006.Pdf), [last visited 11 May 2021]

<sup>78</sup> *Shiv Cable Tv System Vs The State Of Rajasthan And Ors* AIR 1993 Raj 197. On 10 May, 1993,

High Court, the affected operators challenged the district administration's decision, claiming that there was no provision requiring them to seek licenses for their networks.

One of the questions was related to the Cable Television Networks (Regulation) Act, 1995. Basically, it oversees the service of cable television in India, as well as the subscription prices and the overall number of total subscribers that receive basic tier programming. The Central Government can, in accordance with the Cable Television Network (Regulation) (Amendment) Bill, 2002, make it mandatory for any cable operator to transmit or retransmit every pay channel program via an addressable device as and when the Central Government so notifies.<sup>79</sup>

The last question was about the case study of Glow and Lovely (old name Fair and Lovely). Following the widespread demonstrations against racial profiling in the United States by Black Lives Matter, social media was awash with people criticizing beauty labels for promoting prejudice based on skin color. Hindustan Unilever Limited has made a ground-breaking decision to rename the company 'Fair and Lovely.' The company announced that terms like "Fair," "White/Whitening," and "Light/Lightening" would be removed from all of its packaging and communications.<sup>80</sup>

### **3. DIGITAL MEDIA AND BROADCASTING MEDIA**

Broadcast media has become increasingly reliant on social media. All reality shows, including X-Factor, Britain's Got Talent, and Strictly Come Dancing, use Twitter hashtags # to advertise their shows, and almost every programme now has a Facebook page where they connect with audiences and persuade them to vote for politicians. Internet tools such as Youtube, Twitter, and Facebook are transforming the way media is created, circulated, and consumed. Individuals are voicing their views on relevant topics through unconventional social media outlets such as blogs, which are

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<sup>79</sup> Insights On India, <https://www.insightsonindia.com/2020/09/11/Cable-Tv-Networks-Regulation-Act-1995/#:~:Text=Section%20of%20the%20cable,Oversees%20television%20content%20in%20india>. [last visited 11 May 2021]

<sup>80</sup> Doing Well By Doing Good —Case Study: 'Fair& Lovely' Whitening by CreamaneelKarnani

redefining news these days. Almost every journalist nowadays has their own blog and is engaged on Twitter, where they engage with their readers to conduct analysis<sup>81</sup>.

### **3.1 TWITTER**

Every actor, show, and journalist has a Twitter account, which they use to interact with their fans and supporters, as well as support themselves and their shows. Hashtags are incredibly common for promoting events, especially among journalists; for example, during the London Olympics, hash tags such as #TeamGB were trending all over Twitter.

### **3.2 YOUTUBE**

Any broadcaster, from the BBC to ITV to less well-known networks like E Entertainment, now has a YouTube page. Apart from that, Youtube has produced some of the most well-known celebrities of today, including Justin Beiber. On the BBC these days, there are shows focused on Youtube videos that present the top 10 best Youtube videos. Many people who do not watch tv go on Youtube to watch their favorite programs.

### **3.3 BLOGS**

Blogs are becoming more common among celebrities these days, and almost all celebrity chefs, such as Jamie Oliver and Nigella Lawson, maintain a blog where they turn their fans into followers and engage with them on a more personal basis. Many bloggers have become millionaires and celebrities in the mass media as well, such as Lady Gaga, have their own blogs, which they use to engage with their followers.

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<sup>81</sup>ShrimoyeeChakraborty. *The Impact of Social Media on Broadcast Media*. Social media today. Dec. 11, 2012, <https://www.socialmediatoday.com/content/impact-social-media-broadcast-media>. [11 May 2021, 4:20 P:M]

### **3.4 FACEBOOK**

TV programs use Facebook as a main social media site to advertise new series, as well as the program itself. Sports are common on Facebook, and David Beckham is one of the most well-known athletes who is very involved on the platform. He engages in live video chats with his followers and regularly updates his status. Fans will debate any match or upcoming match on Sky Sports' discussion panels.

Broadcast and social media have formed a symbiotic relationship over the years, with each relying on the other for content and interaction.

## **4. IMPACT OF BROADCASTING PLATFORMS ON YOUTH**

Everyday lives of children especially, have become increasingly dominated by radio, television (TV), film, video games, mobile phones, and computer networks. The media has proved to have significant positive and negative impacts on children's cognitive, emotional, and behavioral health. The latest research on the impact of advertising on child wellbeing in both Western countries and India has grown in response to children's increased exposure to upcoming types of media. It is widely acknowledged that the media has a significant impact on child health issues such as abuse, obesity, tobacco and alcohol consumption, and unhealthy sexual habits. But it is quintessential to consider that at the same time, the media can have some beneficial impact on children's welfare as well.

### **4.1 SOCIAL MEDIA**

Teenagers have been heavily influenced by the media. This influence has both positive and negative aspects. Students are being increasingly distracted by social media and networking platforms such as Facebook and Twitter. These pages have been overly addictive for young boys and girls. They are wasting their time on these pages mindlessly and ineffectively. Wise people say that time well invested is time well spent, but today's youth spend more of their time texting, tweeting, sharing photos, and changing their profiles<sup>82</sup>. Smart phones and 4G connections have

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<sup>82</sup>Nick McGillivray, Turbo Future, Feb 1, 2021. <https://Turbofuture.Com/Internet/Effects-Of-Social-Media-On-Our-Youth> [ 11 May 2021, 4:48 P:M]

exacerbated the problem. It is now so simple to access those pages that the younger generation uses them virtually everywhere and all of the time. Similarly, they look forward to their favorite TV shows with bated breath!

Students nowadays tend to be more concerned with engaging with their Facebook buddies than with completing their exams, tasks, and projects! The propagation of obscenity is another significant downside of the increased usage of such social networking sites. This is having a negative effect on their impressionable minds and driving them astray.

Social networking, on the other hand, and the facilities of media sharing formats made possible by advancements in the internet have made life and work much easier for all. Anything is accessible via social media pages and channels. There isn't a single domain or walk of life that doesn't use social networking and the internet! Education, business, banking, security, teaching, studying, science, medicine, accounting, culture, internet, online teaching, telecommunications, television, and space research and exploration are only a few of the fields involved in space research and exploration. Everywhere you look, there is an internet connection and a computer.

## **4.2 THE NETFLIX EFFECT**

In the summer of 2013, when Netflix debuted all fifteen episodes of a new season of *Arrested Development*, statistics found out that about 10% of viewers watched the whole season under twenty-four hours (Wallenstein). This wasn't the first time Netflix has concurrently debuted an entire season of an original series, causing a national video-on-demand stampede. As *House of Cards* and *Orange Is the New Black* first aired in 2013, large numbers of Netflix viewers viewed back-to-back episodes, consuming a whole season in a matter of days. Although these three shows are from various genres—one is a comedy, the others are adult-themed melodramas—they both have a huge following among the millennial generation, which makes up the bulk of Netflix subscribers<sup>83</sup>.

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<sup>83</sup>Sidneyeve Matrix, *The Netflix Effect: Teens, Binge Watching, and On-Demand Digital Media Trends*. Jeunesse: Young People, Texts, Cultures, Volume 6, Issue 1, Summer 2014, pp. 119-138 (Article)



## **CONCLUSION**

Broadcasting technology is an emerging industry in the television broadcasting media, and as a result, competition is increasing day by day, which has a significant impact on public morality and state security. The authors use Doordarshan, an Indian public broadcaster with a development mandate, as an example of how a public media outlet with a development mandate has reacted to new demands and discuss the implications for development broadcasting in general. Broadcasting uncensored and illegal content is harmful to state security, so it must be regulated and monitored. Though it is legal under Article 19 of the Indian constitution, it must be controlled by effective legislation. There is no particular law that deals with the oversight of foreign-produced programs; instead, the rules and codes prescribed by domestic legislation apply. The quality of such programs is controlled by the Ministry of Information and Broadcasting and the Telecom Regulatory Authority of India. The Cable Television Networks (Regulation) Act of 1995 made the 1994 Rules applicable to all cable networks that are downlinked to or uplinked from India, including international programs.

**Research Title: INTELLECTUAL PROPERTY: THE BASICS***Author – Nidhi Shetty\****ABSTRACT**

This paper assesses the basics of intellectual property in India. It explains the various kinds of intellectual property in the international arena. The prevalence of intellectual property in India can be understood in the background of major international conventions that were introduced impacting the sector of intellectual property across the world and especially in India.

*Keywords: Intellectual Property, trademarks, copyrights, patent, protection*

**INTRODUCTION**

Intellectual property can be described as a broadly categorized set of intangible assets owned and protected legally by an establishment from being implemented without proper permission and consent. Around the end of the 19th century with the rapid growth of industrialization and various new inventions becoming a large part of our daily lives the establishment of intellectual property laws was inevitable. The Paris Convention for the protection of intellectual property in 1883 and the Berne Convention for the protection of Literary and Artistic Works in 1886 shaped the functioning of the International Intellectual Property system. According to the definition by The World Intellectual Property Organization (1967), 'Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce<sup>84</sup>. It stated the following list of subject matters protected under the purview of intellectual property rights: Trademarks, service marks, and commercial names and designations; Inventions in all fields of human endeavor; Protection from unfair competition and "all other rights resulting from intellectual activities in the industrial, literary, scientific and artistic fields "Performances of performing artists, phonograms and broadcasts; Literary, artistic and scientific works and discoveries.

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<sup>84</sup>'What Is Intellectual Property (IP)?' (Wipo.int, 2021) <https://www.wipo.int/about-ip/en/>

The technological landscape is changing in ways that necessitate revision of the intellectual property system. In some cases, higher levels of protection are required (the ease of digital distribution is, for example, challenging territorially-based enforcement mechanisms). In other situations, reductions in existing obligations may be desirable (for instance, the same digital technologies facilitate forms of open innovation that are less dependent on intellectual property protection).<sup>85</sup>

With the establishment of the World Trade Organization (WTO) and the formation of the Trade-Related Intellectual Property System (TRIPS) the significance of intellectual protection has been accepted on the international forum. The TRIPS agreement came into effect on 1<sup>st</sup> January 1995 and established intellectual property law into the multilateral trading system for the very first time and yet remains the most comprehensive multilateral agreement on intellectual property law. It covers the following areas under intellectual property:

- Trademarks including service marks,
- Industrial designs;
- Copyrights;
- Geographical indications including labels of origin;
- Trade secrets, Test data, Confidential information;
- The lay-out designs of assimilated circuits
- Patents including protection of new types of plants.

## **RESEARCH METHODOLOGY**

The facts and data cited in this paper were gathered from primary and secondary sources available on various Indian government websites such as the Department of Promotion for Industry and Internal Trade (<https://ipindia.gov.in/>), Ministry of Commerce and Industry (<https://commerce.gov.in/>), and others. Journal articles and newspaper interviews have also served

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<sup>85</sup>Dreyfuss R, 'The Role Of India, China, Brazil And Other Emerging Economies In Establishing Access Norms For Intellectual Property And Intellectual Property Lawmaking' (New York University School of Law 2009)

as sources of inspiration for me. For a clear understanding of the subject matter, the below-mentioned data is analyzed and presented in an articulated study manner.

## **TYPES OF INTELLECTUAL PROPERTY**

**Patents:** A patent is a property right given to an investor by a government entity, such as the Office of the Controller General of Patents, Designs & Trade Marks. The patent gives the inventor certain exclusive rights to the invention, which may be a concept, a method, an innovation, or a physical machine. Patents for designs are common among technology and software companies.

**Copyrights:** Writers and producers of original content have the exclusive right to use, reproduce, or duplicate their work under Copyright. Musicians and authors of books both have their works copyrighted. A copyright also states that the original authors can grant permission to use the work to others via a licensing agreement.

**Trade Secrets:** A trade secret is a company's operation or activity that isn't publicly known and provides an economic benefit or advantage to the company or trade secret holder. Trade secrets are usually the result of a corporation's research and growth, and they must be carefully protected by the company. A template, pattern, recipe, formula, or proprietary method are only some examples of trade secrets. Trade secrets are used to develop a business model that differentiates the company's service to its consumers while also giving it a competitive advantage.

**Trademarks:** A trademark is a recognizable emblem, expression, or insignia that represents a product and legally distinguishes it from others. A trademark is granted to a company exclusively, implying that the company owns the trademark and that no one else can use or duplicate it. A company's name is sometimes associated with a trademark. The Coca-Cola Company, for example, owns the logo and brand name "Coca Cola" (KO). It enables customers to easily recognize products with attractive features. It motivates businesses to enhance the quality of their

products. It would be difficult to tell the difference between duplicates and high-quality items if there was no identifying mark. The firm's incentive to produce high-quality goods will be reduced because the returns will be the same as for lower-quality products. Trademark rights confer “monopoly power” over that particular distinctive trademark, preventing anyone from using the same or a confusingly similar mark. However, since the aim is to prohibit the use of identical or misleading marks with the intent of confounding the user, this type of monopoly control does not result in any loss of welfare. As a result, trademarks mostly serve as a constructive reward. The economics of trademark security and the intellectual property law that governs such marks may seem to be unrelated. However, there are a few ambiguities:

Umbrella branding (brand extension) is a marketing strategy in which a business uses a trademark that has become well-known as a result of the selling of one product to reach a new market. For instance, Reliance is expanding into retail marketing, the entertainment industry, and restaurants, among other areas. Such brand extension strategies pose valid competition policy concerns because a company is effectively selling its goods using a competitive advantage gained in another industry. Consumers are more likely to try products associated with a well-known brand name than products associated with an unknown brand name of similar quality, making it impossible for a new company to break into the market.

Compulsory trademark licensing - Competition policies that force companies to license their trademarks can result in shoddy work at a premium price. The brand's name will be ruined as a result of this. This will reduce the firm's ability to deliver high-quality products to customers.

**Geographical Indications:** A geographical indication is a name or symbol that features on some items and refers to a particular geographic location or origin (e.g. a town, region, or country). The Geographical Indications of Goods (Registration and Protection) Act, 1999, was enacted by India as a member of the World Trade Organization (WTO), and it went into effect on September 15, 2003. “Indications which classify a good as originating in the territory of a member, or a region or a locality in that territory, where a given quality, reputation, or characteristic of the good is essentially due to its geographic origin,” according to Article 22(1) of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

**Franchises:** A franchise is a license that permits a business, person, or party—referred to as the franchisee—to use a company's name, trademark, proprietary information, and processes.

A franchisee is a small business owner or entrepreneur who owns and runs a store or franchise. The franchisee could sell a product or provide a service under the company's name with the help of the license. The franchisee pays the franchisor a start-up fee and annual licensing fees in exchange.

**Industrial Designs:** Industrial design refers to the shape, configuration, pattern, ornament, or composition of lines or colors applied to any article, whether in two-dimensional, three-dimensional, or both forms, by any industrial process or means, whether manual, mechanical, or chemical, separate or combined, that appeal to and are judged solely by the eye in the finished article; but it does not include an industrial process or means that is applied to any article in two-dimensional, three-dimensional, or both forms, by any industrial process .

**Lay out Designs of Integrated Circuits:** The exclusive right to use the layout design registered under law in relation to the class of products for which it is registered for a specified duration is the property in the case of integrated circuit layout designs. The right may also be licensed to a third party for use or assigned to others.

## **PROTECTING CONFIDENTIAL INFORMATION**

Confidential knowledge and know-how can only be covered if the owner is willing to keep them confidential and takes steps to prevent anyone from using them unlawfully in a breach of trust or contract action. The essence of the mode of acquisition, the nature of the rights conferred, the commercial use of those rights, the compliance of those rights, and the remedies available against infringement of those rights are all identical in property and intellectual property law. Property rights refer only to a person's corporeal property rights, which include material possessions. However, intellectual property is intangible incorporeal property by definition. Intellectual property rights are established by law. The innovation may be for a new product, an improved

version of an existing product, or a new production method for an existing or new product. The laws govern the acquisition of an intellectual property monopoly, the requirements that must be met for acquisition, the length of the monopoly, and the licensing or assignment of these monopoly rights to others. The right of material property is transferred for appropriate consideration when the commercial use of intellectual property is assigned or licensed to industrialists for a lump sum payment or on a royalty basis. In other cases of violation of IPRs, member countries of the WTO which provide for criminal procedures and penalties under the TRIPS Agreement, especially where they are performed wilfully on a commercial scale. In the case of trademark infringement, legal remedies include injunctions, penalties or an account of earnings, and the delivery-up of infringing papers for destruction. Infringement of intellectual property will result in both civil and criminal penalties.

