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# BEYOND THE BLUEPRINT: MAPPING THE GAPS BETWEEN COPYRIGHT, TRADEMARK AND DESIGN LAW IN PROTECTING ARCHITECTURAL WORKS IN INDIA

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## Abstract

Architects and developers in India often assume that once a building is designed, copyright covers all of it. The statute says something narrower. Under the Copyright Act, 1957 a building is protected only if it has an artistic character or design, and the protection reaches that artistic character and design, not the methods by which the building is put together. Trade mark law can reach a façade, but only where the façade has come to identify a trader, and only against confusing use. The Designs Act, 2000 looks like a third option, yet it is built around articles of manufacture and, by the text of section 2(d), excludes anything that is an artistic work under the Copyright Act, which includes a work of architecture. This paper reads the three regimes against one another. It argues that their exclusions overlap instead of complementing each other, so that some distinctive features of buildings fall outside all three. It draws on the Delhi High Court's decision in *Raj Rewal*, the Supreme Court's 2025 decision on section 15(2) of the Copyright Act, and the treatment of buildings in the United States and the United Kingdom, and closes with three limited proposals.

***Keywords:*** architectural works; work of architecture; copyright; trade dress; Designs Act 2000; section 15(2) Copyright Act 1957

## I. Introduction

A building is an awkward thing for intellectual property law to deal with. It keeps the rain out and carries loads, and it can also be as deliberate a piece of composition as a sculpture. Most legal systems, India's included, did not write a separate regime for it. They placed architecture inside copyright, which is what the Berne Convention asks of its members, and left the rest to general law.[1]

[1]Berne Convention for the Protection of Literary and Artistic Works (adopted 9 September 1886, as revised), art

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The popular belief, and not only among laypeople, is that copyright then protects the design of a building as a whole: the façade, the form, the layout, the ornament. The Copyright Act, 1957 does not say that. Two other regimes are usually mentioned as backstops. Trade mark law, including passing off, can protect a building's appearance once it works as a badge of origin. The Designs Act, 2000 protects the visual features of articles, and is sometimes suggested for ornamental building features. This paper tests those suggestions against the text of the three statutes and the reported decisions.

The argument is that the three regimes exclude overlapping things. Copyright steps back where a feature is functional or a matter of construction. Trade mark law needs a level of public recognition that very few buildings will ever have. The Designs Act is drafted for manufactured articles and, as section IV shows, points back to copyright for anything that is an artistic work. A feature of a building that one regime leaves out is therefore not reliably caught by the others.

A word on scope. The paper is doctrinal. It relies on the statutory text and on reported decisions, and it says so where the decided cases run out, which happens often: the author has not found a reported Indian decision that squarely decides whether a building is an "article" under the Designs Act, or whether a building façade can be protected as trade dress. Section II covers copyright, including the demolition dispute over the Hall of Nations. Section III covers trade dress, section IV the Designs Act, and section V looks briefly at the United States and the United Kingdom. Section VI maps the gaps and section VII makes proposals.

## II. Copyright in a Work of Architecture

### A. What the Act protects

Copyright subsists in original artistic works.[2] "Artistic work" includes "a work of architecture",[3] and that expression means "any building or structure having an artistic character or design, or any model for such building or structure".[4] A plain functional structure, however well built, is therefore not a work of architecture under the Act at all. For a structure that does qualify, section 13(5) narrows the right further: copyright subsists "only in the artistic character and design and shall not extend to processes or methods of construction".[5]

Three features of this text deserve attention. First, the exclusion in section 13(5) is of "processes or methods of construction". The Act does not say in so many words that functional features,

2(1); Agreement on Trade-Related Aspects of Intellectual Property Rights (adopted 15 April 1994), art 9(1).
[2]Copyright Act 1957, s 13(1)(a).
[3]Copyright Act 1957, s 2(c)(ii).
[4]Copyright Act 1957, s 2(b).
[5]Copyright Act 1957, s 13(5).

ISSN: 2582-6433

or features dictated by building codes or structural necessity, are excluded. That result is reached by reading "artistic character" as the threshold, and by the general principle that copyright protects expression and not utility. Where exactly the line falls in a given building has not, so far as the author is aware, been worked out in a reported Indian decision, and the point is open to argument both ways.

