

# INTELLECTUAL PROPERTY RIGHTS

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**What is property?** Property commonly designates the sum total of physical objects or other material values available at the disposal of human being to satisfy his material needs and desires. So, in general property is in physical form i.e., physical objects which are tangible. For example: Land, Goods etc. But, there is also another form of property, which does not exist in physical form. An idea, a design, an invention, etc., that has been created or invented by a human being by using his mental faculty. The Law treats such property as intellectual property which emanates or arises from the mind of human being by way of reasoning, research, logical thinking, which belongs to him and no one can infringe over this property. Infringement relating to such property will be done by copying or using the same in another form or method without the consent or license of the author of such property. Intellectual properties are relating to patents, trademarks, industrial design, artistic, musical and literary works, etc.,

It is the duty of State to protect such property in the same manner as protection is given to physical property. If any person is deprived of his physical property dishonestly or illegally by another person, he is dealt with the offences relating to property under IPC or other laws. Similarly, it is the duty of the State to protect interests of authors of intellectual properties. The owner of the intellectual property should be able to reap all the benefits arising from his intellectual creativity. In order to protect these rights, the State has enacted various laws viz., Copy Right Act, 1957, Patents Act, 1970, Designs Act, 2000, Trademarks Act, 1999 etc.,

**Copy Right Act, 1957:-** Copy right is a bundle of rights given to the author of an original literary, artistic or musical work. The right to the author is protected for a period of 60 years after his death. Registration of the copy right is not compulsory. If, registered, it is more secure. Even, if it is not registered, the author is secure, provided he says that his rights are reserved.

**Patents Act, 1970:-** This act grants patents to the inventor for his invention in respect of technological improvement which is novel, useful and capable of industrial application. Monopoly rights are given to the inventor. This protection is for a limited period of 20 years from the date of submitting application for registration and for pharmaceutical inventions for a period of 5 years only.

**The Designs Act, 2000:-** The law relating to designs protects the skill and labour in the ornamental features of an industrial product. Registration is compulsory. Design protection is available for a period of 15 years from the date of registration. Designs have nothing to do with the quality of the product. It is only the shape etc., which are useful for handling, consuming, packing etc.,

**Trademark Act, 1999:-** This Act governs the statutory protection for trade marks in the country. This act deals exclusively with trademarks, covering all aspects, which represent good will and identity of the product of particular manufacturer to distinguish it from the competitors. Registered or unregistered, both are protected. Unregistered trade mark is protected by passing-off action as it is a common law remedy. But in India, a statutory provision is made in the Act itself. Right is

perpetual as long as the trademark is in use. Trade marks are represented by trade name, trade logos, service marks, etc.

*Penalties and Procedure relating to Intellectual Property Rights under different laws:*

The aggrieved person is entitled to get remedies such as damages, injunction for restraining the violator, seizure of goods etc. In addition to this, the infringer is liable to be punished for the violation of the intellectual property right under criminal laws.

### **Copy Right Act, 1957**

**Section. 63:** Any person who knowingly infringes or abets the infringement of

- a) the Copy right in a work, or
- b) any other right conferred by this Act. (except Sec.53-A), shall be punished by not less than 06 months and upto 3 years and fine not less than of Rs. 50,000/- which can extend up to Rs. 2,00,000/-

**Section.63.A:** Enhanced penalty on second and subsequent conviction of not less than one year and up to 3 years and fine not less than Rs. 1,00,000 and upto 2,00,000.

**Section.63.B:** Any person who knowingly makes use on a computer of an infringing copy of a computer programme shall be punishable for not less than 07 days - which can extend upto 3 years, and fine of not less than Rs. 50,000/- and which can go upto Rs. 2,00,000/- If computer programme is not used for any commercial gain, lesser punishment of fine of Rs.50,000/- is provided for.

**Section.64:** Power of police. Any police officer not below the rank of Sub-inspector may investigate into the offences of infringement of copyrights (Secs.63, 63.A and 63.B). The police can act not only when the offence has been committed but also if there is likelihood of commission of the offence.

*Other offences under this Act:*

**Section.65:** Possession of plates for purpose of making infringing copies.

**Section.66:** Disposal of infringing copies or plates for purposes of making infringing copies.

**Section.67:** Penalty for making false entries in register etc., for producing or tendering data entries.

**Section.68:** Penalty for making false statements for the purpose of deceiving or influencing any authorization.

*New Offence under Copy Right Act, 1957:*

### **Sec.52.A:**

1. No person shall publish sound recording in respect of any work unless the following particulars are displayed on the sound recording and on any container.

- a) the name and address of the person who has made the sound recording,
- b) the name and address of the owner of the copy right in such works and
- c) the year of its first publication.

2. No person shall publish a video film unless the following particulars are displayed in the video film when exhibited and on the video cassette or other container thereof, namely:-

- a) If it is cinematograph film, certified for exhibition under the provisions of Cinematograph Act, 1952 (Film Board issues a Certification u/s.5-A Cinematograph Act, 1952)
- b) Name and address of the person who has made video film with a declaration relating to purchase of copy rights or permission for making video film from the owner of the copy right
- c) The name and address of the owner of the Copy right in such work.