### **SPECIAL CONSIDERATIONS**

Since there are no standard accounting rules for valuing each asset, certain categories of intellectual property cannot be classified as assets on the balance sheet. However, since market investors are aware of the intellectual property's nature, the value of the property appears to be expressed in the stock price.

Organizations or human inventors are the most common creators of intellectual property rights. Companies, colleges, startups, and small businesses are among the organizations. Research institutions, such as public and private research laboratories that conduct research, are another type of stakeholder. All stakeholders contribute to the creation of intellectual property assets in various forms, which require legal protection under various laws. Every innovation, on the other hand, starts with an idea. A concept cannot be copyrighted in its abstract form, according to the statute. To receive a patent, the law explicitly states that the concept must be presented in the form of an invention that can be implemented. The conception process is crucial not only in terms of the idea and innovation, but also in terms of how faithfully it is created. It can be thought of as a safeguard, so that if the USPTO decides to “interfere” with the patent application, the claimant can provide

proof to the court that it was protected because the inventor was meticulous when creating the invention.

Intellectual Property can be either registered or unregistered. One must apply to an authority, such as the Intellectual Property Office in the United Kingdom, to have your rights recognized if you have registered IP. Otherwise, others would be free to manipulate the inventions. Patents, licensed trade names, and registered design rights are all examples of registered intellectual property. Copyright can also be recorded. In case of unregistered intellectual property, you automatically have legal rights to your development if your IP is unregistered. Copyright, unregistered design rights, common law trademarks and database rights, proprietary information, and trade secrets are all types of unregistered IP.

## **INDIA AND INTERNATIONAL CONSIDERATIONS**

Since 1995, India has been a member of the World Trade Organization (WTO). WTO members are required to have some kind of intellectual property security in their national laws. This means that if you do business with India, you'll see some parallels between local IP law and compliance practices and those in place in the United Kingdom.

India is also a signatory to the following Intellectual Property Treaties:

***Berne Convention***– Each member state recognizes the copyright of writers from other member states in the same way as it recognizes the copyright of its own citizens;

***Paris Convention***- According to this agreement someone from a signatory state may apply for a patent or trademark in any other signatory state and will be issued the same compliance rights and status as if they were a national of that country;

***Patent Cooperation Treaty (PCT)*** - It is a central mechanism for receiving a "bundle" of national patent applications from various jurisdictions in one application.

***Madrid Protocol*** – This protocol allows an individual to file a single trade mark application with their national office that will provide security in multiple countries;



However, India is not a signatory to the Hague Agreement, which requires a single filing to defend a design in multiple countries.

## **INTELLECTUAL PROPERTY RIGHTS AND FRAMEWORK IN INDIA**

The Copyright Act, 1957 (the 'Act') came into effect from January 1958. The Act has been amended five times since then, i.e., in 1983, 1984, 1992, 1994, 1999 and 2012. The Copyright (Amendment) Act, 2012 is the most substantial one. The objects behind the amendment to the Copyright Act, 1957 were to bring the Act in conformity with two WIPO internet treaties concluded in 1996 namely, the WIPO Copyright Treaty ("WCT") and WIPO Performances and Phonograms Treaty ("WPPT"); to protect the Music and Film Industry and address its concerns; to address the concerns of the differently abled and to protect the interests of the author of any work; Incidental changes; to remove operational facilities; and enforcement of rights.<sup>86</sup>

The Berne Convention on Copyright is ratified by India. However, registering the copyright can be beneficial in proving ownership in the event of criminal proceedings against infringers. However, in most cases, registration is not required to pursue a copyright infringement claim in India. The Copyright Office accepts registrations in person or through a representative.

Since 2016, India's Ministry of Commerce and Industry has been in charge of copyright policy. The Department of Industrial Property and Promotion now manages all IPRs (DIPP). In India, internet piracy of films, music, games, and apps, as well as unauthorized copying of physical books, is a major issue. Patent law in India is governed by the Patents Act of 1970, the Patent Rules of 2003, and the Patent Amendment Rules of 2016. Utility model patents are not permitted, as they are in the United Kingdom.

In the case of patents, The Patent Registrar is the administrative authority for patents and is part of India's Ministry of Commerce and Industry's Controller General of Patents, Designs and Trademarks. Patents are valid for 20 years from the date of filing, with an annual renewal charge. The 'first to file' principle governs Indian patent law, which means that if two people apply for a patent on the same invention, the first to file will be granted the patent while in the case of designs

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<sup>86</sup>'Copyright Office' (*Copyright.gov.in*, 2021) <https://copyright.gov.in/> [last visited 14 May 2021]

the Designs Act of 2000 and the Designs Rules of 2001 are the laws that regulate designs. Designs are valid for ten years and can be renewed for a further five years.

The Trade Marks Act of 1999 and the Trade Marks Rules of 2002 and 2017 make up India's trade mark regulations. The Controller General of Patents, Designs, and TradeMarks, which is part of the Department of Industrial Policy and Promotion, is in charge of patent regulation. The police now have more authority to enforce trade mark law, including the right to search premises and seize counterfeit products without a warrant. However, these powers are limited by the requirement that the police obtain the opinion of the Trade Mark Registrar on the mark's registration before taking action. This prolongs the process and can result in the removal or sale of counterfeit products.

In India, trade names are also considered a type of trademark, with protection for those who choose to trade under their own surname despite the existence of other trade names. Because of the common practice of "cybersquatting," which involves third parties registering domain names for well-known marks in order to sell them to the original rights holders, it is advisable for rights holders to register their domain names as trademarks in India as soon as possible. Registration takes up to two years. A trademark in India is valid for ten years and can be extended thereafter indefinitely for further ten-year duration.

## **ENFORCEMENT AND REGISTRATION OF INTELLECTUAL PROPERTY IN INDIA**

India has a large talent pool of scientific and technological talent spread over R&D institutions, enterprises, universities and technical institutes. There is a need to tap this fertile knowledge resource and stimulate the creation of IP assets.<sup>87</sup>

One can register mostly all forms of intellectual property (IP) rights in India. Individual registrations are required for patents in India, but one can apply under the terms of the Patent Cooperation Treaty for rights other than industrial designs, which is generally simpler and faster. The registration of trademarks in India can be done, either through the domestic trade mark system

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<sup>87</sup>Ministry of Commerce and Industry, 'National Intellectual Property Rights Policy' (Government of India 2016)

or through the Madrid system. No registration is required for copyright, but it is recommended that copyrights be registered with the appropriate authorities. The Paris Convention's 'priority rights' will aid in the local registration of trademarks, designs, and patents by enabling previously registered rights to be used.

## **CONCLUSION**

In the ever changing and growing world full of new ideas and innovations it is very important to protect these ideas from piracy and misuse. To save the consumers from being deceived and falling in the trap of imitation, stringent intellectual property laws are indispensable. India is a home to a variety of ideas and there is a need to protect and preserve these in order to grow and realize its dream of self-sufficiency. It is imperative to understand the fundamentals of intellectual property in order to safeguard our designs and schemes, which are always at the risk of being copied or stolen, given the digitized world we live in today.

Research Title: **TERMINOLOGIES IN INTELLECTUAL PROPERTY  
RIGHTS AND MEDIA LAW**

*Author - Prabhjeet Kaur\**

**ABSTRACT**

The intellectual property rights (IPR) are intangible in nature and gives exclusive rights to inventor or developer for their relevant invention or creation. This right provides the inventor jurisdiction over the fabrication of his own to explore convenience if used by others. These comforts may appear in the form of regard and identification or monetary or material benefits or more. These rights magnify the contemporary environment by giving recognition and economic benefits to developers or inventors whereas the lack of IPR perception and its unproductive execution may hamper the economic, technical and societal developments of a nation.

The present paper summarizes various terms of IPR such as patents, trademarks, industrial designs, geographic indications, copyright, etc. with their corresponding rules, regulations, their require and bit part especially concern to Indian context. Further, the status of India's participation in IPR related pursuit across the world has been considered in brief. For Media department that is full of inventiveness and innovation, Copyright is a great catalyst. Media platforms including social media use new ideas, images, sounds, scripts and many more techniques and processes of communication professional, commercial and personal cause. These entire configurations that are fabricated by persons and enterprises with meticulous efforts in designing, research & development require a vast aggregate of investment also. These formations, developed after adherence of time and money, require to give dividends to the inventor and to become an inspiration for all.

***Key Words:*** *IPR, Media Law, Copyright, Infringement*

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## **INTRODUCTION**

The implementation of trade and commerce has been swapped tremendously since 1991, the emergence of the period of economic liberalization and globalization. In the age of rivalry and quickly commuting technologies, intellectual property has become a pivotal component for survival in the market, to direct product life cycle, and to include more purchasers from the services and schemes which are being evolved and rendered. IPR gives preservation to the creations of mind. IPR is now the leading term defined legally at international level and in the law books of different countries. 'Intellectual Property Rights (IPR)' is a term used for various legal privileges which attach to certain types of information, ideas, or other abstract in their expressed forms.<sup>88</sup>

IPR acknowledges creations of mind as property and in this perception it enlarges the meaning of property. The term property offers ordinary identification of possession of a person or undertaking over something. Property is carved up into two basic forms- tangible and intangible. Tangible property is available in physical form such as building or house, land, vehicle, cash, jewellery etc. whereas intangible property cannot be noticed in the physical form. With time we have a progress system and law which preserve tangible properties but earlier it was not attainable to preserve the properties accessible in non-physical forms. IPR furnish protection to such properties and grant the custody of a person or undertaking over it. It helps people to accumulate interest out of their attempt to create or develop new intellectual products. They allow creators or inventors of patents, trademarks or copyrighted works to benefit from their own work or investment in a forming.<sup>89</sup>

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

When it comes to the entertainment industry Intellectual property rights, precisely copyrights and trademarks, come into picture. Copyrights can be categorized into lyrics, music, dialogues, and screenplay. But it is dominant to appreciate where intellectual property rights in the entertainment

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<sup>88</sup> Rajkumar S. Adukia, *HANDBOOK ON INTELLECTUAL PROPERTY*, Microsoft Word - 34\_Hb\_on\_IPR\_8108104.doc, [Apr.20, 2021, 12:00 PM], [http://www.caaa.in/Image/34\\_Hb\\_on\\_IPR.pdf](http://www.caaa.in/Image/34_Hb_on_IPR.pdf).

<sup>89</sup>What is intellectual property?, [Apr.20, 2021, 1:00 PM], [https://www.wipo.int/edocs/pubdocs/en/wipo\\_pub\\_450\\_2020.pdf](https://www.wipo.int/edocs/pubdocs/en/wipo_pub_450_2020.pdf).

industry come into picture and where they do not. Intellectual Property Right is a dominant ingredient in the development of media and entertainment provinces. Media is a field of creativity and expressiveness that entertains, informs and educates millions of individuals worldwide. Numerous media egress including Television, Radio, Cinema, Music, Software industries, Online and digital programme are supplemented with lots of innovative schemes, innovative works and formats. Indian Media and Entertainment Industry has come up as one of the leading sectors in our country as its contribution to the Gross Domestic Product is observed, its character in the cultural exchange is acquired and its labour, discomfort and investment in innovation of content is recognized. In the generation of digital media and with expanded literacy and economic progress this market with all media egress is expanding day by day. Technology has put together straightforward the copying and replication of others' works in any arrangement. Act of contravention not only disappoints the primary contributors or authors to fabricate more innovative works but also harms their gross possibilities just because somebody else is stealing their work which results in loss to the owner. Contravention of copyright found in different media in different ways. Thus, it is required for the owner to have absolute rights over the work or material in the Media or entertainment industry. Today, more film producers are filing for intellectual property rights in the media and entertainment industry to prevent their innovations and safeguard others from gain profit through their creations. The Censor Board of India is creating laws to help film producer literary creations. It is laws like these that fend off film-makers and music directors from "stealing" or "imitating" others' original, creative works. Such laws make certain that the original inventors get both respect and monetary benefits when their inventions are used by other film-makers, thus safeguarding their rights.<sup>90</sup>

## **PROTECTION OF INTELLECTUAL PROPERTY IN MEDIA AND BROADCASTING**

The Indian media and broadcasting industry has developed crucially in the previous thirty years. Admittance to the most recent innovation and data has expanded dramatically in modern times,

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<sup>90</sup> Diva Rai, *Copyright and the entertainment industry*, iPleaders Intelligent Legal Solutions,(Apr.20, 2021, 1:30 PM), <https://blog.ipleaders.in/copyright-and-the-entertainment-industry/>.

starting imagination among the public who are currently creating and sharing unique works in critical volumes. Issues in regards to the inventiveness and innovation of substance produced by computerized reasoning are in any event, being wrestled with! This presents the media and broadcasting industry with various difficulties in regards to the insurance of licensed innovation. The enactment and legal executive energize innovativeness, free and reasonable scattering of substance, while continually attempting to forestall abuse. Signal robbery can take actual structure, for example, unapproved accounts of transmissions on video tapes, DVDs or USB sticks, or it very well may be virtual, like the unapproved rearrangement of signs over the air or on the web. Hacking into scrambled compensation TV signals with hardware intended to dodge the safety efforts in set-top boxes is another basic type of theft, while live games communications have been a specific objective for unapproved retransmission on the Internet. Telecasters', remembering those for non-industrial nations, guarantee signal robbery of assorted types is costing them a great many dollars in lost compensation TV memberships as well as promoting incomes, influencing venture choices and seriousness.<sup>91</sup>

## **BASICS OF IPR**

As the name demonstrates Intellectual Property Rights are elite rights over the manifestations of the psyche. A maker can have select rights over his creation for a specific time of time contingent on the sort of Intellectual Property.

### **Sorts of intellectual property rights**

The information on licensed innovation rights is must to an everyday person. An average person all over and each opportunity arrive across the things made, developed, found and delivered by some human psyche. A plan of a house , the material utilized in a house, its decorations like a floor covering, couch, ice chest ,TV, phone, canvases, photos, divider clock the articles of every day utilize like a pens, books, the papers ,tissue papers, shoes and so forth the things that are worn by him like Jeans ,T-shirts , pants, caps ties , shoes and so on ; the things of transport like cycles,

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<sup>91</sup>*Protecting broadcasters in the digital era*, WIPO, [Apr.21, 2021, 12:00 PM], [https://www.wipo.int/wipo\\_magazine/en/2013/02/article\\_0001.html](https://www.wipo.int/wipo_magazine/en/2013/02/article_0001.html).

vehicles, bicycles etc...The list is unending! Practically every one of the things that encompass an average person is one way or another, property scholarly properties of somebody. Someone has invested his time, cash and energy to develop and make them. Thus, these all basic things are licensed innovations of somebody and are ensured by law. These things of scholarly properties can be arranged into two principal classes: -

- a) Mechanical Property rights.
- b) Copyright and related rights.

The mechanical properties rights remember rights for type of licenses, exchange marks, mechanical plans, and geographic sign of source. The copyrights and related rights things incorporate all abstract works which range from articles, news-paper things, books, story books, verse books, drawings, photos, compositions, structural plan, music, dance, films and imaginative exhibitions

- A. **Patent:** -Patent is an award given by the Government to a creator for having made an innovation, which has the property of curiosity, non-self-evident and mechanical utility. Once truly, a patent gives the designer the option to bar others from making, utilizing, selling, bringing in or offering available to be purchased the development for the span of the patent term, which is generally 20 years.
- B. **Trademarks:-**An exchange mark (famously known as brand name) in layman's language is a visual image which might be a word signature, name, gadget, mark, numerals or mix of shadings utilized by one endeavour on merchandise or benefits or different articles of trade to recognize it from other comparable merchandise or administrations starting from an alternate endeavour. The brand name proprietor will have imposing business models over the use of that image. It incorporates Brands, Logos, Service marks, Trade name and so forth.
- C. **Copyrights:-**Copyright is a correction given by the law to makers of abstract, sensational, melodic and creative works and makers of cinematograph movies and sound chronicles. Indeed, it is a heap of rights including, entomb alia, privileges of proliferation, correspondence to people in general, variation also, and interpretation of the work. There could be slight varieties in the piece of the rights contingent upon the work.