Second, the definition of "artistic work" treats drawings differently from buildings. A drawing, which expressly includes a plan, is protected "whether or not any such work possesses artistic quality",[6] while a building is protected only if it has artistic character. So the architect's plans are easier to protect than the finished building. Reproduction of an artistic work includes the "depiction in three-dimensions of a two-dimensional work",[7] which on its face covers constructing a building from another person's plans. The weak spot is copying from the finished building or from photographs, where the copier has never seen the plans and the claimant must rely on the building's own artistic character.

Third, the Act lets people picture buildings freely. Making or publishing a painting, drawing, engraving or photograph of a work of architecture, or displaying it, is not an infringement.[8] Two-dimensional copies of a façade are thus largely outside the owner's control. What remains is the three-dimensional copy, which is the one that matters commercially, and it is also the one against which the Act's remedies are weakest.

**B. Remedies, and the limits of the author's control**

Section 59 provides that, notwithstanding the Specific Relief Act, 1963, where construction of an infringing building has commenced the copyright owner "shall not be entitled to obtain an injunction to restrain the construction of such building or structure or to order its demolition".[9] The owner is left with damages and the other remedies in section 55. An architect whose design is copied can therefore recover money, but cannot stop the copy once it is going up and cannot have it taken down.

The Delhi High Court's decision in *Raj Rewal v Union of India* shows the same imbalance from the other side.[10] Raj Rewal designed the Hall of Nations and the Nehru Pavilion at Pragati Maidan in New Delhi, completed in 1972. The Indian Trade Promotion Organisation decided to demolish them to make way for a new convention centre, and they were demolished in 2017.

[6]Copyright Act 1957, s 2(c)(i).
[7]Copyright Act 1957, s 14(c)(i)(B).
[8]Copyright Act 1957, s 52(1)(s).
[9]Copyright Act 1957, s 59(1).
[10]*Raj Rewal v Union of India* 2019 (260) DLT 190 (Del), CS(COMM) 3/2018, decided 28 May 2019 (Endlaw J).

ISSN: 2582-6433

Rewal sued the Union of India and the Organisation, relying on section 57, which preserves the author's right to claim authorship and to act against distortion, mutilation or modification prejudicial to his honour or reputation.[11] He asked for a mandatory injunction requiring the buildings to be recreated, under his supervision, at the same or an equally prominent location.

The Court dismissed the suit. It accepted that the defendants had owed the architect a courtesy: he ought to have been told of the proposed demolition, given reasons, and allowed to do what he wished with the work before it went. But it held that section 57 gave him no cause of action against the demolition itself, and no claim to damages for it. The reasoning gave weight to the owner's right to deal with its own property, a constitutional right though no longer a fundamental one, and treated the architect's interest as a different thing from the owner's interest in the physical structure.[12]

The decision concerned moral rights and not infringement, and it should not be stretched beyond that. Even so, read with section 59, it fixes a pattern. In both settings the Indian statute and the courts keep the architect's copyright separate from the physical building and let the building prevail. Copyright in architecture is a right in the artistic character of the design, enforceable mainly through money, and it does not give control over what happens to the structure.

## III. Trade Dress and the Façade

### A. The statutory hooks

The Trade Marks Act, 1999 says nothing about buildings, and it has no separate head called trade dress. Protection for appearance comes in two ways. The first is registration. A "mark" includes a device, the shape of goods, packaging and a combination of colours,[13] and a "trade mark" is a mark capable of being represented graphically and capable of distinguishing the goods or services of one person from those of others, which may include the shape of goods, their packaging and combination of colours.[14] The second is passing off, which the Act expressly leaves untouched.[15]

A first difficulty is that the definition speaks of goods or services. A building is not goods. A façade could function as a mark for services supplied in or from the building, such as a hotel,

[11]Copyright Act 1957, s 57.
[12]For a critical note on the reasoning, see Adyasha Samal, 'Right to Property Reigns Supreme Over the Moral Rights of an Architect: Indian High Court Changes Course' (King's Student Law Review Commercial Law Blog, 16 March 2020).
[13]Trade Marks Act 1999, s 2(1)(m).
[14]Trade Marks Act 1999, s 2(1)(zb).
[15]Trade Marks Act 1999, s 27(2).

