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PROTECTION OF INDUSTRIAL DESIGN IN INDIA. A CRITICAL ANALYSIS”

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❖ Abstract

Industrial design plays a significant role in modern commerce by giving product a distinctive visual identity and influencing consumer choice in an increasingly competitive market place. The appearance of a product including its shape, configuration, pattern, ornamentation, or a composition of lines and colours, can constitute an important commercial asset for its creator or proprietor. In India, the legal protections of such design is primarily governed by the Designs Act ,2000, along with the Designs Rules ,2001, which establish a statutory framework for the registration, protection and enforcement of the industrial designs. The present study examines the nature, scope procedure and effectiveness of industrial design protection in India.

The paper analyses the statutory meaning of “design” and the essential requirements for registration, particularly, novelty originally, prior publication, and visual appeal. Under the Designs Act, protection is directed towards the aesthetic features of an article rather than its functional or mechanical aspects. A registered proprietor obtains exclusive rights over the protected design for an initial period of ten years, extendable by a further five years, thereby providing a maximum protection period of fifteen years.

The study further explores the legal remedies available against unauthorised use or limitation of a registered design. Particular attention is given to Section 22 of Designs Act ,2000, which deals with the piracy of registered designs and provides for remedies including damages and injunctions.

The paper also evaluates the relationship between industrial design protection and other forms of intellectual property rights, particularly copyright trademark and patent, the distinction is important because design law primarily protects the visual and aesthetic characteristics of an article, whereas patent protect invention and trademark protects indicator of commercial origin. The protection of industrial designs in India is essential for promoting innovation, creativity and a fair competition. The Designs Act, 2000 provides a legal framework for safeguarding

designs rights and preventing unauthorised use. Effective enforcement and continued development of the legal framework are necessary to strengthen design protection and support the growth of Indian industries.

Keywords

Industrial Design, Design Act 2000, Originality, Design piracy, Intellectual Property rights.

❖ Meaning and Definition of Industrial Design

Industrial design is about the looks and appearance of a product. These features could be the way something looks, like its shape, how it's arranged, designs, decorations, or how colours and lines are used on an item. This can be shown in flat or three-dimensional forms.

Under Section 2(d) of the Designs Act, 2000, a design refers only to the features of shape, configuration, pattern, ornament, or arrangement of lines and colours that are applied to an article. These features can be in two-dimensional, three-dimensional form, or both. They must be created through an industrial process or method, and they are judged solely based on what can be seen by the eye in the finished product.

The definition does not include any way or method of building, and anything that is basically just a mechanical tool is not considered. It also does not include trademarks, property marks, and artistic works as stated in the Copyright Act, 1957. Objectives of Industrial Design Protection

❖ The main reasons for protecting industrial designs in India are as follows:

1. Encouraging creativity helps designers come up with new and appealing products.
2. Preventing unauthorized copying: It helps protect registered designs from being used or sold without permission.
3. Helping industry grow: It motivates companies to spend money on creating new products and coming up with fresh design ideas.
4. Helping businesses and designers get benefits from their creative work is important. It ensures they can make money from their ideas and efforts.
5. Encouraging fair play: It prevents competitors from using unfair methods to benefit from someone else's registered design.
6. More options for consumers: It helps have more products that look different and come

in various styles.

7. Helping the economy grow: It helps build up industries like furniture, textiles, electronics, cars, packaging, and everyday products.

❖ Legal Framework for Protection of Industrial Designs in India

- The Designs Act, 2000

The Designs Act of 2000 is the main law that controls the protection of industrial designs in India. It replaced the Designs Act from 1911 and updated the Indian legal system.

The Act sets out rules for what makes a design, when it can be registered, how to register it, the rights the owner gets, what happens if someone copies the design, how registration can be cancelled, and what can be done if someone breaks the rules.

The Act also creates a legal system that helps register and enforce industrial designs that meet certain standards.

- The Designs Rules, 2001

The Designs Rules, 2001 give step-by-step instructions on how to carry out the Designs Act, 2000. They handle things like submitting forms, categorizing items, presenting design ideas, checking details, officially recording them, paying charges, and other necessary steps.

The Rules have been amended over time. Applicants need to follow the correct version of the Rules and the latest requirements set by the Indian Designs Registry.

- International Framework

India is part of the World Trade Organization (WTO) and follows the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Articles 25 and 26 of TRIPS cover the protection of industrial designs. Article 25 ensures that original designs created on your own are protected if they are new or unique. Article 26 talks about the rights of people who own these protected designs and includes some allowed exceptions.

India's local design laws work inside this global system. International agreements have made it more important for countries to include industrial design protection in their national intellectual property systems.

❖ Essential Requirements for Registration of an Industrial Design

Not all designs can be registered according to Indian laws. A design has to follow the rules set out in the Designs Act, 2000.