D. **Geographical Indications**:-In connection of merchandise, it implies a sign which recognize such products (regardless of whether it is an horticultural merchandise, common products or fabricated products) as starting, or made in the domain of the country, or an area or a region of that region, where guaranteed quality, notoriety, or different attributes of such products is basically credited to its topographical beginning. In the event of fabricated products, one of the exercises both of creation or handling of concerned products happens in an area, district or region, by and large.

E. **Design**:-It manages the security of an exceptional mechanical plan, shape, or elaborate look of an article.<sup>92</sup>

## **BASICS OF MEDIA LAW**

Media Law is a legitimate field that identifies with lawful guidelines of the broadcast communications industry, data innovation, broadcasting, promoting, media outlets, restriction, and web and online administrations among others.

As the prominence of different media have multiplied, the field of media law has gotten more significant. A little more than a century prior, the media would have consisted of print and live exhibitions alone. Today, the media contains the printed word and live entertainers, yet in addition radio, TV, films, computer games, cell phones, and the Internet.<sup>93</sup>

## **THE INDIAN MUSIC INDUSTRY AND ITS COPYRIGHT LAW**

The music business has a complicatedly woven relationship with the film business. Despite the fact that both are in reality reliant, the business standards are organized in such a manner so film ventures at the same time profit by the music business too. There has been widespread abuse and adaptation of Music and artists by filmmakers and music names for quite a long while they have

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<sup>92</sup> Charles F. Carletta, J.D, *INTELLECTUAL PROPERTY BASIC CONCEPTS AND PRINCIPLES*, IP Basics.pdf, [Apr.21, 2021, 1:00 PM], <https://www.stetson.edu/law/conferences/highered/archive/media/IP%20Basics.pdf>.

<sup>93</sup> Rajkumar S. Adukia, *HANDBOOK ON INTELLECTUAL PROPERTY*, Microsoft Word - 34\_Hb\_on\_IPR\_8108104.doc, [Apr.21, 2021, 1:30 PM], [http://www.caaa.in/Image/34\\_Hb\\_on\\_IPR.pdf](http://www.caaa.in/Image/34_Hb_on_IPR.pdf).

been denied the excessive measures of benefits that the Producers or music marks make out of business misuse of the music either by delivering the music independently or consolidation of the tune in the film.

There is an earnest need to focus on the privileges of the music makers over the privileges of the individuals who are just answerable for the misuse of the music. The 2012 correction to the Copyright Act wherein the Supreme Court attesting the Delhi Court's judgment in Indian Performing Rights Society V. Aditya Pandey and others case maintained that the creators of artistic and melodic works consolidated in sound accounts would stay qualified for get an equivalent portion of sovereignties accumulating from the usage of the sound chronicles. The 2012 change, trying to defend the privileges of creators of scholarly, melodic, and imaginative work shaping a piece of a cinematograph film, has been given the un-weighable option to get eminence. Area 18(1), embedded through Amendment Act 2012, gives that the creator of an abstract or melodic work fused in a cinematograph film or sound account will not allocate the option to get sovereignties in any structure other than as a piece of the film or sound chronicle. Even after the all rights that are accessible to the creator of the imaginative, melodic or scholarly work u/s 14 of the Act have been properly appointed out to the music name or the maker, he can't forgo off his entitlement to get eminence instalments once his work has been put to utilize. Copyright enlistment awards lawful status to the inventive work consequently making it a licensed innovation and making and allowing the proprietor legitimate covers.<sup>94</sup>

## **PROTECTION OF CONTENT CURATED ON SOCIAL MEDIA AND THE INTELLECTUAL PROPERTY RIGHTS INVOLVED**

A copyright ensures the proprietor of one sort of licensed innovation (made by an individual yet having no structure or substance). Just particular sorts of works which fall inside the U.S. Copyright Act can be protected. The copyright cycle has gotten genuinely straightforward with customary works like books, plays, films, and theatre. However, copyright is somewhat more troublesome with the approach of the web. For instance, bloggers should know about what they

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<sup>94</sup> Kakoli Nath, *Music Industry and Copyright Law in India*, FINOLOGY BLOG, [Apr.22, 2021, 1:00PM], <https://blog.finology.in/intellectual-property-law/music-industry-copyright-law-in-india>.

compose, to keep away from copyright, brand name, and defamation issues. What's more, before you utilize a picture from the web you should make certain to get a permit or discover public area pictures. This article takes a gander at different online media locales and their copyright approaches.<sup>95</sup>

### **CASE STUDY:*Kunal Kohli Vs. Jyoti Kapoor***

Kunal Kohli, who is well known for making some remarkable movies like "Faana" and "Murmur Tum", hitherto confronted conflict against his film "Phir Se" for which he at last had no other option except for go for an out of the court goal. The film was his dispatch film as an entertainer. It was guaranteed that the native story and content had a place with Jyoti Kapoor, and the tale of the film was duplicated from her screenplay. The scold against Kunal Kohli was of a noteworthy sort. As per Kapoor, in 2010 she had conveyed content for the film mark 'R.S.V.P' and records it with the Film Writers Association. In 2013, she met with chief maker Kunal Kohli who passes on interest in her content. Nonetheless, the two couldn't show up at a simultaneousness following which Kapoor address another creation house which concedes to make a film on her content.

In 2014, Kapoor went over paper articles about Kunal Kohli starting another film 'Phir Se'. From the articles and Kohli's meetings, Kapoor saw that Kohli had utilized her essential content. Kapoor registered a grievance with the Fraud, Waste and Abuse and Indian Motion Pictures Producers Association (IMPPA) and furthermore gave a notification to Kohli. The repercussions of the charge were grave to the point that in November 2014, a Joint Dispute Settlement Committee of IMPPA gave consideration regarding Kohli directing him to stop shooting of the film 'Phir Se' till the procedure was settled.

The story of the film was purportedly taken. Jyoti Kapoor had documented a case saying that "Theatre administrator had messaged her a 90-page bound content shipped off Kunal after which he needed to get it. Nonetheless, dealings didn't work out and before I know it is the undeniable closeness in the content I submitted and the film he declared."

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<sup>95</sup> Discussion Paper: Online Curated Content Platforms: Regulation or not?, Online-Curated-Content-Regulation.pdf, [Apr.22,2021,2:00PM], [http://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/Research\\_Papers/Online-Curated-Content-Regulation.pdf](http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Online-Curated-Content-Regulation.pdf).

The High Court had given a recess stay request on the free of the film after claims evened out by Jyoti Kapoor in regards to likeness in the content of two motion pictures, "Phir Se" and "RSVP", however the last hardship was as far as the picture of some surrender individuals who represent the Indian film calling which is generally known for its component of advancement and ability. The procedure was determined to be an out-of-court settlement after Jyoti closed not to battle with her 'family', as they all have a place with a similar film calling. It is said that even after gaining the notification from IMPPA, Kunal didn't stop the film shooting. Seeing this, Jyoti Kapoor drew closer to the Bombay High Court and recorded an argument against "Bombay Film Company", the assembling places of the film. There was additionally another tendency to the conflict as the respondent expressed that a huge number in the film didn't take after R.S.V.P., like the setting, the treatment of the story and the peak. There were additionally claiming that R.S.V.P. isn't unmistakable or novel, however the court went through her screenplay and inferred that it tends to be suitably named as a novel. The film encroaches the Intellectual Property Rights laws for copyright; in straightforward terms, the content or screenplay was taken or replicated. Horribly after a long legitimate conflict, Kunal neglected to demonstrate that his content was unique. Because of which the Bombay High Court requested that he go for compromise. It was solely after just about two months after author Jyoti Kapoor appended a between time stay on Kunal Kohli's moving toward film 'Phir Se' over literary theft charges that the Bombay High Court gave the green sign to the film to be separated theatres. Be that as it may, misfortunes go with as the film couldn't arrive at the venue screens.<sup>96</sup>

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<sup>96</sup>Roshmila Bhattacharya, KunalKohli to pay Rs 25 lakh as compensation to Jyoti Kapoor, TOI, [Apr.21, 2021, 11:00 AM], <https://timesofindia.indiatimes.com/entertainment/hindi/bollywood/news/kunal-kohli-to-pay-rs-25-lakh-as-compensation-to-jyoti-kapoor/articleshow/48154730.cms?from=mdr>.

## **CONCLUSION**

Copyright gives certain base defenses to the makers over their manifestations. By broadening the legitimate security, innovativeness is remunerated. Inventiveness is considered as the column to the advancement in this manner empowering innovativeness is the need of the socialized society too. Creators, specialists, artists, producers, engineers, PC program designers when get insurance by the law it functions as support to be more imaginative and inventive consequently assurance of copyright is related with inspiration and creates a favourable climate for inventiveness. In spite of the fact that intellectual property law is prohibitive and negative in nature, however with arrangements and exemptions administrators have attempted to create suitable and feasible harmony between interests of copyright holders and the interests of society. Intellectual property law grants to utilize the work with no weight on the off chance that it is utilized for research, revealing recent development or for legal procedures.

Intellectual property law in India is reformist in nature as consistent corrections and corrigendum given by the government make it adequately compelling to take care in evolving socio-social, political and mechanical climates. Our media and media outlets are developing step by step and colossal cash is contributed here. Their privileges need assurance from the endeavours of encroachments. The law part takes care of the discipline if copyrights are abused. Be that as it may, it isn't sufficient and impractical to check such demonstrations at each level. Mindfulness is another arrangement that can diminish the endeavours of such infringement. With a stirred populace we can expect a better climate of inventiveness, progress and advancement in our country.

Research Title: **CONVERGENCE OF BLOCK CHAIN AND ARTIFICIAL INTELLIGENCE**

Author - Senthil V.P\*

**ABSTRACT**

Artificial Intelligence (AI) and blockchain have recently been two of the most popular topics. Artificial intelligence (AI) and blockchain are two of the most trending innovations that would radically alter how we live, function, and communicate.

The author attempts to understand the fundamentals of block chain and artificial intelligence, as well as why these technologies are so common, and what technical revolutions these two technologies will bring together. Like for every coin, there are two sides and this technology has certain drawbacks, flaws, and security concerns, which the author has discussed briefly.

**Key words-** *block chain, technology, technology, artificial intelligence*

**RESEARCH QUESTIONS-**

1. Can the merged block chain and AI transform our daily life enormously?
2. What is the most recent AI block chain application or development?
3. How Artificial Intelligence and Blockchain are regulated in India?

**INTRODUCTION**

Block chain and artificial intelligence (AI) are two of the most widely used technical innovations today. Despite the fact that the two systems' creation entities and implementations are vastly different, researchers have been discussing and investigating the possibility of combining them. Artificial intelligence and block chain are becoming increasingly important in the fourth industrial revolution. Block chain has the potential to transform the economic system's architecture, and AI can be said to be founded on the 4th industrial revolution's fundamental framework. We should assume that the combined strength of these two systems can be used to

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assess the fourth industrial revolution's depth and growth.<sup>97</sup> To fully comprehend the wonders of AI and block chain when combined, we must first define AI and block chain

### **WHAT IS ARTIFICIAL INTELLIGENCE (AI)**<sup>98</sup>

An AI would appear to the average person as a terminator-like figure from all of the movies we've seen, but if you ask an expert, an AI would be described as systems that are programmed to perform intelligent functions that were previously performed by humans. For a system to be an Artificial intelligence (AI) it needs to fulfil these conditions –

- A human-created intellectual being capable of executing functions intelligently without being directly told.
- Capable of logical and humane reasoning and action.

### **HISTORY OF AI**

The history of Artificial Intelligence (AI) dates back to antiquity, when myths, legends, and rumours circulated about master craftsmen endowing artificial beings with intelligence or consciousness. Classical philosophers tried to characterize the mechanism of human thought as the mechanical manipulation of symbols, which sowed the seeds of modern AI. The programmable digital computer, a system built on the abstract essence of mathematical logic, was invented in the 1940s as a result of this work. This computer, as well as the concepts behind it, prompted a group of scientists to seriously consider the possibility of creating an electronic brain.

During the summer of 1956, a workshop on the Dartmouth College campus launched the field of AI science. For decades, those who attended will be at the forefront of AI science. Many of them believed that in less than a century, a computer as intelligent as a person would exist, and they were given millions of dollars to make this vision a reality.<sup>99</sup>

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<sup>97</sup> Prof Ahmed Banafa , *Blockchain and AI: A Perfect Match?*, OpenMind BBVA, [May 16, 2021 3:50 P.M], <https://www.bbvaopenmind.com/en/technology/artificial-intelligence/blockchain-and-ai-a-perfect-match/>

<sup>98</sup> Vaishali Advani - et al., *What is Artificial Intelligence? How Does AI Work, Applications and Future?* GreatLearning Blog: Free Resources what Matters to shape your Career! (2021), [May 16, 2021 4:15 P.M], <https://www.mygreatlearning.com/blog/what-is-artificial-intelligence/>

<sup>99</sup> AITopics, A Brief History of AI, [last visited May 16, 2021], <https://aitopics.org/misc/brief-history>

It became clear later that they had grossly underestimated the project's difficulty. The US and British governments stopped funding undirected artificial intelligence research in 1973, in response to criticism from James Light hill and continuing congressional scrutiny, and the difficult years that followed became known as the "AI winter." Seven years later, a bold plan by the Japanese government encouraged governments and industry to spend billions of dollars in AI, but investors were disillusioned by the late 1980s and withdrew funding once more.<sup>100</sup>

Investment and interest in AI was successfully applied to many problems in academia and industry in the first decades of the twenty-first century, thanks to modern methods, the use of strong computer hardware, and the collection of massive data sets.

## **USES OF AI**

The aim of artificial intelligence is to augment human capabilities and aid us in making complex decisions with far-reaching consequences. Currently, the purpose of Artificial Intelligence is the same as it has been for the last thousand years with all of the technology and techniques we've developed: to minimise human initiative and assist in decision-making.

In order to gain insights into customer behaviour and make data-driven decisions, AI is being used in a number of fields. For example, Google's predictive search algorithm used past usage data to predict what a user will type next in the search bar. Netflix uses previous experience data to recommend what movie a user should watch next, keeping them glued to the web and extending their viewing time. Let's take a look at how artificial intelligence is enhancing people's lives around the board.<sup>101</sup>

## **HEALTHCARE:**

1. **Administration:** Artificial intelligence (AI) programmes are assisting with day-to-day administrative tasks in order to reduce human error and boost productivity. NLP is used to transcribe medical records and to help physicians better understand patient information by structuring it.

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<sup>100</sup> Steven Nuñez, *A brief history of artificial intelligence InfoWorld (2020)*, Info World.com, [May 16, 2021 4:35 P.M], <https://www.infoworld.com/article/3527209/a-brief-history-of-artificial-intelligence.html>

<sup>101</sup> Leeway Hertz (2021), [last visited May 16, 2021], <https://www.leewayhertz.com/ai-applications-across-major-industries/>



2. **Robotic surgery:** Robotic surgeons have a limited margin of error and can operate 24 hours a day, seven days a week without being exhausted. Since they operate with such precision, they are less invasive than traditional treatments, potentially reducing the amount of time patients spend in the hospital recovering.
3. **Vital stats monitoring:** the different levels of a person's vital statistics decide their state of health, which is a continuous process. This data is no longer on tap, waiting to be analysed and converted into actionable insights as devices become more commonplace. Since vital signs have the potential to predict health symptoms even before the patient is conscious, there are many life-saving applications here.