ISSN: 2582-6433

restaurant or bank, or be filed as a three-dimensional mark, but then the claim is about the services and the façade's role in identifying them, and not about the architecture as such. A second difficulty is distinctiveness. A mark "devoid of any distinctive character" cannot be registered, subject to a proviso that saves a mark which has acquired a distinctive character through use before the date of application.[16] Where the shape of goods is claimed, section 9(3) adds further exclusions, including shapes necessary to obtain a technical result.[17]

**B. What the decided cases show**

The Indian cases on get-up and shape concern packaging and products. In *Colgate Palmolive Co v Anchor Health and Beauty Care Pvt Ltd* the Delhi High Court granted an interim injunction against use of a red-and-white colour scheme on tooth powder containers, holding that the overall visual impression, built up by long and wide use, identified the plaintiff's goods.[18] In *Gorbatschow Wodka KG v John Distilleries Ltd* the Bombay High Court restrained use of a bottle shape alleged to be deceptively similar to the plaintiff's vodka bottle, treating the shape as part of the goodwill the plaintiff had built.[19]

Both were passing off actions, and in both the claimant had sold the product for a long time in the market. Neither concerned a building. The step to a façade is therefore one of analogy, and a court asked to take it would require the same things: evidence that the appearance has been used consistently and prominently in the course of trade, and that the public reads it as pointing to one source.

**C. Who can meet the threshold**

Distinctiveness in this sense is a product of commerce, not of design quality. A chain of hotels or shops built to a uniform exterior for decades is a plausible claimant. A well-known headquarters used in a company's advertising may be another. An original façade on a private house, a school or a government building is not, however good it is, because nobody has been using it to indicate the origin of services. Copyright requires only originality. Trade dress requires recognition, and the two measure different things.

Trade dress also protects against confusion and not against copying. Someone who reproduces a distinctive façade in another city for an unrelated business may confuse nobody, and the

[16]Trade Marks Act 1999, s 9(1)(a) and proviso.
[17]Trade Marks Act 1999, s 9(3).
[18]*Colgate Palmolive Co v Anchor Health and Beauty Care Pvt Ltd* 2003 (27) PTC 478 (Del); also reported at 108 (2003) DLT 51.
[19]*Gorbatschow Wodka KG v John Distilleries Ltd* 2011 (47) PTC 100 (Bom).

ISSN: 2582-6433

owner will have no claim in passing off even though the copy is exact. So even where the threshold is met the right is narrower than copyright in the very case where copyright is hardest to enforce, namely the finished building copied without access to the plans.

## IV. The Designs Act, 2000

### A. Two textual barriers

The Designs Act protects a "design", defined in section 2(d) as the features of shape, configuration, pattern, ornament or composition of lines or colours "applied to any article", by an industrial process or means, which in the finished article "appeal to and are judged solely by the eye".[20] An "article" is "any article of manufacture and any substance, artificial, or partly artificial and partly natural", and includes any part of an article capable of being made and sold separately.[21] The definition of design then excludes "any mode or principle of construction", trade marks, property marks, and "any artistic work as defined in clause (c) of section 2 of the Copyright Act, 1957".[22]

This produces two barriers for a building. The first is the word article. An erected structure is not an article of manufacture applied by an industrial process in the ordinary sense of those words, though the author has not found a reported decision that decides the point. The second is the last exclusion. A work of architecture is an artistic work under section 2(c)(ii) of the Copyright Act, so on the text of section 2(d) it is not a design. The two statutes thus point at each other. A building with artistic character is excluded from the Designs Act because copyright covers it. A building without artistic character is outside copyright, and has no obvious route into the Designs Act either, because it is still not an article.