- Novelty or Originality

According to Section 4 of the Act, a design can't be registered if it is not new or original. A design that was already shown to the public before the important filing date might not meet this requirement.

A new design is one that hasn't been shared or made known before in a way that makes it no longer unique or original. A new design can include elements created by the author, even if it is influenced by other designs, as long as it meets the necessary legal standards.

A designer makes a truly original decorative design for a home lamp that hasn't been shared with the public before. The pattern might be able to get registered if all the other legal requirements are met.

- Application to an Article

The design has to be used on an article by using an industrial method or technique. It has to be about how a specific product looks, not just a general idea.

For example, a specific design on a bedsheet might be protected, but the general concept of making bedsheets look good cannot be registered as a design on its own.

- Appeal to the Eye

The design should look good and be judged only by how it appears in the final product. Its visual characteristics are the primary concern.

A product's technical performance or how it works inside isn't automatically considered a design just because it has useful commercial value.

- Non-functional Character

Section 2(d) does not include a simple machine or a way of building something. Design protection is not meant to take the place of patent protection for technical inventions.

For example, the look of a ceiling fan can be protected under design laws because it's decorative, but the motor inside cannot be protected just because it's part of the fan.

- No Prior Publication

If a design was already shown to the public or published before the important date, it might not be eligible for registration. Section 4 says that you can't register a design if it was already shared in India or somewhere else through publishing, using it, or any other

way before the date you filed or claimed priority, as needed.

So, designers should usually not show their design to the public or start selling it before they take the right steps to keep it safe.

- No Conflict with Public Order or Morality.

Section 4 also stops the registration of a design that isn't clearly different from existing designs or groups of existing designs, or that includes or has something that is shameful or inappropriate.

These rules stop the registration system from giving special rights to designs that don't meet the required standards. Important Provisions of the Designs Act, 2000

❖ **The following sections are especially important for protecting industrial designs.**

Section 2(d) - Definition of design

Section 4.- Prohibition of registering certain designs.

Section 5.- Application for registration

Section 6.- Registration regarding specific items.

Section 9.- Certificate of registration

Section 11.- Copyright in registered designs

Section 12.- Restoration of lapsed designs

Section 19.- Cancellation of registration

Section 22.- Piracy of registered designs

Section 5: Application for Registration

Section 5 allows a person who claims to be the owner of a new or original design, which has not been published before in a way that is not allowed by the Act, to register the design by submitting an application.

The application needs to follow the correct steps and meet all the required standards. The Designs Registry checks it, and they approve the registration if all the necessary conditions are met.

Registration gives a clear legal reason to enforce the rights connected with the design.

Section 6: Registration in Respect of Particular Articles

Section 6 covers the process of registering designs for items that are in specific, listed categories. A design can be registered for the product or products it is meant to be used on, as long as it follows the legal rules in place.

For example, the same decorative design might require proper registration coverage based on whether it is used on furniture, packaging, or another type of product.

Correct classification is important because design protection is linked to the proper article or class.

Section 9: Certificate of Registration

Section 9 says that after a design is registered, a certificate of registration is given. The certificate is official proof that someone is registered, but there might still be questions about whether it is valid according to the Act.

Section 11: Copyright in Registered Designs

Section 11 says that when a design is registered, the person who registered it gets copyright in the design for ten years from the date it was registered, but this is only true if the rules in the Act are followed.

This time period can be made longer by another five years if you apply on time and pay the required fee.

According to the law, the longest time you can get protection for a design is 15 years.

The word "copyright" in Section 11 means the special rights that are given by law to a registered design under design law. It should not be automatically mistaken for copyright as defined under the Copyright Act, 1957.

Section 12: Restoration of Lapsed Designs

Section 12 offers a way to restore a design registration that has stopped being valid because the required fee for extending the registration was not paid.

Restoration is allowed only if it meets the legal requirements, follows the set time frame, and goes through the correct steps. It offers owners a way to fix some issues, but fixing things isn't done automatically.

Section 19: Cancellation of Registration

Section 19 outlines the reasons why someone can ask to cancel a registered design. These include:

- The design was previously registered in India.
- It was released in India or somewhere else before the important registration date.
- The design is not new or original.
- It doesn't meet the criteria to be considered a design under the Act.
- It is not registrable under the Act.

This rule helps stop designs that are not properly registered or are invalid from still being

protected by law.

Section 22: Piracy of Registered Designs

Section 22 covers the copying of registered designs. It stops certain actions without the permission of the registered owner, like using a registered design without approval, or copying it in a way that's misleading or too similar, on products that are meant to be sold, imported to be sold, or involved in other business activities covered by the section.

The rule also covers bringing in items that are copied without permission and intentionally selling or showing items that have a design not approved by the right owner.

The owner can use the options provided in that section and any other relevant laws. A company signs up for a unique chair design. Another company on purpose makes and sells chairs that copy a registered design without asking for permission. This behavior could be considered piracy according to Section 22, depending on the specific facts and legal requirements.