### **E-COMMERCE:**

1. **Better recommendations:** When people are asked about market AI implementations, this is usually the first example they provide, and it's because it's a setting where AI has already shown to be effective. The majority of major e-commerce firms have adopted Artificial Intelligence to make product recommendations that consumers may be interested in, resulting in substantial sales growth.
2. **Improving search results:** The ability of consumers to find what they're looking for is crucial to e-growth. It's all about business. Artificial Intelligence has been fine-tuning search results based on thousands of criteria to ensure that customers get exactly what they want.
3. **Chatbots:** This is a well-known example that reflects on AI chatbots' widespread use in a number of industries. Chatbots are now available to serve customers 24 hours a day, seven days a week, alleviating the shortage caused by a lack of human resources.

### **HUMAN RESOURCES:**

1. **Hiring:** AI will sift through thousands of CVs in seconds using natural language processing to see if they're a good fit. This is beneficial because there would be no individual errors or biases, and the recruiting process would be much faster.
2. **Creating a positive work environment:** AI is being used to analyse employee data and place them in the appropriate units, assign tasks based on their competencies, collect feedback on the workplace, and predict whether or not they will leave.

## **WHAT IS BLOCK CHAIN?**

Blockchain, also known as Distributed Ledger Technology (DLT), is a distributed ledger technology that uses decentralisation and cryptographic hashing to make any digital asset's history unalterable and transparent.

A Google Document is a good starting point for learning about blockchain technology. When we make a document and share it with a group of people, the document is circulated rather than copied or transferred. This results in a decentralised distribution chain in which everybody has access to the document at the same time.<sup>102</sup>

When waiting for changes from another party, no one is shut out, and all changes to the document are registered in real time, making them fully transparent. While blockchain is more complex, the basic concept remains the same.

## **HISTORY OF BLOCK CHAIN**<sup>103</sup>

Despite the fact that blockchain is a relatively modern invention, it has a long and fascinating background. The timeline below summarises some of the most significant and well-known events in the history of blockchain.

"Bitcoin: A Peer-to-Peer Electronic Cash System" was published in 2008 by Satoshi Nakamoto, a pseudonym for an individual or organisation.

Until this point, the principle of block chain has only existed as a concept in the minds of various individuals.

## **HOW DOES BLOCKCHAIN WORK?**<sup>104</sup>

Blocks, nodes, and miners are the three main terms of blockchain.

### **Block**

Every chain is made up of several blocks, each of which has three basic elements:

- The information contained in the block.

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<sup>102</sup> Built in, , <https://builtin.com/blockchain>, [last visited May 16, 2021]

<sup>103</sup> Noor Muhammad Khan et al., *Blockchain Technology History: Ultimate Guide 101 Blockchains* (2020), [May 176, 2021 5:13 P.M], <https://101blockchains.com/history-of-blockchain-timeline/>

<sup>104</sup> See supra note 7.

- A nonce is a 32-bit whole number. When a block is formed, a nonce is generated at random, which then generates a block header hash.
- The hash is a 256-bit number that is associated with the nonce. It has to begin with a large number of zeros (i.e., be extremely small).

A nonce generates the cryptographic hash when the first block of a chain is generated. Unless it is mined, the data in the block is considered signed and forever linked to the nonce and hash.

### **Miners**

To add new blocks to the chain, miners use a technique known as mining.

Each block in a blockchain has its own unique nonce and hash, but it also refers to the previous block's hash, making block mining difficult, particularly on large chains. Miners solve the incredibly difficult math problem of generating an accepted hash with specialised algorithms.

### **Nodes**

Decentralisation is one of the most relevant principles of blockchain technology. The chain cannot be owned by a single machine or person. Instead, the nodes of the chain join together to form a distributed ledger. A node is an electronic computer that holds a copy of the blockchain on hand and keeps the network running.

## **USES OF BLOCK CHAIN**

The most well-known blockchain application is cryptocurrency. Bitcoin, Ethereum, and Litecoin are digital coins (or tokens) that can be used to buy goods and services. Crypto, which is a form of cryptographic currency, can be used to buy anything from lunch to a new house. Unlike traditional currencies, crypto relies on blockchain to function as both a shared ledger and a stronger cryptographic authentication mechanism, ensuring that all online transactions are recorded and secured.

Blockchain has long been associated with bitcoin, but the technology's ease of use and security have led to its adoption in a number of fields, the majority of which can be traced back to the

Ethereum blockchain's development. Programmers may use the Ethereum blockchain to create complex programmes that communicate with one another.<sup>105</sup>

In almost every field, blockchain appears to have an infinite number of applications. The ledger technology can be used to detect financial fraud, securely share patient health records between healthcare providers, and even track intellectual property and music rights in the corporate world.

## **ADVANTAGES AND DISADVANTAGES OF ARTIFICIAL INTELLIGENCE (AI)**<sup>106</sup>

It's impossible to argue that technological advances have made our lives better. Anything from music reviews to map directions, mobile banking, and fraud prevention has been taken on by AI and other applications. The line between success and disaster is razor-thin. AI is no exception to the rule that there are always two sides to a coin. Taking a peek at some of the benefits of artificial intelligence:

1. **Human Error Reduction:** The term "human error" was coined to describe the fact that humans make errors from time to time. Computers, on the other hand, do not make these errors if they are correctly programmed. Artificial intelligence makes decisions based on previously collected data and a selection of algorithms.
2. **Take chances instead of humans:** This is one of artificial intelligence's most significant advantages. By building an AI Robot that can do the risky stuff for us, we can solve many of humanity's risky weaknesses. It can be used effectively in any kind of natural or man-made catastrophe, whether it is going to Mars, defusing a missile, exploring the deepest parts of the oceans, digging for coal and oil.
3. **Available 24x7:** An average person can work for 4–6 hours a day, excluding breaks. Humans are designed in such a way that they can take time off to refresh themselves and prepare for a new day at work, and they also have weekly off days to keep their work and

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<sup>105</sup> Rahul Venugopal, *What is Blockchain: Blockchain Definition, Features and Use Case*, Simplilearn.com (2021), [May 16, 2021 5:45 P.M], <https://www.simplilearn.com/tutorials/blockchain-tutorial/what-is-blockchain>

<sup>106</sup> Sunil Kumar, *Advantages and Disadvantages of Artificial Intelligence Medium* (2019), Towards Data Science [May 16, 2021 6:30 P.M ], <https://towardsdatascience.com/advantages-and-disadvantages-of-artificial-intelligence-182a5ef6588c>

personal lives apart. But, unlike humans, we can use AI to make machines work 24 hours a day, seven days a week with no breaks, and they don't get bored.

4. **Helps with Routine Tasks:** We will be doing a lot of repetitive tasks in our day-to-day jobs, such as sending thank-you emails, double-checking documents for mistakes, and so on. We can use artificial intelligence to productively automate these mundane tasks and even eliminate “boring” tasks from humans' schedules, allowing them to be more innovative.

When you see the positive side of a situation, you should keep in mind that it still has a negative side. Similarly, while AI has some benefits, it still has several drawbacks that we must consider. So, let's take a look at some of the most significant drawbacks of artificial intelligence (AI) –

1. **Risk of unemployment-** As AI advances at an exponential rate, our intuitive brain wonders whether AI will finally be able to replace humans. To be frank, I'm not sure whether AI would raise or decrease unemployment. AI, on the other hand, is supposed to take over the majority of daily activities.
2. **Highly expensive implementation-** AI-based machines, computers, and other devices are extremely expensive to set up due to the complexity of engineering that goes into making them. The exorbitant expense does not stop there; repair and maintenance costs will run into the thousands of dollars.
3. **Lacks creativity-** Artificial intelligence (AI) isn't designed to create art. As a consequence, it should be obvious that AIs lack creativity and imagination. And even though they help you prepare and create something new, they will never be able to compete with the human brain. The person who programmes and orders them limits their capacity to be creative.
4. **Doesn't progress over time-** One of the most impressive aspects of human cognition is the ability of human brain power to increase with age and experience. The same cannot be said of AIs, which are machines that do not age and gradually deteriorate over time.

## **ADVANTAGES AND DISADVANTAGES OF BLOCK CHAIN**<sup>107</sup>

First let's take a look at the advantages of block chain

### **1. Improved processing speed-**

Traditional banking organisations took a long time to process and execute transactions before the blockchain, but transaction speed increased significantly after the blockchain was introduced. The entire banking process used to take three days, but with the introduction of Blockchain, the time has been reduced to minutes, if not seconds.

### **2. Safety and security-**

Blockchain technology is extremely secure since each person who enters the network is given a unique identity that is linked to his account. This ensures that the transactions are made by the account owner. The chain's block encryption makes it more difficult for a hacker to break the chain's traditional setup.

### **3. Traceability-**

The Blockchain format is structured in such a way that any problem can be easily detected and, if necessary, resolved. It also leaves an audit trail that is permanent.

### **4. Process Integrity-**

This programme was designed in such a way that any block or transaction that relates to the chain cannot be changed for security purposes, resulting in an extremely high degree of security.

Now let's take a look the Disadvantages of block chain –

### **1. Uncertainty in terms of regulatory status**

The central government has developed and controls new money in every part of the world. Bitcoin's acceptance by banks and other financial institutions becomes a stumbling block.

### **2. Power Consumption-**

The Blockchain uses a lot of electricity; in one year, Bitcoin miners used more energy than 159 different countries combined. One explanation for this is that whenever a new node is formed, it interacts with every other node at the same time.

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<sup>107</sup> Data Flair , <https://data-flair.training/blogs/advantages-and-disadvantages-of-blockchain/> [last visited May 17, 2021]

### 3. Cost

According to study, the overall cost of a Bitcoin exchange is \$75-\$160, with energy accounting for the majority of this cost. There is little reason to believe that technical advances would be able to resolve this issue. The storage conundrum, on the other hand, could be shielded by the intractable energy problems.

## A JOINT APPROACH TO AI AND BLOCKCHAIN <sup>108</sup>

The block chain and AI both have drawbacks. What if we combine these 2 technologies and make them both work in getting each other better? So, AI can help us implement blockchain technology. Let's take a look on how AI can make blockchain technology efficient in different aspect -

### 1. Long-term viability

Artificial intelligence methodologies have long been used to improve large-scale activities. A blockchain architecture and a microeconomic system, in theory, have a lot in common: separate integrated subsystems, autonomous computations, and so on. Microeconomics is concerned with allocating scarce resources among different uses in order to maximise consumers' utility and producers' benefit. Then, from the perspective of large-scale complex systems, a unified view of AI-backed blockchain system energy consumption optimization can be developed.<sup>109</sup>

### 2. Talent Shortage

Given the existing scarcity of blockchain experts, one option is to use a multi-agent method. The process of writing/reading transaction data from blocks can thus be completely automated by building numerous task-oriented virtual agents. On the other hand, AI-assisted online learning will aid in the development of critical blockchain talent.

### 3. Scalability

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<sup>108</sup> Ahmed Banafa, *Blockchain and AI: A Perfect Match?* OpenMind BBVA (2021), [May 17, 2021 7:20 P.M], <https://www.bbvaopenmind.com/en/technology/artificial-intelligence/blockchain-and-ai-a-perfect-match/>

<sup>109</sup> Philipp Sandner, Jonas Gross & Robert Richter, *CONVERGENCE OF BLOCKCHAIN, IoT, AND AI FRONTIERS* (2020), Frontierin, [May 17, 2021 8 P.M], <https://www.frontiersin.org/articles/10.3389/fbloc.2020.522600/full>

In the sense of blockchain, scalability refers to a system's ability to scale as the number of users grows. In reality, scalability problems can be seen from a variety of perspectives, including latency (the time it takes to confirm a transaction), bootstrap time (the time it takes to validate a transaction), and cost caused per verified transaction. Overall, one or more of these scalability problems hinder the performance of a blockchain framework. Traditional centralised data mining strategies are struggling to deal with this situation since each block contains a certain volume of transaction data. New AI algorithms, on the other hand, will learn from distributed data sources, providing us with a global optimal solution for the goal blockchain structure.

#### **4. Security**

A blockchain system's protection issues include application layer vulnerabilities, data encryption mechanisms, and so on. The intrusion detection system (IDS) and intrusion security system (IPS) are essential components for detecting multiple attacks at the vulnerability applications layer. Swarm intelligence methods have been extensively used in this field to improve the effectiveness of an IDS. Computational intelligence (another main branch of AI) plays an important role in both classical and contemporary cryptographic schemes, including the blockchain data encryption mechanism. Their uses in this respect include encryption and hash functions (artificial neural network). In general, the benefits of using computational intelligence include the development of more stable cyphers and the improvement of the blockchain system's stability by enhanced system attack-defence processes.

#### **5. Hardware**

Specialized device modules are critical to the operation of a blockchain system. Modern computer architecture is based on the von Neumann architecture, which divides a computer into various components such as a central processing unit, internal memory, external storage, input/output (I/O) units, and buses (wires used to connect these components together). In this regard, neutrally motivated neuromorphic hardware illuminated a new path. Hardware architecture based on leaky integrate-and-fire and spike-timing-dependent plasticity spiking neuron models could include several hundred neurons as well as various synaptic step shift memory cells.



## 6. Data Gatekeeper

With the growth of the data ecosystem, intelligent open data has become a top priority. When blockchain-based data services become more widely accessible, both businesses and individuals may need assistance with data accessibility, use, and interpretation. AI's capabilities make it ideal for these types of activities.

## 7. Privacy

As more sensitive data is incorporated in blockchain systems, data protection becomes a major concern for ensuring users' privacy. This is somewhat relevant to a previous security problem in which we demonstrated the critical position of AI. Consider the Bitcoin blockchain scheme, which now uses elliptic curves to generate private and public keys. However, so far no one has succeeded in developing a public-key algorithm that is without flaws. Different intelligent search algorithms can be used together to search the bits of a hidden key to help solve this issue.

## **LATEST DEVELOPMENT AND TECHNOLOGICAL APPLICATION OF AI AND BLOCKCHAIN COMBINED-**

Block chain and artificial intelligence were once all buzzwords, but that is no longer the case. Artificial intelligence (AI) and blockchain have evolved into industry-leading technologies that fuel innovation in almost every sector. Artificial intelligence (AI) refers to robots that are programmed to perform intelligent tasks that previously needed humans. Now let's take a look at some practical applications of AI and block chain combination. From blockchain's ability to map and track food supply chains to AI's penetration into nearly every area of healthcare, each is addressing some of the world's most pressing issues.

They also work well together, designing and organising large databases, enforcing cyber security policies, and finishing tasks in a fraction of the time it takes humans.<sup>110</sup>

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<sup>110</sup> Raghav Bharadwaj, *AI in Blockchain - Current Applications and Trends*, Emerj (2019), [May 18, 2021 8:30 P.M], <https://emerj.com/ai-sector-overviews/ai-in-blockchain/>

### 1. Smart Computing Power-

Running a blockchain and all of its cryptographic data on a server would take a lot of processing power. For example, the hashing algorithms used to mine Bitcoin blocks employ a brute force approach, which involves manually enumerating all possible solution candidates and checking each one until it satisfies the problem's claim. With AI, we'll be able to take the next step and tackle projects in a more intelligent and efficient manner. Consider a machine learning-based algorithm that could digitally polish its skills in real time with the right training data.

### 2. Creating Diverse Data Sets -

Unlike AI-based projects, blockchain technology creates transparent, accessible networks that, in the case of public blockchain networks, can be used by anyone, anywhere in the world. Blockchain networks are being used to facilitate decentralization across a number of industries, despite the fact that blockchain technology is the ledger that underpins cryptocurrencies.

For example, Singularity NET is focused on using blockchain technology to facilitate a wider distribution of data and algorithms, ensuring the development of artificial intelligence and the advent of decentralized A.I.

### 3. Data Protection-

The development of AI is completely dependent on data input — our data. Details are how AI learns about the world and what is going on in it. In essence, data nourishes AI, and AI will be able to evolve over time as a result. Blockchain, on the other hand, is a distributed ledger technology that allows for the cryptographic storage of data. It allows for the development of fully encrypted databases that can only be accessed by parties that have been granted permission. We have a backup scheme for people's sensitive and highly important personal information when blockchains and AI are combined. Medical or financial information is much too personal to entrust to the algorithms of a single organisation. Storing this data on a blockchain, which can be accessed by an AI with authorization and after it has gone through the proper procedures, will provide us with a slew of advantages, including personalised feedback while safely storing our sensitive information.