The Supreme Court's decision in *Cryogas Equipment Pvt Ltd v Inox India Ltd* supports reading the boundary this way, though the case was about engineering drawings and not architecture.[23] The Court dismissed appeals against a High Court order that had restored a suit the Commercial Court had rejected at the threshold under Order VII Rule 11 of the Code of Civil Procedure. It treated section 15(2) of the Copyright Act as a limit on artistic works that have been applied industrially as designs, and set out a two-step inquiry: first whether the work is a pure artistic work or a design derived from one and applied industrially, and only then whether section 15(2) is engaged. A work of architecture, on this approach, sits on the artistic-work side of the line.

[20]Designs Act 2000, s 2(d).
[21]Designs Act 2000, s 2(a).
[22]Designs Act 2000, s 2(d).
[23]*Cryogas Equipment Pvt Ltd v Inox India Ltd* 2025 INSC 483 (SC, 15 April 2025).

ISSN: 2582-6433

### B. Components, section 15 and disclosure

None of this means the Designs Act is irrelevant to building. A cladding tile, a perforated screen unit, a door fitting or a modular façade panel is an article of manufacture, or a part capable of being made and sold separately, and its appearance can in principle be registered. Two provisions make this route more hazardous than it looks.

The first is section 15 of the Copyright Act. Copyright does not subsist in a design registered under the Designs Act,[24] and copyright in a design capable of being registered but not registered "shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process" by the owner or with the owner's licence.[25] An architect who designs a distinctive component and has it mass-produced without registering it may find the copyright gone after the fiftieth article, while no design right was ever taken out.

The second is prior disclosure. A design cannot be registered if it has been disclosed to the public, in India or elsewhere, before the filing date, whether by publication or by use.[26] A building is, by its nature, shown to the public. An architect who builds first and thinks of registering the component afterwards may find that the building itself defeated novelty. Registration therefore has to be planned before the work is seen, which is not how most architectural practice runs.

### C. What is left

The Act can protect the parts, if they are manufactured, registered in time, and not disclosed beforehand. It does not protect the composition of the building, which is the thing most people mean when they say they want to protect a building's design.

## V. The United States and the United Kingdom

The United States dealt with the same problem by amending its statute. Following its accession to the Berne Convention, Congress enacted the Architectural Works Copyright Protection Act of 1990, which added "architectural works" as a separate category of copyright subject matter.[27] An architectural work is defined as "the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings", and "includes the overall form as well as the arrangement and composition of spaces and elements

[24]Copyright Act 1957, s 15(1).
[25]Copyright Act 1957, s 15(2).
[26]Designs Act 2000, s 4(b).
[27]Architectural Works Copyright Protection Act, Pub L No 101-650, tit VII, 104 Stat 5133 (1990); 17 USC § 102(a)(8).

ISSN: 2582-6433

in the design, but does not include individual standard features".[28] The American text therefore says expressly that spatial arrangement and composition are protected, and it removes only standard features. India's text excludes methods of construction and leaves the status of spatial composition unstated.

The United Kingdom is closer to India. The Copyright, Designs and Patents Act 1988 lists among artistic works "a work of architecture being a building or a model for a building", and provides that "building" includes "any fixed structure, and a part of a building or fixed structure".[29] The British registered design regime is framed around a "product", defined as any industrial or handicraft item other than a computer program.[30] On its face that is not very different from the Indian "article of manufacture", so the British statutes do not obviously supply a design-law answer to the Indian gap either.

The comparison does not show that India is uniquely behind. It shows that the choice made in the United States, which is to define the copyright subject matter so as to cover the building's composition, is the one that closes most of the gap without help from trade mark or design law. India has made no such choice, and relies on the general words "artistic character or design".

## VI. Mapping the Gaps

Put side by side, the three regimes exclude features of buildings in ways that overlap.

Take first the features with a functional or structural explanation: a roof form shaped by span and climate, load-bearing elements, devices required by fire or safety rules. Copyright is doubtful here, because section 13(5) excludes methods of construction and the "artistic character" threshold is hard to meet where a feature is explained by function. A shape mark runs into section 9(3) and the general reluctance to give a monopoly over what works. The Designs Act excludes any "mode or principle of construction". A feature that is both structural and visually distinctive can fall outside all three at once.

