

R E P O R T O F W O R K S H O P O N I P R

On **07/09/2016** our College conducted a workshop for the students of Commerce on **Intellectual Property Rights** and was pleased to invite **Prof. Advocate Sanjay Murkute** to share the objectives, provisions and rights involved in Intellectual Property. On the aforesaid date he delivered a lecture to the students of T.Y.B.Com in respect of the abovesaid subject matter specially on the objectives and laws of Copyright which is as follows;

Intellectual property (or "IP") refers to the patents, copyrights and other intangible assets in India. **IP** is a category of property that includes intangible creations of the human intellect, and primarily encompasses copyrights, patents, and trademarks. It also includes other types of rights, such as trade secrets, publicity rights, moral rights, and rights against unfair competition. Artistic works like music and literature, as well as some discoveries, inventions, words, phrases, symbols, and designs can all be protected as intellectual property. Intellectual property law has evolved over centuries. It was not until the 19th century that the term "intellectual property" began to be used, and not until the late 20th century that it became commonplace in the majority of the world.

Indian government approved its first National Intellectual Property Rights Policy in May 2016 to ensure compliance to the Doha Development Round and TRIPS Agreement, it aims at creating a "Creative India; Innovative India".

The main purpose of intellectual property law is to encourage the creation of a wide variety of intellectual goods. To achieve this, the law gives people and businesses property rights to the information and intellectual goods they create, usually for a limited period of time. Because they can then profit from them, this gives economic incentive for their creation.

The intangible nature of intellectual property presents difficulties when compared with traditional property like land or goods. Unlike traditional property, intellectual property is indivisible – an unlimited number of people can "consume" an intellectual good without it being depleted. Additionally, investments in intellectual goods suffer from problems of appropriation – while a landowner can surround their land with a robust fence and hire armed guards to protect it, a producer of information or an intellectual good can usually do very little to stop their first buyer from replicating it and selling it at a lower price. Balancing rights so that they are strong enough to encourage the creation of information and intellectual goods but not so strong that they prevent their wide use is the primary focus of modern intellectual property law.

Copyright:-

A copyright gives the creator of an original work exclusive rights to it, usually for a limited time. Copyright may apply to a wide range of creative,

intellectual, or artistic forms, or "works". Copyright does not cover ideas and information themselves, only the form or manner in which they are expressed.

The "Copyright Act, 1957" (as amended by the Copyright Amendment Act 2012) governs the subject of copyright law in India. The history of copyright law in India can be traced back to its colonial era under the British Empire. The Copyright Act, 1957 was the first post-independence copyright legislation in India and the law has been amended six times since 1957. The most recent amendment was in the year 2012, through the Copyright (Amendment) Act 2012

The Copyright Act 1957 (as amended by the Copyright Amendment Act 2012) governs the subject of copyright law in India. The Act is applicable from 21 January 1958. The history of copyright law in India can be traced back to its colonial era under the British Empire. The Copyright Act 1957 was the first post-independence copyright legislation in India and the law has been amended six times since 1957. The most recent amendment was in the year 2012, through the Copyright (Amendment) Act 2012. India is a member of most of the important international conventions governing the area of copyright law, including the Berne Convention of 1886 (as modified at Paris in 1971), the Universal Copyright Convention of 1951, the Rome Convention of 1961 and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). But India is not a member of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

Copyright is a bundle of rights given by the law to the creators of literary, dramatic, musical and artistic works and the producers of cinematograph films and sound recordings. The rights provided under Copyright law include the rights of reproduction of the work, communication of the work to the public, adaptation of the work and translation of the work. The scope and duration of protection provided under copyright law varies with the nature of the protected work.

In a 2016 copyright lawsuit, the Delhi High Court states that copyright is "not an inevitable, divine, or natural right that confers on authors the absolute ownership of their creations. It is designed rather to stimulate activity and progress in the arts for the intellectual enrichment of the public. Copyright is intended to increase and not to impede the harvest of knowledge. It is intended to motivate the creative activity of authors and inventors in order to benefit the public.