## **HERE ARE A FEW EXAMPLES OF COMPANIES THAT ARE COMBINING BLOCKCHAIN AND AI WITH ASTONISHING RESULTS.<sup>111</sup>**

### **1. FINALZE**

Finalze is a technology platform that integrates blockchain and machine learning to build civil infrastructure-related applications. The company's technologies in the construction industry simplify and speed up workflow, management, and verification processes, and its software also integrates with wearables to ensure compliance with safety regulations.

### **2. BLACKBOX AI**

Blackbox AI is an artificial intelligence company that develops tools for new inventions. The company's engineers create personalised information infrastructure that powers everything from machine learning to natural language processing to blockchain technology. Aside from developing blockchain technology, the company also offers advisory services focused on how its technologies can help a blockchain reach its full potential.

### **3. CORE SCIENTIFIC**

Core Scientific integrates customised blockchain and artificial intelligence infrastructure into existing enterprise networks, allowing businesses to handle anything from supply chain management to real-time data reporting. The Core Scientific campus is 273 acres in size, with two substations and a hydroelectric dam on-site.

### **4. BEXT360**

Bext360 uses AI and blockchain to increase supply chain efficiency and performance in the chocolate, wood, fish, and mineral sectors. The company's artificial intelligence analyses crops and predicts growth rates, while blockchain ensures that a commodity's supply chain can be monitored from seed to finished product.

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<sup>111</sup> Sam Daley, *Tastier coffee hurricane prediction and fighting the opioid crisis: 31 ways blockchain & AI make a powerful pair*, Built In, [May 18, 2021 9 P.M], <https://builtin.com/artificial-intelligence/blockchain-ai-examples>

## 5. BURSTIQ

BurstIQ created a "Health Wallet" that combines artificial intelligence, blockchain, and big data to manage a patient's data holistically. The Burst IQ wallet gives healthcare professionals access to a patient's medical history and exercise plans. Healthcare professionals can then buy, sell, or exchange patient data for different clinical trials or to learn more about a specific disease.

## 6. VIA

VIA combines blockchain and artificial intelligence to assist some of the world's largest energy companies in better understanding and using data. Its Trusted Analytics Chain (TAC) safeguards an energy company's data, gathers it privately from various locations and companies, and uses smart contracts to give businesses a better overall view of the market.

## **AI AND BLOCKCHAIN REGULATION IN INDIA**

In India, artificial intelligence and block chain are becoming more of a priority of policy growth. It has an important competence to take account of the nation's regional effect, the emerging AI and blockchain industry and aggressive governmental initiatives on the AI block chain combination. While current policy mechanisms are designed to promote the accelerated development of the AI & Block Chain for Economic Growth and Social Good in India and many other jurisdictions, the overall trend remains: the drawbacks and risks of decisions based on data are still retrospectively considered to create and implement AI and block chain applications.

Currently, India lacks a regulatory mechanism that governs the use of AI and blockchain technology. However, the finance minister issued a circular in 2018 announcing - "The Government does not consider Cryptocurrencies "as Legal Tender or Coin" and will take all measures to eliminate the use of these Crypto Assets in Financing "Illegitimate Activities" or a Part of the Payment System the Government will explore the use of Blockchain technology proactively for assuring in Digital Economy."

This declaration suggests that the government was never against blockchain technology, but rather against crypto and anti-blockchain technology abuse.

The government eventually recognised the rise of crypto-regulated countries in 2020 and agreed to revoke the 2018 circular, allowing Indian financial institutions to collaborate with cryptocurrency exchanges. Nirmala Sitharaman, the Finance Minister at the time, said: “From our side, we are very clear that we are not shutting all options. We will allow certain windows for people to do experiments on the blockchain, bitcoins or cryptocurrency.”

It is clear that She recognises that blockchain is a vast field, and that the development of fintech is dependent on such experiments. She also said that India has a competitive edge.

## **CONCLUSION**

Despite its many advantages, blockchain technology is still in its infancy. Blockchain is one of the most revolutionary technologies that has the potential to transform the entire economic system. The convergence of blockchain and artificial intelligence is largely uncharted territory right now. Despite the fact that the merging of the two technologies has received a lot of academic attention, there aren't many programmes devoted to this ground-breaking combination. In this article, we've discussed a variety of blockchain implementation problems. Based on our preliminary review, we have outlined possible solution avenues through the lens of AI. The author hopes that this paper will encourage other researchers from various backgrounds to fully exploit AI's promise in the blockchain domain.

**Research Title: STATUS OF CRYPTOCURRENCY IN INDIA***Author - Shreya Sharma\****ABSTRACT**

In recent times, cryptocurrency has become a common topic of discussion in India. The legal status of cryptocurrency has caused widespread confusion among the general public. As a result, this article primarily focuses on addressing the present legal status of cryptocurrency in India, as well as its past in India. It also actively addresses the main risks and problems associated with cryptocurrencies, and the alternatives that the government is considering in its place or in other words the future of cryptocurrency in India.

**Key words:** Cryptocurrency, RBI, Government of India, regulation, Bill 2021

**INTRODUCTION AND MEANING**

A Cryptocurrency is a virtual or digital currency that is meant to be a medium of exchange. It is very similar to a real-world currency but unlike the real-world currency it does not have any physical embodiment. It uses cryptography to work the way it does. One of the most distinctive features of a cryptocurrency is that they operate independent of a bank or a central authority, which means that they work in a decentralised manner.

It is important to note that there is a limit to how many units can exist. For example, in the case of bitcoin this limit exists at 21 million, no more bitcoin above this limit will be produced. Transfer of funds can easily be verified in cryptocurrency. Cryptocurrency allows new units to be added only after certain types of requirements are met. For example, for Bitcoin only after a block has been added to the block chain, will the miner be rewarded with bitcoins and this is the only way new bitcoins can be generated.

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In the simplest of words cryptocurrency is a form of digital money which means that it can be stored on one's computer or one's phone and can be sent peer to peer with no bank or intermediaries being involved for its regulation among society.

Unlike digital wallet wherein upon transferring money from your wallet to your bank account, some amount of money is lost, there is little to no transaction cost in case of cryptocurrency. A cryptocurrency holder has 24/7 access to the money and there are no limits on purchases and withdrawals, which is not the case with a bank. Cryptocurrency also makes international transactions faster. All of these features enhance the importance of cryptocurrency than our current regular currencies.

## **TYPES OF CRYPTOCURRENCIES**

The four most prevalent types of cryptocurrency or tokens are – platform tokens, security tokens, transactional tokens and utility tokens. Each of these categories has its unique features based on usage. A token can fit into more than one category simultaneously, therefore these groups may not be mutually exclusive.

**Platform tokens** – these use block chain infrastructures to deliver decentralised applications for various uses. They benefit from the block chains that are created upon obtaining heightened security and the capacity to support transactional activity. Platform tokens are the most used tokens in terms of global advertising and market place industries. The use of block chain ensures the safety of the user's assets and prevents any outside attacks. Its disadvantage can be found within the decentralised application for they are not always user friendly and currently have certain limitations as a result of the scalability of block chains. For Example, Ethereum and NEO.

**Security tokens** – security tokens are tokens that represent a stake in some external enterprise or ascent. They act as direct on-chain representations of real-world securities or as on-chain instruments serving a similar purpose for block chain projects and or digital assets. Security tokens are usually chosen for their high transparency. Investors feel more secure using this type of token. Most security tokens are only available for accredited investor and have limited liquidity in the secondary market. For Example, Monero, Z-cash and Dash.

**Transactional tokens** – these are mainly used to transact and are exchanged for goods and services. It is the original cryptocurrency and its creation came as a way to create a digital decentralised currency with all benefits of block chains or fast secure transactions with lower fees and no need for an intermediary for the global transfer of funds. These tokens allow its holder to pay for or sell goods and services in a fast and convenient way. They are meant to operate as digital money. For Example, Bitcoin.

**Utility tokens** – These were not created for direct investment or for conducting transactions but, as the name suggests, to have utility. This utility is usually providing access to the services of the protocol where they exist. Its value is based on the worth of what token gives access to and the value of the platform token as the relationship is synergistic. The platform token acts as the security for the utility token. Users can buy tokens to acquire the services it provides or similar to transaction tokens can buy them to hold onto and wait until its value increases. For Example, ERC 20 standard, which are created on Ethereum to provide access to services of their respective projects with their value being tied to the platform token.

## **BRIEF HISTORY OF CRYPTOCURRENCY IN INDIA**

Cryptocurrency was first invented in the year 2008 by Satoshi Nakamoto. While cryptocurrencies are gaining acceptability and becoming popular globally, the Reserve Bank of India in 2013, had issued a press release that cautioned the public against dealing in digital currency. However, in 2016 when the government demonetized certain currency notes and emphasised upon digital payments, adoption of cryptocurrency picked up. The increase in dealing of this virtual currency forced the RBI to issue another press release in February 2017, expressing its concerns regarding cryptocurrency and reiterating its earlier decision of 2013 press release. Around October and November two PILs were filed in the Hon'ble Supreme Court, one in favour of regulations of cryptocurrencies in India while the other asking the government to ban buying or selling of digital



currencies. As a result, the government of India set up a committee to study the matters relating to the digital currency and recommend actions in relation thereto.<sup>112</sup>

Apart from this, the Reserve Bank of India and the Finance Ministry of India, have issued various other press releases warning the general public about the potential risks involved regarding dealing in virtual currencies. On April 6, 2018, the RBI issued a circular that not only maintained the status quo asking all banks to not deal in virtual currencies but also directed them to stop providing services to individuals or group entities that deal with the same.

In July 2019, the committee that was set up to study digital currency trends, released its report regarding recommendations, which were submitted in 2019 and therefore, advised against the regulation of cryptocurrencies in India and suggested a ban on the same. However, on March 4, 2020, the ban on cryptocurrency was struck down by the Hon'ble Supreme Court. It also termed the circular by RBI dated April 6, 2018 as unconstitutional. The Apex Court clarified that use of cryptocurrency is unregulated in India but not illegal.<sup>113</sup>

## **CURRENT STATUS OF CRYPTOCURRENCY IN INDIA**

As things stand today there is no specific law which either regulates or specifically bans crypto assets in India and hence crypto assets or cryptocurrency are legal in India. However, there are a few things that need to be considered.

In April 2018, as discussed before, the RBI issued a circular to all the banks and financial institutions of the country asking them not to provide services or deal with anybody who was in turn dealing in virtual currencies. The Supreme Court held that the challenged circular is bad in law and illegal. Among other things, the Supreme Court stated that, it is illegal because it violated the fundamental rights guaranteed by the Constitution of India. Interestingly, while the matter was pending in the Supreme Court the government came out with proposed bill in February 2019 to

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<sup>112</sup>AyushVerma, *Cryptocurrencies: Way Forward for India*, IPLEADERS-INTELLIGENT LEGAL SOLUTIONS(2020) [April 28, 2021 7:00 pm] <https://blog.ipleaders.in/cryptocurrencies-way-forward-india/>

<sup>113</sup>*Cryptocurrency in India: The past, present and uncertain future*, THE ECONOMIC TIMES [April 30, 2021, 9:00 pm] <https://economictimes.indiatimes.com/tech/trendspotting/cryptocurrency-in-india-the-past-present-and-uncertain-future/articleshow/81410792.cms?from=mdr>

ban crypto assets in India. However, the government neither introduced the bill in the parliament nor made it a law. This was also noted by the Supreme Court and therefore no action was taken by the government on this bill.

Once the verdict of the Apex Court came out in March 2020, the government in 2021 has come out with a bill called '*The Cryptocurrency and Regulation of Official Digital Currency in India Bill 2021*' (the "**Bill**"). The government has proposed to introduce this Bill in Lok Sabha but so far it has not been done. This however indicates that the government is determined to launch a law on crypto assets. Whether the law ban these assets or regulates is not clear because the contents of the Bill are not available to public. Although it appears that the government perhaps is tilted towards regulating crypto assets as against completely banning it. The Finance Minister of India, Ms. Nirmala Sitharaman in a news discussion mentioned that the government is negotiating laws concerning virtual currency with the RBI and that the government is seeking a calibrated position considering the advancement of technology.<sup>114</sup> She also said that the government proposes not to take any extreme view. The Finance Minister also asserted rather not firmly yet, that the government is looking to delve into the blockchain technology quite proactively for introducing a digital mode of currency and economy<sup>115</sup>.

Hence, in other words it is to say that as of today (i.e., 10<sup>th</sup> March 2021) cryptocurrency is legal in India, but the government does propose to come out with a law soon which will make its status clearer.

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<sup>114</sup>Govt. response to cryptocurrency will be 'calibrated'; open to experiment: Sitharaman, BUSINESS TODAY [April 29, 2021 8:00 am] <https://www.businesstoday.in/current/economy-politics/govt-response-to-cryptocurrency-will-be-calibrated-open-to-experiment-sitharaman/story/433134.html>

<sup>115</sup> Rajeev Kumar, *Investing in Cryptocurrency? Risks, Safety Legal Status, Future in India-All you need to know*, FINANCIAL EXPRESS [April 29, 2021 8:30 am] <https://www.financialexpress.com/money/investing-in-cryptocurrency-risks-safety-legal-status-future-in-india-all-you-need-to-know/2195319/>

## **THREATS AND CHALLENGES AROUND CRYPTOCURRENCY**

There has been a certain level of acknowledgment of cryptocurrency, however the attitude towards it is rather a risk-fearing one. There are several reasons as to why regulatory authorities and central banks discourage investment in such currencies. Some of these reasons are as follows: -

- a) ***Lack of Mandate*** – There is no legislation regulating the activities regarding cryptocurrencies. Section 26 of the RBI Act states that, “*every banknote shall be legal tender at any place in India in payment or on account for the amount expressed therein and shall be guaranteed by the Central Government*”. Therefore, cryptocurrency is neither protected nor guaranteed by the Central Government. So, it is understood that privately issued cryptocurrencies are not the most secured way of exchange and investment.
- b) ***Susceptible to Security Risks*** – The owners of these cryptocurrencies are anonymous because the wallets that are associated with public and private keys to the transaction are not connected or tied with the people in particular because the transactions are done publicly, hence making the owner of the transaction ambiguous and prone to risks related to security.
- c) ***Risk of permanent loss of money*** – The passwords and transaction details are stored online/digitally for all transactions in cases of these virtual currencies. This further puts the owners at risk of malware attacks, such as hacking and loss of password, eventually leading to permanent loss of money. The lost money cannot be reclaimed as there is no concise data of the respective owners of the currencies.
- d) ***Risk of Illegal Activities*** – These transactions are done online and are encrypted, hence they can easily be made subjected to illegal activities, such as terror funding, money laundering, drug trafficking, smuggling etc. The trickiest part of the same is that the owner would be completely unaware as these transactions are totally encrypted.
- e) ***Cost Considerations*** – Validation of a transaction is called mining. It is an extremely complex and heavily technical operation. This requires a network of specialised machines which come with a very high processing capacity. “*These specialised machines are employed to produce unique hashes using complex hashing algorithms and these hashes are tied to every block. With the increasing number of cryptocurrencies, the cost of*

*generating hashes for mining is increasing and the overall phenomenon is still less understood by the majority of the financial institutions and the regulators”<sup>116</sup>.*

## **FUTURE OF CRYPTOCURRENCY**

Observers of this unpredictable virtual currency foresee that the Indian Government will incorporate the regulation of Bitcoin in certain stages. An article on the future of Bitcoin stated that, “*India’s Bitcoin industry welcomes these changes knowing that government acceptance will give the cryptocurrency the backing it needs. In fact, India’s Bitcoin industry has long tried to popularize Bitcoin with strategies that include conducting security checks, requesting identification from users, such as government-verified address documents, Permanent Account Numbers (PAN) or Aadhaar IDs, and sometimes even checking bank details.*”<sup>117</sup>

***India’s plan to launch its own cryptocurrency*** – It is understood that the Indian Government is planning to introduce a Bill completely banning private cryptocurrencies. The aforesaid Bill is considered to be titled as *The Cryptocurrency and Regulation of Official Digital Currency Bill, 2021*. According to a government issued introductory booklet, the main aim of the said Bill is to facilitate the creation of an official digital currency which shall be regulated by the Reserve Bank of India.<sup>118</sup>

Critics of the Bill reasoned that there is no such thing as cryptocurrency being private as the said virtual currencies, by their nature itself are public in nature and are largely decentralized. According to Nischal Shetty, Founder of Bitcoin and cryptocurrency exchange WazirX, introduction of such a Bill completely prohibiting the use of cryptocurrency on the pretext of them being private, is a hurried move.