Take next the distinctive building with no commercial identity. A private residence or a public institution may easily satisfy copyright's originality requirement for whatever artistic character it has. It will not build up the recognition that trade dress needs, because the building is not used to identify a trader. For these buildings copyright is the only right, and section 59 and *Raj Rewal* show how little control it gives.

Take last the composition of a façade as against its components. The composition is a work of

[28] 17 USC § 101 (definition of 'architectural work').
[29] Copyright, Designs and Patents Act 1988, s 4(1)(b) and (2).
[30] Registered Designs Act 1949, s 1(2) and (3).

ISSN: 2582-6433

architecture, and so is excluded from the Designs Act by section 2(d). Its components may be registrable, but only if registered before disclosure and before the fiftieth industrial reproduction. The Designs Act therefore reaches the parts, and only on conditions, and does not reach the whole.

There is also a mismatch of strength between the paper design and the finished building. The plan is protected whether or not it has artistic quality, and building from it infringes. The building must show artistic character, can be photographed freely under section 52(1)(s), and cannot be stopped or demolished once infringing construction has begun. An architect's protection is strongest against someone who copies the drawings and weakest against someone who walks past the building and builds something similar.

## VII. Proposals

The proposals below are modest. None needs a new regime.

*First*, section 2(b) could be clarified, by amendment or by decision, on whether "artistic character or design" covers the overall form and the arrangement of spaces and elements, and not only surface ornament. The American definition is one model, and India need not copy it in full. What matters is that the question is currently unanswered, and architects cannot plan around an unanswered question.

*Second*, courts asked to protect a façade in an appropriate case could say plainly that a façade used consistently and prominently as an identifier of services can be protected through passing off or as a registered mark, on the same footing as get-up and shape for goods. That requires no change in the law, and it would remove doubt about whether such a claim can be brought at all. It should not lower the standard of proof of recognition.

*Third*, the Controller General of Patents, Designs and Trade Marks could issue guidance on the position of building components under the Designs Act, including the effect of prior disclosure by construction, and on how section 15(2) of the Copyright Act applies to one-off site-built work as against mass-produced components. The reasoning in *Cryogas* gives a footing for treating the former as outside the section.

## VIII. Conclusion

The belief that copyright protects the whole design of a building does not survive a reading of the Copyright Act, 1957. What the law gives is three partial protections. Copyright covers the artistic character and design of a structure, excludes methods of construction, and gives the architect little control over what is built or demolished. Trade dress can protect a façade, but

ISSN: 2582-6433

only where it has come to identify a trader, which almost no building does. The Designs Act, by its definitions of "article" and "design", reaches manufactured components, and not the composition of the building. Each regime leaves out things the others also leave out, and the result is a gap, not a division of labour. The United States closed much of the equivalent gap by defining its copyright subject matter more fully. India has not done so, and until it does the protection of architectural works will remain thinner than most of the people relying on it assume.

## Bibliography

**Legislation**

Copyright Act 1957 (India).

Trade Marks Act 1999 (India).

Designs Act 2000 (India).

Copyright, Designs and Patents Act 1988 (UK).

Registered Designs Act 1949 (UK).

Architectural Works Copyright Protection Act, Pub L No 101-650, tit VII, 104 Stat 5133 (1990) (US); 17 USC §§ 101, 102(a)(8).

**Treaties**

Berne Convention for the Protection of Literary and Artistic Works (adopted 9 September 1886, as revised).

Agreement on Trade-Related Aspects of Intellectual Property Rights (adopted 15 April 1994).

**Cases**

*Colgate Palmolive Co v Anchor Health and Beauty Care Pvt Ltd* 2003 (27) PTC 478 (Del).

*Cryogas Equipment Pvt Ltd v Inox India Ltd* 2025 INSC 483 (SC).

*Gorbatschow Wodka KG v John Distilleries Ltd* 2011 (47) PTC 100 (Bom).

*Raj Rewal v Union of India* 2019 (260) DLT 190 (Del).

**Secondary sources**

Samal A, 'Right to Property Reigns Supreme Over the Moral Rights of an Architect: Indian High Court Changes Course' (King's Student Law Review Commercial Law Blog, 16 March 2020).