**Section.68.A Penal provision:**

Whoever contravenes the Sec.52.A shall be punishable with imprisonment which may extend to 3 years imprisonment and fine. It is a cognizable offence as per the schedule under Cr.P.C.

**Section.70:** Any offence under this Act shall be tried by the Judicial Magistrate of the First Class or Metropolitan Magistrate.

**PATENT ACT, 1970**

**Section 118:**

If any person who has applied for patents and the controller has issued any directions to that applicant not to disclose about that invention as it is useful for defence purposes U/s. 35 of this Act, fails to comply, with any such direction shall be punishable with a imprisonment for a term which may extent to two years, or with fine, or with both.

**Sec. 119:** Falsification in Register, etc:- If any person makes, or causes to be made a false entry in any register kept under this Act, shall be punishable with imprisonment for a term which may extent to two years, or with fine or with both.

**Sec. 120:** Unauthorised claim of patent rights If any person falsely represents that any article sold by him is patented in India or is the subject of an application for patent in India he shall be punishable with fine which may extend to five hundred rupees.

**Sec.121:** Wrongful use of words "patent office": Punishment: which may extent to six months or with fine, or with both.

**Other Penal Provisions:-**

**Sec. 122:** Deals with refusal or failure to supply information.

**Sec. 122:** Deals with offences by companies.

**Trade Marks Act, 1999:**

1. A person is said to falsify a Trade Mark when:-

a. Without the assent of the proprietor of the Trade Mark he makes that trade mark or a deceptively similar mark;

or

b. Falsifies any genuine Trade Mark whether by alteration, addition, effacement or otherwise.

**2. What is False Trade Mark ?**

If any trade mark is falsified or falsely applied to goods or services it is called as "False Trade Mark". False Trade Mark is an offence under this Act.

3. In this Act the burden of proving assent of the proprietor shall lie on the accused

**Sec.103:** Punishment for applying false Trade Mark, Trade descriptions, etc.

Any Person Who

a) Falsifies any Trade Mark; or  
b) Falsely applies to goods or services any Trade Mark; or

c) Makes, disposes of or has in his possession/any die, block, machine plate or other instrument for the purpose of falsifying or being used for falsifying, a Trade Mark; or

d) Applies any false trade description to goods or services;

e) Applies a false indication of such country, place name or address for the goods produced or manufactured

f) Tampers with, alters or effaces an indication of origin which has been applied to any goods to which it is required to be applied

under the Act. ( Sec.139- Goods shows indication of origin) or

g) Causes of any things above mentioned in this section to be done (Abettor) shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to 3 years and with fine which shall not be less than Rs. 50,000/- but may extend to Rs. 2,00,000/-. Reasons to be recorded for imposing the sentence less than the minimum prescribed.

**Sec.104:** Penalty for selling goods or providing services to which False Trade Mark or false trade description is applied:- Any person who sells, lets for hire or exposes for sale, or hires, or has in his possession for sale, goods, or things or provides or hire services, to which any false Trade Mark or false trade description is applied

Or

Fails to indicate the country, or place in which they were made or produced or name of the manufacturer, shall be punishable with imprisonment for a term not less than six months but which may extend to three years and with fine not less than Rs. 50,000/- but which may extend to Rs. 2,00,000/-. Reasons to be recorded for imposing less than the minimum prescribed punishment in instances, where the accused establishes that he acted in good faith and any such violation takes place accidentally or innocently or that there is no bad intention on the part of the person who has obtained such goods or services.

**Sec.105** Provides for enhanced punishment on second or subsequent conviction.

**Sec. 107 (1):-** Penalty for falsely representing a trademark as registered. It is also

an offence to represent an unregistered trademark as registered.

**Sec. 107 (2):-** If any person contravenes any provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to three years, or with fine or with both.

**Sec.111:** Forfeiture of goods : Whether convicted or acquitted of an offence u/ s.103,104, or 105 ( except in case of acquittal without intent to defraud) Court may direct the forfeiture of all goods and things by means or in relation to which the offence has been committed.

Sec.115: Procedure for investigation, etc.,: All offences under this Act shall be tried by Judicial Magistrate First Class and in Metropolitan areas by the Metropolitan Magistrates. Offences under Secs.103,104 and 105 are cognizable.

**Investigating Officer:** Police officer not below the rank of DSP or equivalent may conduct search and seize without warrant the goods, dye, block, machine, plate or other things involved in the crime. All the seized goods should be produced before Judicial Magistrate First Class as soon as possible. Police officer before making any search and seizure shall obtain the opinion of the Registrar on facts involved in the offence relating to Trade Mark and shall abide with the opinion so obtained.

If any person commits any of the above offences in order to make a wrongful gain depending upon the facts and circumstances of the case the relevant IPC provisions concerning criminal breach of trust, cheating, forgery etc. may also be included.