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<sup>116</sup> FINANCIAL EXPRESS, *supra* note 3, at Pg. 5.

<sup>117</sup> *The Future of Cryptocurrencies in India*, COMPAREREMIT, [April 28, 2021 9:00 pm] <https://www.compareremit.com/money-transfer-guide/the-future-of-cryptocurrencies-in-india/>

<sup>118</sup> Ankita Chakravarti, *RBI plans its own cryptocurrency, proposed crypto law may ban Bitcoins and Dogecoins in India*, INDIA TODAY [April 30, 2021 10:00 am] <https://www.indiatoday.in/technology/news/story/rbi-plans-its-own-cryptocurrency-proposed-crypto-law-may-ban-bitcoins-and-dogecoins-in-india-1764247-2021-01-30>

However, till the time there is no particular legislation regulating cryptocurrencies, the status of the same shall remain ambiguous.

### **CRITICAL APPRAISAL AND WAY FORWARD**

Cryptocurrency is a form of digital money which means that it can be stored on one's computer or one's phone and can be sent peer to peer with no bank or intermediaries being involved for its regulation among society. Although the current status of Cryptocurrency is ambiguous, but there is an inclination towards it being legal solely because it is not illegal. People have increasingly been attracted towards making investments into it. The Indian Government plans on banning the same due to its private and ambiguous nature. There are also various threats associated with it such as lack of data regarding the transactions, risks of using the virtual currency for funding terror activities, drug trafficking, smuggling etc. Since the transactions are totally encrypted, there is no concrete data of users and owners of the virtual currencies. Thus, it becomes difficult to keep a track of transactions, herein creating number of loopholes and loose ends. Even though the status of cryptocurrency is covered with loopholes, roadblocks and disadvantages, initiatives by the Indian Government such as the launch of its own virtual currency that will be regulated by the RBI, will ensure limited ambiguities and may even promote investments into the same.

**EXPERTS CONTRIBUTIONS****THE TECH SAVVY LAWYER – TECHNOLOGY FOR LEGAL PRACTITIONERS***Author – Nitu Subedi\****INTRODUCTION**

Technology is the engine that propels the planet forward. It is the practical application of scientific knowledge, especially in industry. Legal technology (also known as legal tech) refers to the tools and applications that have a significant impact on how we use legal services in our everyday lives. Legal tech has come to be synonymous with technology startups that are transforming the legal profession by providing people with online software that decreases or removes the need to see a lawyer, or by linking people with lawyers more effectively through online marketplaces and lawyer-matching websites. Technology has had a profound influence on the practice of law in recent years. Legal information has fused with machine learning, and when combined with legal books, it has a wide variety of applications in all legal fields -corporate and government alike.

The primary aim of this form of technical innovation has been to improve legal office performance and clerical work productivity. Management can now compare the performance of various divisions and cost centers within an enterprise thanks to the technologies used to track internal capacities.

**IMPACT OF TECHNOLOGIES IN LEGAL FIELD**

To mobilize the desk-oriented, pen-pushing working style of law practice, technology came to the rescue. To work on their trials, lawyers do not need to be glued to libraries, record offices, telephones, or copiers. There has been a move away from traditional desktop working mechanisms, owing to advanced computing, storage devices, the internet, search engine software, smartphones, tablets, and kindles.

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During the past, even the most basic investigative work for a case could be time consuming, involving manual investigations in person, library visits, record references, calls, and meetings, all of which took several days to complete. The situation in the courtrooms was more complex, and the procedure was time-consuming and lengthy. This is one of the big setbacks in the legal system, as well as a branch of the root cause of case backlogs.<sup>119</sup>

But due to the advancement in technologies, the legal profession in all countries quickly shifted and incorporated it into their practices in order to be in sync with modern times and stay linked to the up-to-date information. Work that used to take several days to complete in the past is now done in a matter of few hours in the modern world.

### **IMPORTANCE OF TECHNOLOGY FOR LEGAL PRACTITIONER**

1. **Reduced Chances of Errors:** Since all data is now available online and is managed by Artificial Intelligence (AI), the chances of errors are much lower.
2. **Time Management and Information Processing:** There is no question that technology, when used correctly, is faster and more effective than any human being. This can be very beneficial to any law firm.
3. **Research Made Easy:** Despite the fact that legal professionals have become accustomed to using the Internet and other similar tools for their study, they continue to rely on print items. They print everything, including the new laws and regulations, and use it as a reference when working on each case. This increases the amount of time needed for analysis.
4. **Improved Transparency:** Many attorneys present their clients' problems in a convoluted manner in order to increase their income. They keep quiet about the fact that the issue they're having is as easy as using a DSLR. In addition, law firms are limited to offline outlets. This causes clients to have reservations about any lawyer they meet. However, with the aid of the best legal practice management solutions and other similar deals, this

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<sup>119</sup> Prateek Saxena, WHAT'S THE ROLE OF TECHNOLOGY IN THE LEGAL SECTOR? APPINVENTIV (2020), <https://appinventiv.com/blog/technology-in-legal-sector/#:~:text=Another%20benefit%20of%20introducing%20technology,access%20to%20all%20the%20details>, [Last visited may1, 2021].

condition can be changed. These technical solutions have the ability to create a marketplace where clients can find profiles of the best legal practitioners in the field. They can talk to various lawyers and stay in touch in real time, as well as learn about the basic legal standards. This can also assist them in partnering with the right experts and reaping greater benefits, as well as ensuring confidence and accountability in the process.

5. **Increased Comfort:** The use of legal-based mobile apps and tools improves the efficiency of legal processes. On the one hand, these technological solutions enable ordinary people to communicate with top legal professionals without having to leave their homes.

## **THE BENEFITS OF TECHNOLOGY FOR A LAWYER<sup>120</sup>**

### **1. Document Review**

By automating the document review process in due diligence, modern technology will save lawyers valuable time. The AI tools can easily review the contract, evaluate key clauses like change of ownership, assignment, event of default, termination, and so on, identify threats, and generate reports, similar to what a law firm might create with a team of lawyers.

### **2. Contract and Case management**

Electronic contracts and case management tools have also revolutionized how law firms and in-house legal departments treat paperwork and lawsuits. Companies can now electronically store large contracts and use technology to analyze, organize, monitor, and archive documents in a fraction of the time it would take humans.

### **3. Drafting Documents**

Lawyers can stop reinventing the wheel by using document automation software to generate basic legal documents based on certain inputs that they must provide. Such software will help lawyers concentrate their time on more complicated legal problems while reducing delays, costs, and risks.

### **4. Online Dispute Resolution**

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<sup>120</sup> 5 Ways Technology Is Changing the Legal Profession, Firstlight.Net (2018), <https://www.firstlight.net/5-ways-technology-is-changing-the-legal-profession/> [last visited May 1, 2021].



New dispute resolution mechanisms such as online mediation and online arbitration, also known as online dispute resolution (ODR), are increasingly being used by businesses, especially e-commerce businesses, as the internet's position in communication and business grows.

## **VARIOUS STEPS TO BE TAKEN FOR THE IMPLEMENTATION OF THE LEGAL TECH MARKET<sup>121</sup>**

### **1. Identifying the issues and possibilities**

To get the most out of considering legal software creation, you must first understand why you need it. That is to say, you must have a good understanding of the problems you face with conventional business processes, the opportunities you are losing out on, and how legal innovations can provide the right solutions.

### **2. Selecting the Best Legal Software Development Firm**

Though a wide variety of technology solutions providers have demonstrated the ability to produce fantastic applications for law firms, not all of them are the right choice. This is due to the fact that each legal project necessitates a unique collection of skills and experience.

### **3. Organize an internal launch**

It's time to launch your technology programme now that you've successfully built, tested, and marketed it. A successful internal launch requires planning and teamwork. Keep concentrated on the execution as the launch date approaches, and be prepared to fix any last-minute problems. The project's long-term sustainability can be determined by effective communication and preparation.

### **4. Feel free to make changes**

Embracing creativity necessitates flexibility. It's fine to abandon a method or legal technology tool if metrics show it's not performing as planned. Setting goals and being

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<sup>121</sup> Sergio Esteve De Miguel, How to effectively introduce Legal Technology in your law firm? Legal Document Management Software Blog, <https://blog.biglelegal.com/en/how-to-introduce-legal-technology-law-firm> [last visited May 2, 2021].

open and truthful when things don't go as planned is the only way for the company to succeed and eventually outperform the competition.

## **TECHNOLOGICAL ADVANCEMENT IN INDIAN COURTS**

India has taken a number of steps to simplify processes in the judiciary, with the aim of increasing productivity and reducing time spent on non-productive tasks. Some of the measures include: quick access to online case records and previous judicial pronouncements, voice recognition software to minimize reliance on stenographers, video conferencing to extend the reach of courts, case management systems, e-registry of court, automated preparation of cause-lists, and phasing out physical records by e-filing and e-submission.

The introduction of technology in India has resulted in a paperless world. Filing FIRs online, questioning witnesses, suspects, recording evidence, and so on via video-conferencing saves time, money, and the expense of dealing with hard-core offenders, and allows cases to be resolved quickly. With freely accessible precedents and legal prepositions online, judges are in a stronger position to examine and resolve cases.

The Indian judiciary's digital development allowed litigants to have their questions about pending cases answered online. The full text of all Supreme Court published judgments from 1950 to the present is available online. Litigants and advocates can check the status of their cases using an integrated voice response system (IVRS).

## **LANDMARK JUDGMENTS**

### **The right to use the internet is considered a Fundamental Right.**

The Supreme Court ruled in January, 2020, that, by definition, the freedom to access the Internet is a fundamental right under Article 19 of the Constitution.<sup>122</sup> The Supreme Court stated that it is important to differentiate between the internet as a medium and internet-based freedom of speech.

The court ordered the Jammu and Kashmir administration to restore internet access to government websites, localized/limited e-banking facilities, hospital services, and other critical services as soon as possible. The decision came in response to petitions challenging the region's telecommunications blackout, which occurred after Article 370 was repealed. Non-recognition of technology within the realm of law, according to the Supreme Court, is just a disservice to the unavoidable. In this light, the importance of the internet cannot be overstated, as we are encapsulated inside cyberspace from morning to night, and our most essential activities are facilitated by the use of the internet, as the court observed. The ruling, however, made no mention of a timeline for restoring internet access to other industries or to citizens in the area. The Supreme Court stated that none of the parties involved in the case have argued for the declaration of the right to access the internet as a fundamental right, and therefore it is not voicing any opinion on the subject. "We are restricting ourselves to announcing that under Article 19(1) (a) and 19(1) (g), the right to freedom of speech and expression, as well as the right to carry on any trade or service, are guaranteed."<sup>123</sup>

The Supreme Court ruled in *Anuradha Bhasin vs. Union of India and Others* that while freedom to practice any profession or carry on any trade, service, or occupation over the internet is protected by the Constitution under Article 19(1)(a) and 19(1)(g), restrictions on such fundamental rights should be governed by Article 19(2) and (6) of the Constitution, including the proportionality measure. The internet is an essential tool for trade and commerce, and it plays an important role in

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<sup>122</sup>Prabhash K Dutta, Internet access a fundamental right, Supreme Court makes it official: Article 19 explained India Today (2020), <https://www.indiatoday.in/news-analysis/story/internet-access-fundamental-right-supreme-court-makes-official-article-19-explained-1635662-2020-01-10> [last visited May 4, 2021].

<sup>123</sup> Top 10 crucial judgements by supreme court in the year of the pandemic, BUSINESS INSIDER(2020), <https://www.businessinsider.in/india/news/top-10-crucial-judgments-by-supreme-court-in-the-year-of-the-pandemic/articleshow/79967305.cms> [last visited May 4, 2021].

running an e-commerce company because it offers a virtual forum that is more affordable to a businessman.<sup>124</sup>

The right to freedom of speech and expression is guaranteed under Article 19(1)(a) of the Constitution, according to the Supreme Court in PUCL vs. Union of India. Here, freedom refers to the ability to freely express one's views through speech, writing, publishing, photography, or any other means.

Since the internet allows citizens to express themselves on a global scale, it falls under the purview of Article 19(1)(a) of the Constitution. Article 21 of the Constitution has a broader scope and functions as an unfilled container into which people must pour their substance based on their experiences. There is no distinction between a right granted under Part III of the Constitution and those that have been declared as a result of Apex Court decisions.<sup>125</sup>

In the last decade, there have been more than 391 Internet shutdowns across India, resulting in a rapid decline in technology development. While the government has taken steps to promote the IT sector by launching programmes such as Digital India, which has nine pillars, six of which are directly related to Internet access, suspending the internet for such a long period not only creates a barrier for growth, but it also creates a barrier for innovation.

In one of the landmark cases, the Supreme Court ruled that a statute restricting a person's personal liberty would pass not only the Article 21 test, but also the Article 14 and Article 19 tests. The Golden Triangle is formed by Articles 14, 19, and 21 and cannot be read in isolation since they are mutually inclusive.

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<sup>124</sup> Access to internet not a Fundamental Right, The Statesman (2020), <https://www.thestatesman.com/supplements/law/access-internet-not-fundamental-right-1502893356.html> [last visited May 4, 2021].

<sup>125</sup> Right to Internet and Fundamental Rights, Legal Service India - Law, Lawyers and Legal Resources, <http://www.legalserviceindia.com/legal/article-2967-right-to-internet-and-fundamental-rights.html> [last visited May 4, 2021].

The above-mentioned Articles are extremely important and fundamental to the concept of the rule of law. Since the Golden Triangle provides people with complete protection against any infringement of their rights, shutting down internet services is a violation of those rights.<sup>126</sup>

### **WHY IS IT MORE IMPORTANT THAN EVER TO EMBRACE TECHNOLOGY IN THE LEGAL INDUSTRY?**

COVID-19 has shown the importance of and need for such reforms in the legal industry. Technology is being used more and more by law firms and litigators on a regular basis. Courts have gone interactive, from electronic filing to video conferencing hearings, despite some challenges for judges and attorneys. However, dealing with change and necessity has left little space. Time is unpredictably volatile, as the Coronavirus epidemic has shown, bringing people and both small and large businesses to a halt for an indefinite period of time. In such a case, embracing technology has proven to be critical, as it can make the work process much smoother and simpler. It will also save time and keep you from doing things that aren't important.<sup>127</sup> People have learned to find alternative and long-term alternatives over the available resources as a result of the current situation. In the midst of this crisis, technological adoption has become critical to sustainability and success.

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<sup>126</sup> Access to internet is a fundamental right, says Supreme Court, Hindustan Times (2020), <https://www.hindustantimes.com/india-news/access-to-internet-is-a-fundamental-right-says-supreme-court/story-miomQARGJTy7Cz1WPazENI.html> (last visited May 4, 2021).

<sup>127</sup> Importance of Technology for Lawyers in the Coming Times, Legal kart, <https://www.legalkart.com/legal-blog/importance-of-technology-for-lawyers-in-the-coming-times> (last visited May 1, 2021).

## **CONCLUSION**

Given the growing scale of legal ventures, some of which even include multiple actors and a mountain of paperwork, it's become critical to provide clients with services that are as low-cost, reliable, and competent as possible. As a result, the ongoing advancement of legal technology has become increasingly relevant in recent years. Using configurable systems, business rules engines, and workflows, technology can help courts respond more easily to changes in legislation, culture, and demographics. However, given our country's limited IT infrastructure, technology adoption by attorneys, law firms, and law offices will take some time. As a result, every lawyer should prepare for future change, development, and success by learning to embrace technology and being future-ready. Apex Court ruled that the right to practice any profession or conduct any trade, service, or occupation over the internet is protected by the Constitution and is therefore essential to Article 19 of the Constitution, subject to appropriate limitations. Suspending Internet access not only prevents people from doing business online, but it also prevents them from earning a living, except in an emergency. Article 21 of the Indian Constitution guarantees; no fundamental right can be stripped away.