Exceptions to Copyright infringement:-

The Copyright Act 1957 exempts certain acts from the ambit of copyright infringement. While many people tend to use the term fair use to denote copyright exceptions in India, it is a factually wrong usage. While the US and certain other countries follow the broad fair use exception, India follows a different approach towards copyright exceptions. India follows a hybrid approach that allows-

(i) fair dealing with any copyrighted work for certain specifically mentioned purposes and

(ii) certain specific activities enumerated in the statute.

While the fair use approach followed in the US can be applied for any kind of uses, the fair dealing approach followed in India is clearly limited towards the purposes of:-

(i) private or personal use, including research, and education,

(ii) criticism or review,

(iii) reporting of current events and current affairs, including the reporting of a lecture delivered in public.

While the term fair dealing has not been defined anywhere in the Copyright Act 1957, the concept of 'fair dealing' has been discussed in different judgments, including the decision of the Supreme Court of India in Academy of General Education v. B. Malini Mallya (2009) and the decision of the High Court of Kerala in Civic Chandran v. Ammini Amma.^[28]

In September 2016, the Delhi High Court ruled in Delhi University's Rameshwari Photocopy Service shop case, which sold photocopies of chapters from academic textbooks was not infringing on their publisher's copyright, arguing that the use of copyright to "stimulate activity and progress in the arts for the intellectual enrichment of the public" outweighed its use by the publishers to maintain commercial control of their property. However, in December 2016, the ruling was reversed and taken back to court, citing that there were "triable issues" in the case.

Remedies:-

The Copyright Act 1957 provides three kinds of remedies - administrative remedies, civil remedies and criminal remedies. The administrative remedies provided under the statute include detention of the infringing goods by the customs authorities. The civil remedies are provided under Chapter XII of the Copyright Act 1957 and the remedies provided include injunctions, damages and account of profits. The criminal remedies are provided under Chapter XIII of the statute and the remedies provided against copyright infringement include imprisonment (up to 3 years) along with a fine (up to 200,000 Rupees).

Jurisdiction [Place of Suing] Under Copyright Act, 1957 - Recently in 2015 the Jurisdiction law regarding Copyright Violation has gone a drastic change by the following judgement of the Hon'ble Supreme Court - Jagdish Singh Khehar and Arun Mishra, JJ. - Civil Appeal Nos. 10643 - 10644 of 2010 with 4912 of 2015 [arising out of SLP [c] No. 8253 of 2013], Dated 01/07/2015 - Indian Performing Rights Society Ltd. Vs. Sanjay Dalia and another - - Copyright Act [14 of 1957], Section 62 - Trade Marks Act [47 of 1999], Section 134 - Civil Procedure Code Section 20 - Suit for infringement of Copyright of Trade Mark - Place of suing - Place where plaintiff resides or carries on business or works for

gain – Is an additional forum made available to plaintiff by Section 62 of 1957 Act and Section 134 of 1999 Act – Applicability of Section 20 of Civil Procedure Code is not completely ousted thereby – If cause of action has arisen wholly or in part in place where plaintiff resides or is doing business suit has to be filed at such place – Plaintiff cannot drag defendant to far off place under guise that he carries business there also. --- Interpretation of statutes – Mischief Rule – Construction that suppresses even counter mischief has to be adopted. – Interpretation of statutes – words notwithstanding anything contained in any other law – do not always completely exclude applicability of other law. ---- Words and phrases – "Notwithstanding anything contained --- being in force" – Do not necessarily exclude applicability of other law.

Benefits:- The crux of the intellectual property rights: to give credit where, and when, it is due. With the emergence of the knowledge society and virtual products, the issue of safeguarding the investment in the information-based products has certainly gained high importance. We, as consumers or producers in the information chain, cannot afford to be ignorant about the intellectual property rights!! Thus protection of Intellectual Property Rights (or IPR) has definite (tangible) benefits, such as to propagate innovative culture, profitability, market leadership and helps creation of wealth for the individual and the nation. India falling one among the developing countries have miles to go, as she has a vulnerable collection of traditional, oral, folklore, customary, agricultural, traditional medicinal like Ayurveda etc. and besides not having much wealth and infrastructure, lack of awareness of IPRs among all stratas of people, is a major set back to a developing country like India