❖ Procedure for Registration of Industrial Designs in India

Registering is a key part of getting legal protection. The general procedure is explained below.

Step 1: Creation of the Design

The designer creates a new or original visual design for an article. Drawings, photos, or other suitable images should clearly show how the design looks.

Step 2: Conducting a Design Search

Before starting the process, the applicant needs to check for any existing registered designs and any public information that might be relevant. This helps check if the proposed design can meet the needs for being new and original.

A search doesn't always lead to registration, but it can help lower the chances of facing problems or having the registration canceled later.

Step 3: Identification of the Proprietor

The applicant needs to show why they believe they own the design. When a design is made by an employee, consultant, or freelance designer, it's important to look at the agreements in place and the laws that apply.

Step 4: Filing the Application

The application is submitted to the Indian Designs Registry in the correct format, along with all the necessary documents, classifications, declarations, or other required information, and the required fees.

Step 5: Examination

The Registry checks if the application follows the Act and the Rules. It might cause problems

if the design doesn't meet the legal requirements or if the application has issues.

Step 6: Reply to Objections

The applicant needs to address any objections they receive within the allowed time and follow the correct way as specified. Depending on the situation, you might need to get more information, make changes, or have a meeting to discuss things.

Step 7: Registration

If the application meets the legal requirements, the design is registered and a certificate is given. Registration details might also be shared following the correct steps as required.

Step 8: Maintenance and enforcement

The proprietor should monitor unauthorised use, maintain the registration, pay any required extension fee on time, and take appropriate action where infringement occurs.

Thus, registration is not merely a formality. It is part of a broader strategy for protecting and commercially exploiting design rights.

❖ Piracy of Registered Designs and Legal Remedies

Piracy of a registered design happens when someone does something that is not allowed under Section 22 of the Designs Act, 2000.

For example, if a company makes and sells products that copy another person's registered design in a fake or obvious way without asking for permission, the person who owns the design can take the company to court.

Section 22 offers important solutions, including the following:

1. Statutory monetary relief: According to Section 22(2)(a), someone who is responsible for piracy might have to pay the registered owner an amount up to ₹25,000 for each violation, but this amount cannot go beyond the legal maximum of ₹50,000 for one design under that section.
2. The owner can file a lawsuit to get compensation for any harm caused and also ask a court to stop someone from repeating the illegal actions. This is allowed under Section 22(2)(b). The law sets a maximum limit of ₹50,000 for compensation that can be claimed for one design under this clause, as stated in the Act.

The necessary legal conditions and steps must be followed and met. Before starting to prepare legal documents or giving advice on an ongoing disagreement, make sure the money limits are up to date with the latest laws.

3. An injunction can stop more illegal actions if the court decides it is fair and proper to do so.

4. Other possible solutions: Based on the situation, there might be other legal rules that could apply. However, a claimant cannot assume that every remedy available under copyright or trademark law automatically applies to a dispute involving an industrial design.

These remedies prevent unauthorized copying and help protect the rightful interests of registered owners.

❖ Relationship Between Industrial Designs and Copyright

One important issue in Indian intellectual property law is how copyright and industrial design protection can overlap.

Copyright usually covers the original way something is expressed in creative works, while the Designs Act covers certain visual designs that are applied to products using industrial methods. Section 15 of the Copyright Act, 1957 is especially important. It deals with copyright in designs that can be registered under the Designs Act and the results of making products in large quantities as allowed by the rules.

In general, if a design can be registered under the Designs Act but hasn't been registered, then Section 15(2) might stop the copyright protection for that design once an item that uses the design is made more than fifty times using an industrial process by the copyright owner or with their permission.

The use of this rule depends on the specific situation and the legal requirements set by the law. It should not be thought that every artistic work automatically loses its copyright once fifty copies have been made.

So, designers and companies need to figure out the right way to protect their products before they start making and selling them.

❖ Conclusion

The protection of industrial designs is an essential part of India's intellectual property rights framework. It recognises the commercial and creative value of the visual appearance of products and provides legal protection against specified forms of unauthorised copying.

The Designs Act, 2000, together with the Designs Rules, 2001, establishes the principal framework for registration, ownership, duration, cancellation, and enforcement of industrial design rights. Sections 2(d), 4, 5, 11, 19, and 22 are particularly important for understanding the scope and operation of this protection.

Industrial design protection encourages innovation, supports businesses, promotes fair competition, and contributes to economic growth. At the same time, effective protection requires public awareness, timely registration, proper enforcement, and a careful distinction between design rights and other intellectual property rights.

In conclusion, India should continue strengthening its industrial design protection system while ensuring that the rights granted to proprietors remain consistent with the public interest and legitimate competition. A balanced and accessible system will help designers, entrepreneurs, manufacturers, and consumers benefit from creativity and innovation.

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AGREEMENT TO TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