## **GENERAL DATA PROTECTION REGULATION – AN OVERVIEW**

*Author – P. Sree Ramya\**

### **ABSTRACT**

Data breaches inevitably happen. Information gets lost, stolen or otherwise released into the hands of people who were never intended to see it - and those people often have malicious intent.

The GDPR (General Data Protection Regulation) is legislation for data protection and privacy of the residents of the European Union (EU) that replaced the previously existing Data Protection Directive 95/46/EC in spring 2018 as the primary law regulating on how companies protect EU citizens' personal data.

Under the terms of GDPR, not only do organisations have to ensure that personal data is gathered legally and under strict conditions, but those who collect and manage it are obliged to protect it from misuse and exploitation, as well as to respect the rights of data owners - or face penalties for not doing so.

The GDPR's goal is to impose a uniform data security regulation on all EU members, removing the need for each member state to design their own data protection rules and ensuring that laws are consistent across the EU.

The present paper discusses in brief the overview of GDPR, its provisions, penalties for non-compliance and many such queries which we generally have regarding this data protection regulation.

*Key Words: GDPR, data protection, privacy, personal data, EU, data breach*

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## **WHAT IS GDPR?**

The General Data Protection Regulation (GDPR) (EU) 2016/679 is a legal framework for data protection and privacy of all the individuals in the European Union (EU) and the European Economic Area (EEA). It also addresses the export of personal data outside the EU.

### **Evolution of Regulation**

As technology progressed and the Internet was invented, the EU recognized the need for modern protections. So in 1995 it passed the European Data Protection Directive, establishing minimum data privacy and security standards, upon which each member state based its own implementing law. But already the Internet was morphing into the data Hoover it is today. In 1994, the first banner ad appeared online. In 2000, a majority of financial institutions offered online banking. In 2006, Facebook opened to the public. In 2011, a Google user sued the company for scanning her emails. Two months after that, Europe's data protection authority declared the EU needed "a comprehensive approach on personal data protection" and work began to update the 1995 directive.

The GDPR agreed upon by the European Parliament and Council on 27th April 2016, replaced the Data Protection Directive 95/46/EC in spring 2018 as the primary law regulating on how companies protect EU citizens' personal data.

The GDPR 2016 Regulation consists of 173 recitals and 99 Articles divided into eleven chapters that cover general provisions, principles, data subject rights, data controller or processor duties, transfers of personal data to third countries, supervisory authorities, member state cooperation, remedies, liability or penalties for rights violations, and miscellaneous final provisions.

Companies that fail to achieve GDPR compliance before the deadline of May 25th 2018 were subjected to stiff penalties and fines.



**RELEVANT TIMELINE<sup>128</sup>**

Date	Event
24 <sup>th</sup> October 1995	Directive 95/46/EC was adopted
22 <sup>nd</sup> June 2011	EDPS Opinion on EC Communication 'A comprehensive approach on personal data protection in EU'
25 <sup>th</sup> January 2012	Proposal by the European Commission to strengthen online privacy rights and the digital economy
7 <sup>th</sup> March 2012	EDPS Opinion on EC data protection reform package
23 <sup>rd</sup> March 2012	The Article 29 Working Party adopted an Opinion on the data protection reform proposal.
5 <sup>th</sup> October 2021	The Article 29 Working Party provided further updates on the data protection reform discussions.
12 <sup>th</sup> March 2014	The European Parliament demonstrated strong support for the GDPR by voting in plenary with 621 votes in favour, 10 against and 22 abstentions.
15 <sup>th</sup> June 2015	The Council reached a general approach on the GDPR. The European Data Protection Board replaced the Article 29 Working Party.
27 <sup>th</sup> July 2015	The European Data Protection Supervisor published his recommendations to the European co-legislators negotiating the final

<sup>128</sup> European Data Protection Supervisor, The History of the Data Protection Regulation [https://edps.europa.eu/data-protection/data-protection/legislation/history-general-data-protection-regulation\\_en#](https://edps.europa.eu/data-protection/data-protection/legislation/history-general-data-protection-regulation_en#) [last visited 25 June 2021, 9:00 AM]

	text of the GDPR in the form of drafting suggestions.
15 <sup>th</sup> December 2015	EP, Council and EC reached an agreement on the GDPR
2 <sup>nd</sup> February 2016	The Article 29 Working Party issues an action plan for the implementation of the GDPR
27 <sup>th</sup> April 2016	General Data Protection Regulation (GDPR) replacing Directive 95/46/EC
24 <sup>th</sup> May 2016	The Regulation into force, 20 days after publication in the Official Journal of the EU
10 <sup>th</sup> January 2017	EC proposed two new regulations on privacy and electronic communications and on the data protection rules applicable to EU institutions
6 <sup>th</sup> May 2018	Data Protection Directive for the police and justice sectors into national legislation made applicable
22 <sup>nd</sup> May 2018	Proposal for a Regulation on the protection of personal data in EU institutions
25 <sup>th</sup> May 2018	Corrigendum to Regulation (EU) 2016/679 & The General Data Protection Regulation will apply from this day

## **WHY GDPR?**

Data breaches inevitably happen. Information gets lost, stolen or otherwise released into the hands of people who were never intended to see it - and those people often have malicious intent.

Under the terms of GDPR, not only do organisations have to ensure that personal data is gathered legally and under strict conditions, but those who collect and manage it are obliged to protect it from misuse and exploitation, as well as to respect the rights of data owners - or face penalties for not doing so.

The GDPR's goal is to impose a uniform data security regulation on all EU members, removing the need for each member state to design their own data protection rules and ensuring that laws are consistent across the EU.

In addition to EU members, it is important to note that any company that trades in goods or services to EU, regardless of its location, is subject to the regulation. As a result, GDPR will have an influence on data protection requirements all over the world.

### **WHAT DOES GDPR PROTECT?**

The GDPR generally intends to protect personally identifiable information (PII) which includes any data that can be used to identify a specific individual, such as:

- Basic identity information like the name, address, email addresses;
- Web data related to the location, IP address, cookie data, RFID (Radio Frequency Identification) tags, login credentials, social media posts, digital images, geolocation, biometric and behavioral data;
- Health and genetic data;
- Biometric data;
- Racial or ethnic data;
- Political opinions;
- Sexual orientation

GDPR requirements apply to each member state of the European Union, aiming to create more consistent protection of consumer and personal data across EU nations. Some of the key privacy and data protection requirements of the GDPR include:

- Requiring the consent of subjects for data processing
- Anonymizing collected data to protect privacy
- Providing data breach notifications
- Safely handling the transfer of data across borders
- Requiring certain companies to appoint a data protection officer to oversee GDPR compliance

The GDPR mandates a baseline set of standards for companies that handle EU citizens' data to better safeguard the processing and movement of citizens' personal data.

### **WHICH COMPANIES DOES THE GDPR AFFECT?**

Any company that stores or processes personal information about EU citizens within EU states must comply with the GDPR, even if they do not have a business presence within the EU. Specific criteria for companies required to comply are:

- A presence in an EU country;
- No presence in the EU, but it processes personal data of European residents;
- More than 250 employees;
- Fewer than 250 employees but its data-processing impacts the rights and freedoms of data subjects, is not occasional, or includes certain types of sensitive personal data.

### **KEY REGULATORY POINTS OF THE GDPR:**

#### **➤ Data Protection Principles**

While processing data it should be in accordance with the seven protections and accountability principles outlined in Article 5.1-2:

- 1) Lawfulness, fairness and transparency;
- 2) Purpose limitation (for the legitimate purposes specified explicitly to the data subjects while collecting the data);
- 3) Data minimization (Collect only that data which is needed for the specified purpose);
- 4) Accuracy
- 5) Storage limitation (Should be stored only until the data is needed);
- 6) Integrity and confidentiality (e.g. by using encryption);
- 7) Accountability (to demonstrate GDPR compliance with all of these principles).

**Ways-**

- ✓ Designate data protection responsibilities to a team
- ✓ Maintain detailed documentation of the data collected, used, stored, and the employee responsible for it, etc.
- ✓ Train staff and implement technical and organizational security measures.
- ✓ Have Data Processing Agreement contracts in place with third parties you contract to process data for you.
- ✓ Appoint a Data Protection Officer

➤ **Data security**

**“Appropriate technical and organisational measures”**

Technical measures mean anything from requiring your employees to use two-factor authentication on accounts where personal data are stored to contracting with cloud providers that use end-to-end encryption.

Organizational measures are things like staff trainings, adding a data privacy policy to your employee handbook, or limiting access to personal data to only those employees in your organization who need it.

If you have a data breach, you have 72 hours to tell the data subjects or face penalties. (This notification requirement may be waived if you use technological safeguards, such as encryption, to render data useless to an attacker.)

- **Data protection by design and by default- Article 25**

For example, you’re launching a new app for your company. You have to think about what personal data the app could possibly collect from users, then consider ways to minimize the amount of data and how you will secure it with the latest technology.

- **When you’re allowed to process data- Article 6**

In the case of following instances, it’s legal to process person data:

1. The data subject gave specific, unambiguous consent to process the data. (Like opted in to your marketing email list.)

2. Processing is necessary to execute or to prepare to enter into a contract to which the data subject is a party. (Like checking the background before leasing property to a prospective tenant.)
3. You need to process it to comply with a legal obligation of yours. (Order from the court in your jurisdiction.)
4. You need to process the data to save somebody's life.
5. Processing is necessary to perform a task in the public interest or to carry out some official function.
6. Legitimate interest to process someone's personal data.

- **Consent**

**“Consent from a data subject to process their information”**

1. Consent must be “freely given, specific, informed and unambiguous.”
2. Requests for consent must be “clearly distinguishable from the other matters” and presented in “clear and plain language.”
3. Data subjects can withdraw previously given consent whenever they want, and you have to honor their decision. The company can't simply change the legal basis of the processing to one of the other justifications.
4. Children under 13 can only give consent with permission from their parent.
5. There is a need to keep documentary evidence of consent.

- **Data Protection Officers**

There are three conditions under which a company is required to appoint a DPO:

- ✓ For a public authority other than a court acting in a judicial capacity;
- ✓ For core activities that require you to monitor people systematically and regularly on a large scale. (Like the Google);
- ✓ For core activities that are large-scale processing of special categories of data listed under Article 9 of the GDPR or data relating to criminal convictions and offenses mentioned in Article 10.

## **DATA SUBJECT AND THEIR PRIVACY RIGHTS:**

Data subject are the residents of the European Union (EU) the protection of whose data and privacy is the main concern of GDPR.

Here are the rights of a data subject:

- **Right to be informed;**
- **Right to Access:** The right to find out on how a company acquires their personal data, what kind of data they hold, when and how they use it.
- **Right to rectification;**
- **Right to be forgotten:** (The right to erasure)

This applies when:

- i. The personal data is no longer necessary in relation to the purpose for which it was collected;
  - ii. The individual specifically withdraws consent to processing;
  - iii. Personal data has been unlawfully processed;
  - iv. The data must be erased in order for a controller to comply with legal obligations (like deletion of certain data after a set period of time).
- **Right to restrict processing;**
  - **Right to data portability;**
  - **Right to object;**
  - **Rights in relation to automated decision making and profiling.**

## **Who within a company will be responsible for compliance?**

The GDPR defines several roles that are responsible for ensuring compliance: data controller, data processor and the data protection officer (DPO).

The data controller defines how personal data is processed and the purposes for which it is processed. The controller is also responsible for making sure that outside contractors comply.

Data processors may be the internal groups that maintain and process personal data records or any outsourcing firm that performs all or part of those activities. The GDPR holds processors liable for breaches or non-compliance.

## **Requirements of general data protection regulation**

The following are some of the chapters and articles that have the greatest potential impact on security operations:

- **Articles 17 & 18** – Articles 17 and 18 of the GDPR give data subjects more control over

personal data that is processed automatically. The result is that data subjects may transfer their personal data between service providers more easily (also called the “right to portability”), and they may direct a controller to erase their personal data under certain circumstances (also called the “right to erasure”).

- **Articles 23 & 30** – require companies to implement reasonable data protection measures to protect consumers’ personal data and privacy against loss or exposure.
- **Articles 31 & 32** – Data breach notifications play a large role in the GDPR text. Article 31 specifies requirements for single data breaches: controllers must notify Supervising Authorities (SA)s of a personal data breach within 72 hours of learning of the breach and must provide specific details of the breach such as the nature of it and the approximate number of data subjects affected. Article 32 requires data controllers to notify data subjects as quickly as possible of breaches when the breaches place their rights and freedoms at high risk.
- **Articles 33 & 33a** – require companies to perform Data Protection Impact Assessments to identify risks to consumer data and Data Protection Compliance Reviews to ensure those risks are addressed.
- **Article 35** requires that certain companies appoint data protection officers. Specifically, any company that processes data revealing a subject’s genetic data, health, racial or ethnic origin, religious beliefs, etc. must designate a data protection officer; these officers serve to advise companies about compliance with the regulation and act as a point of contact with SAs. Some companies may be subjected to this aspect of the GDPR simply because they collect personal information about their employees as part of human resources processes.
- **Articles 36 and 37** outline the data protection officer position and its responsibilities in ensuring GDPR compliance as well as reporting to Supervisory Authorities and data subjects.
- **Article 45** – extends data protection requirements to international companies that collect or process EU citizens’ personal data, subjecting them to the same requirements and penalties as EU-based companies.
- **Article 79** – outlines the penalties for GDPR non-compliance, which can be up to 4% of the violating company’s global annual revenue depending on the nature of the violation.

### **Fines and Sanctions:**

As compared to the former Data Protection Directive, the GDPR has increased penalties for non-compliance. The fines are determined based on the circumstances of the case. The Supervisory Authority (SA) holds the investigative and corrective powers. The SA has the discretion to choose whether to impose their corrective powers with or without fines.

Companies that violate GDPR compliance may be fined up to €20 million, or up to 4% of the annual worldwide turnover of the preceding financial year, whichever is greater.



## **Whether A Matter Can be Referred for Arbitration in the Absence of an Arbitration Clause or Agreement?**

*Authors – Mr. Tariq Khan\**  
**Ms. Ruhi Thakkar**

### **INTRODUCTION**

Arbitration has a similar structure to that of litigation but the fundamental difference between arbitration and litigation lies in the fact that the former owes its existence to an arbitration clause or an arbitration agreement. *An arbitration agreement is the written agreement between the parties, to submit their existing, or future disputes or differences, to arbitration, Mahanagar Telephone Nigam Ltd vs Canara Bank*<sup>129</sup>

In certain situations, as a result of inartistic drafting, the process of alternative dispute mechanisms becomes time consuming which defeats its very objection. The situation becomes worse when there is no arbitration clause or agreement in place as *a valid arbitration agreement is the foundation stone on which the entire edifice of the arbitral process is structured*<sup>3</sup> and the nature of dispute is such that it could be better resolved through arbitration.

Therefore, in the research paper, the authors examine the approach, wherein there is no written arbitration clause or agreement in place but there still exists a possibility to refer the matter for arbitration.

### **Intention of the Parties**

In an English case, *Sonact Group Limited v. Premula Spa*,<sup>130</sup> the Court held that an arbitral tribunal had jurisdiction in a dispute which arose from an informal settlement agreement even if that agreement did not contain an arbitration clause. The decision was based on the clear intentions of the parties to settle the dispute through arbitration.

Such a pragmatic and pro arbitration stance has been taken by the Supreme Court and High

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\*This *Case Commentary* is authored by Mr. Tariq Khan, Principal Associate at Advani & Co. and Ms. Ruhi Thakkar, final-year student at Adv. Balasaheb Apte College of Law, Mumbai.

<sup>129</sup> Civil Appeal Nos. 6202-6205 OF 2019 (Arising out of SLP (Civil) No. 13573-13576 of 2014) <sup>3</sup> Supreme note 1

<sup>130</sup> (2018) EWHC 3820 Comm

Courts of India as well. Indian arbitration law is governed by the Arbitration and Conciliation Act, 1996 and Section 7 of the said act defines an arbitration agreement as an agreement by the parties to submit to arbitration all or certain disputes to arbitration which have arisen or which may arise between the parties. An arbitration agreement can be in the form of an arbitration clause in the contract or can be in the form of a separate agreement and it should be in writing. Clause 4 of the said section explains that an arbitration clause can be considered in writing if it is contained in a document signed by the parties, an exchange of letters or correspondence which provide a record of the agreement, an exchange of statement of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

Keeping Section 7(4) in mind, the courts have often reiterated that an arbitration agreement need not be in a particular form. It can be inferred from various documents signed and exchanged by the parties in the course of their contract, thereby making it possible to resort to arbitration even in the absence of an express agreement.

***In Smt. Rukmanibai Gupta v. The Collector, Jabalpur & Ors,***<sup>131</sup> the Apex Court explained that the arbitration clause is not required to be in any particular form. What is important is that the intention of the parties to refer the dispute to arbitration should be clearly ascertained from the terms of the agreement. It is therefore immaterial whether or not the expression arbitration or 'arbitrator' has been used in the agreement. Also, it is not important that agreement of arbitration has to appear in the document containing the other terms of agreement between the parties.

*"Law is well settled that arbitration clause may be incorporated by reference to a specific document which is in existence and whose terms are easily ascertainable."*

The same view has been taken by the court in ***Visa International Ltd vs. Continental Resources USA Ltd***<sup>132</sup>,

*"No party can be allowed to take advantage of inartistic drafting of arbitration clause in any agreement as long as clear intention of parties to go for arbitration in case of any future disputes is evident from the agreement and material on record including surrounding circumstances."*

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<sup>131</sup> (1980) 4 SCC 556

<sup>132</sup> Arbitration Petition No. 16 Of 2007

In *Mahanagar Telephone Nigam Ltd vs Canara Bank*<sup>133</sup>, the Apex Court opined that if it can be implied from the documents on record that the parties were ad idem and have reached an agreement upon all material terms, such contract would then be considered as a binding contract. The meaning of a contract should therefore be interpreted by adopting a common sense and such understanding of the contract must not be hindered by a pedantic and legistic interpretation.

*“A commercial document has to be interpreted in such a manner so as to give effect to the agreement, rather than to invalidate it. An ‘arbitration agreement’ is a commercial document inter parties, and must be interpreted so as to give effect to the intention of the parties, rather than to invalidate it on technicalities.”*

In *Khardah Company Ltd. v. Raymon and Co. (India) Pvt. Ltd*<sup>134</sup> the court while ascertaining the terms of agreement, held:

*“If on a reading of the document as a whole, it can fairly be deduced from the words actually used herein, that the parties had agreed on a particular term, there is nothing in law which prevents them from setting up that term. The terms of a contract can be expressed or implied from what has been expressed. It is in the ultimate analysis, a question of construction of the contract.”*

### **Party Autonomy**

*“Party autonomy has been held to be the brooding and guiding spirit of arbitration.”*

“Party autonomy” is “the freedom of the parties to construct their contractual relationship in the way they see fit”<sup>135</sup>. It is one of the biggest advantages of Arbitration wherein, the parties can decide everything mutually, from the dates of hearing to the procedure to be followed. In the landmark judgement of *Pasl Wind Solutions Private ... vs Ge Power Conversion India Private*<sup>136</sup>, the Supreme Court of India while relying on various judgements and international resources, elucidated the importance of party autonomy in Arbitration Mechanism.

Thus, in *Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc*<sup>137</sup>, the Apex Court held:

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<sup>133</sup> Nos. 6202-6205 Of 2019

<sup>134</sup> 1962 AIR 1810, 1963 SCR (3) 183

<sup>135</sup> The Doctrine Of Party Autonomy In International Commercial Arbitration: Myth Or Reality? Sunday A. Fagbemi\*

<sup>136</sup> Civil Appeal No. 1647 Of 2021

<sup>137</sup> No.7019 Of 2005

*“Party autonomy being the brooding and guiding spirit in arbitration, the parties are free to agree on application of three different laws governing their entire contract — (1) proper law of contract, (2) proper law of arbitration agreement, and (3) proper law of the conduct of arbitration, which is popularly and in legal parlance known as “curial law.”*

The Apex Court in the judgment has also shed light on the findings of authors in Comparative International Commercial Arbitration [Chapter 17: Determination of Applicable Law in Julian D.M. Lew, Loukas A. Mistelis, et al., Comparative International Commercial Arbitration (Kluwer Law International 2003) pp. 411-437 , Para 17-8]

*“All modern arbitration laws recognise party autonomy, that is, parties are free to determine the substantive law or rules applicable to the merits of the dispute to be resolved by arbitration. Party autonomy provides contracting parties with a mechanism of avoiding the application of an unfavourable or inappropriate law to an international dispute. This choice is and should be binding on the Arbitration Tribunal. This is also confirmed in most arbitration rules.”*

Henceforth, in the course of deciding the existence, validity or understanding of the arbitration agreement or the presence of an arbitration clause in the agreement, the terms of the said contract will have to be understood in the way the parties want and intend them to be.

*“In that context, particularly in agreements of arbitration, where party autonomy is the grund norm, how the parties worked out the agreement, is one of the indicators to decipher the intention, apart from the plain or grammatical meaning of the expressions and the use of the expressions at the proper places in the agreement.”* <sup>138</sup>

### **Power of the Court to Refer the Matter for Arbitration**

When two parties enter into a contract, and there is an absence of arbitration clause the parties will have only one resort i.e., the aggrieved party filing a civil suit in the court. In such cases, while hearing the matter there can be a realization by the court that the said matter being a Commercial dispute can be better resolved through alternative dispute mechanisms as litigation is comparatively a long drawn process.

When there is no pre-arbitration clause or an agreement in a matter, the Courts have the power to refer any matter to arbitration under Section 89 of Civil Procedural Code, according to which if it

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<sup>138</sup> Supra 9

appears to the court that there exists an element of settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and after getting parties observations on the same, the matter may be referred for arbitration, conciliation, judicial settlement through Lok Adalat or mediation.

In the landmark judgement of *Kerala State Electricity Board and Anr. Vs. Kurien E. Kathilal and Anr*<sup>139</sup>, the Apex Court has elucidated the requisites for referring a matter for arbitration under Section 89 of CPC.

In this case, the contract did not contain an arbitration clause and therefore a civil suit was filed in the Kerala High Court. While hearing the matter the court opined that as the dispute was commercial in nature, it will take ages to resolve the same through a civil suit. The Court adjudged that it would be better to send the matter for arbitration. The court took the consent of the parties, the parties agreed and the judgment of the High Court referred the matter for arbitration.

The Kerala Electricity Board appealed to the Apex Court contending that there was no arbitration agreement or a clause in writing. The parties gave their oral consent in an open court and there was no agreement in writing clearly stating the intention and consent of the parties to refer the matter to arbitration which is a compulsion under section 7 of the AC Act.

Section 7 therefore makes it compulsory that courts have to take the consent of the parties in writing before referring a matter for arbitration even if they are taking the route of Section 89. Of CPC.

The Apex Court in the Kerala Electricity Board case explained this requisite as follows:

*“35. Insofar reference of the parties to arbitration, oral consent given by the counsel without a written memo of instructions does not fulfill the requirement under Section 89 CPC. Since referring the parties to arbitration has serious consequences of taking them away from the stream of civil courts and subject them to the rigor of arbitration proceedings, in the absence of arbitration agreement, the court can refer them to arbitration only with written consent of parties either by way of joint memo or joint application; more so, when government or statutory body like the appellant-Board is involved.”*

Even if there was no pre-existing arbitration agreement, the parties to the suit can agree for arbitration when the choice of ADR processes is offered to them by the court under section 89 of the Code. Such agreement can be by means of a joint memo or joint application or a joint

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<sup>139</sup> Nos.3164-3165 Of 2017

affidavit before the court, or by record of the agreement by the court in the order sheet signed by the parties. Once there is such an agreement in writing signed by parties, the matter can be referred to arbitration under section 89 of the Code; and on such reference, the provisions of Act will apply to the arbitration.<sup>140</sup>

Section 89 of CPC, gives vast powers to the courts to refer a matter for arbitration without an arbitration clause; however, such reference can only be made if all the parties to the contract mutually agree to resort to arbitration. As mentioned above, such consent should be in writing. The clear settled law thus is that the existence or validity of an arbitration agreement shall be decided by the Court alone.

In *Sukanya Holdings Pvt. Ltd vs. Jayesh H. Pandya & Anr*<sup>141</sup> court opined that "section 89 of CPC would be applicable even in cases where there is no arbitration agreement for referring the dispute to arbitration."

The position was reiterated by this Court in *Jagdish Chander vs. Ramesh Chander*<sup>142</sup>, stating as follows:

*Therefore, where there is no pre-existing arbitration agreement between the parties, the consent of all the parties to the suit will be necessary, for referring the subject matter of the suit to arbitration under section 89 of the Code.*

It is pertinent to keep in mind that though there is a possibility of referring a matter for arbitration without a clause through the inference of the intention of the parties, the Apex court has also refused such reference in cases where the intention of the parties could not be inferred from the exchange of documents.

The Supreme Court in *S.N.Prasad,M/S Hitek..vs. M/S Monnet Finance Ltd.& Ors*<sup>17</sup>, refusing a reference to the existence of an arbitration agreement between the first respondent and the appellant, explained that to in order to constitute an arbitration agreement under section

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<sup>140</sup> Nos.3164-3165 OF 2017

<sup>141</sup> Appeal (civil) 1174 of 2002

<sup>142</sup> Appeal (civil) 4467 of 2002

7(4)(c) of the Act, it is required that a statement of claim containing a specific allegation about the existence of an arbitration agreement by the applicant and 'non-denial' thereof by the party.

*"An 'allegation' is an assertion or declaration about a fact and also refers to the narration of a transaction. If there is no allegation as to the existence of any arbitration agreement between the parties, the question of 'non-denial' does not arise and the matter will not be referred for arbitration because no reference in any manner by the party is inferred."*<sup>143</sup>

### **Novation**

Novation is the act of replacing a legitimate existing contract with a new contract, where the transfer is mutually agreed by both parties concerned.<sup>144</sup>

In *Spml Infra Ltd vs. Ntpc Limited*, the Apex Court opined that, *there is no dispute that in the event a contract is novated by the parties entering into another contract, the rights and obligations of the parties would be covered by the new contract and not the one that has been novated.*

Therefore, when initially in the main contract there is no arbitration agreement, but if it is added in the subsequent contract or probably an addendum there is a possibility that entering into an addendum on a later date an agreeing for arbitration will result in the arbitration clause to prevail and it will therefore be governing the previous contracts also.

*"Once it is established that the parties had entered into an arbitration agreement, the Courts must lean in favour of relegating the parties to that forum. Once it is established that the parties had entered into an Arbitration Agreement, the question whether the contract (including the arbitration clause) stood discharged by accord and satisfaction must be considered with the perspective whether the same is established without any detailed adjudicatory exercise."*<sup>145</sup>

### **Third Parties**

An arbitration agreement exists between two or more parties to that agreement. But, there are certain situations as indicated from the evolving body of academic literature and adjudicatory

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<sup>143</sup> CIVIL APPEAL No. 9224 OF 2010

<sup>144</sup> <https://cleartax.in/g/terms/novation>

<sup>145</sup> Civil Appeal No. 9224 Of 2010

trends which indicate that an arbitration agreement between two or more parties can function so as to bind other parties or non-signatories to the agreement as explained in ***Cheran Properties Limited vs Kasturi And Sons Limited***.<sup>146</sup>

While explaining the above mentioned interpretation, the court relied on the theories formulated by various international jurists;

*“Arbitration is usually limited to parties who have consented to the process, either by agreeing in their contract to refer any disputes arising in the future between them to arbitration or by submitting to arbitration when a dispute arises. A party who has not so consented, often referred to as a third party or a non-signatory to the arbitration agreement, is usually excluded from the arbitration. There are however some occasions when such a third party may be bound by the agreement to arbitrate. For example, ..., assignees and representatives may become a party to the arbitration agreement in place of the original signatory on the basis that they are successors to that party’s interest and claim “through or under” the original party.*

*The third party can then be compelled to arbitrate any dispute that arises.”*

Modern business transactions often set off multiple layers and agreements which also involve transactions within a group of companies. The intention to bind both signatory and non-signatory entities to the agreement may be reflected from the circumstances in which the agreement was entered into.

*“The effort is to find the true essence of the business arrangement and to unravel from a layered structure of commercial arrangements, an intent to bind someone who is not formally a signatory but has assumed the obligation to be bound by the actions of a signatory. “<sup>147</sup>*

***In Chloro Controls India (P) Ltd. Vs. Severn Trent Water Purification Inc***<sup>148</sup>, the Apex court elucidated on arbitration between a signatory and a third party stating that Arbitration thus could be possible between a signatory and a third party, but the onus lies on that party to show that in fact and in law, it is claiming ‘through’ or ‘under; the signatory party as our Section 45 of the 1996 Act.

The same view was reiterated by the Apex Court in ***Ameet Lalchand Shah vs. Rishabh***

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<sup>146</sup> CIVIL APPEAL NOS 10025-10026 OF 2017

<sup>147</sup> CIVIL APPEAL NOS 10025-10026 OF 2017

<sup>148</sup> CIVIL APPEAL NO. 7134 OF 2012



*Enterprises*<sup>149</sup>, wherein the court opined that,

*“If it can prima facie be shown that parties are ad idem, even though the other party may not have signed a formal contract, it cannot absolve him from the liability under the agreement.”*

## **CONCLUSION**

Recently, the trends have changed. India is moving towards arbitration and a pro arbitration stance is being adopted as is reflected from the recent judgments. From emphasizing the importance of party autonomy in arbitration as the “*the grund norm*” in *Pasl Wind Solutions Private ... vs. Ge Power Conversion India Private*<sup>150</sup> to giving utmost importance to ascertain the intention of the parties in *Visa International Ltd vs. Continental Resources USA Ltd*<sup>151</sup>, and upholding the pertinence of mutual consent in *Jagdish Chander vs. Ramesh Chander*<sup>152</sup>, the judiciary has time and again adopted a pragmatic approach towards arbitration in India.

The Legislature has also taken significant steps towards this direction by reducing the scope of interference in arbitration proceedings as is evident from what was opined in *N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd.*<sup>153</sup> as, “*The legislative policy of minimal interference is enshrined in Section 5, which by a non-obstante clause prohibits judicial intervention except as specified in Part I of the Arbitration Act.*”

The legislature as well as judiciary are taking excellent steps but in these cases where there is no arbitration clause, parties have to be very careful and it is always a better resort to get a proper arbitration clause drafted if the intention of the parties to refer the matter to arbitration is clear. During the process of drafting and resorting to arbitration it is pertinent that the observations of the *Kerala State Electricity Board and Anr. Vs. Kurien E. Kathilal and Anr*<sup>154</sup>, about mutual consent of the parties to refer the matter to arbitration ought to be in

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<sup>149</sup> CIVIL APPEAL NO. 4690 OF 2018  
(Arising out of SLP(C) No.16789 of 2017)

<sup>150</sup> CIVIL APPEAL NO. 1647 OF 2021

<sup>151</sup> ARBITRATION PETITION NO. 16 OF 2007

<sup>152</sup> Appeal (civil) 4467 of 2002

<sup>153</sup> CIVIL APPEAL NOS. 3802 - 3803 / 2020

<sup>154</sup> Civil Appeal Nos.3164-3165 Of 2017

writing, to not be ignored. As held by the Apex Court in *Mahanagar Telephone Nigam Ltd vs. Canara Bank*<sup>155</sup>, *A valid arbitration agreement constitutes the heart of an arbitration.*

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<sup>155</sup> Civil Appeal Nos. 6202-6205 OF 2019 (Arising out of SLP (Civil) No. 13573-13576 of 2014)