

# Critical Analysis of Design Laws in India with Provisions of Design Act, 2000

## Abstract:

Designs, or Industrial Design which is been first introduce in the British era in the year 1872 as passed by the British Parliament for India "The Patterns and Designs Act, 1872" for the protection of Industrial Designs this was the first legislation made by them for the protection design in India. Later on in the year 1911 "the Patents and Designs Act, 1911", was passed by the British Parliament and this 1911 act continued with Independence of India, as continued into legislation, which ensures and provides protection against the infringement of design and also the provides the mechanisms or procedure for registration of Design application in India.

But after huge years of break Indian government has passed new legislation in the year 2000 for the better protection of industrial Design. As this act was established to combine and correct the law identifying with the security of plans and to execute the TRIPS Agreement.

It became effective in India on May 11, 2001, supplanting the old law of 1911 to give more successful assurance to the enlisted outlines and to empower plan exercises. This new Act defines better way of protection against the infringement of design also provides the new and simple procedure of registration of application for design in India. Also this act enlisted various other important provisions like: period of extension of design, rights of registered proprietors, penalty against infringement and its procedure, also defines Design Controller, examiner, reports made by Controller, Publication period, Objection and period of limitation, Certificate of registration issued by Controller, etc, all the details and procedure are given under this act,2000 And with the period of time this act been amended several times and added other important provisions into it.

**Keywords:-** Design, Original, Article, Industrial process, Design Controller, Examiner, Report, Registration, Publication, Infringement, Objection, Rights, Proprietor, Certificate, Period, Extension, Penalty.

## I- INTRODUCTION:-

### What is Design?

Design is the creation of a plan or convention for the construction of an object, system or measurable human interaction (as in architectural blueprints, engineering drawings, business processes, circuit diagrams, and sewing patterns). Design has different connotations in different fields (see design disciplines below). In some cases, the direct construction of an object (as in pottery, engineering, management, coding, and graphic design) is also considered to use design thinking.

Designing often necessitates considering the aesthetic, functional, economic, and socio political dimensions of both the design object and design process. It may involve considerable research, thought, modelling, interactive adjustment, and re-design. Meanwhile, diverse kinds of objects may be designed, including clothing, graphical user interfaces, products, skyscrapers, corporate identities, business processes, and even methods or processes of designing.<sup>2</sup>

### Design defined Under Indian Legislation:-

Design defined under the Design Act, 2000:

“Features of shape, configuration, pattern, ornament or composition of lines or colours applied to any article in two or three- dimensional form, or both, by any industrial process or means- whether manual, mechanical or chemical, separate or combined- which in the finished article appeal to and are judged solely by the eye”<sup>3</sup>

What is “article” Stands for: Any manufactured object

## II- JOURNEY OF DESIGN LAW IN INDIA:-

Designs, or Industrial Design which is been first introduce in the British era in the year 1872 as passed by the British Parliament for India "The Patterns and Designs Act, 1872" for the protection of Industrial Designs. A short time later the demonstration was supplanted by

1 - Dictionary meanings in the [Cambridge Dictionary of American English](#), at [Dictionary.com](#) (esp. meanings 1–5 and 7–8) and at [Ask Oxford](#) (esp. verbs).

2 - [Brinkkemper, S. \(1996\). "Method engineering: engineering of information systems development methods and tools" \(PDF\). Information and Software Technology. 38 \(4\): 275–280. doi:10.1016/0950-5849\(95\)01059-9.](#)

3 - <http://www.ipindia.nic.in/writereaddata/images/pdf/act-of-2000.pdf>

another united demonstration called The Inventions and Designs Act, 1888. This 1888 demonstration was only an unmistakable impression of British model of a similar demonstration in the United Kingdom. But later on in the year 1911 “the Patents and Designs Act, 1911”, was passed by the British Parliament which revoked the past demonstrations identifying with licenses and without precedent for India this demonstration has presented another different office for the execution of law identifying with outlines, and this 1911 act continued with Independence of India, as continued into legislation. At last parliament of India has passed new legislation in the year 2000 for the better protection of industrial Design. This act was established to combine and correct the law identifying with the security of plans and to execute the TRIPS Agreement.

It became effective in India on May 11, 2001, supplanting the old law of 1911 to give more successful assurance to the enlisted outlines and to empower plan exercises. The new demonstration of 2000 stipends the proprietor or proprietor of the enlisted plans an exclusionary right of offering, authorizing, relegating and utilizing the same in any item.

Also Design act of India 2000 has been amended several times.

In the year 2007 on 8th February: National Design Policy adopted. Among other things aims at promotion of Indian design through a well-defined and managed regulatory, promotional, and institutional framework. Action plan for implementation of the policy was also adopted.

Here in the year 2008 Designs (Amendments) Rules, 2008 was notified as legislation

Late on in the year 2009 2nd March: The Central Government constituted the India Design Council. The Council is intended to act as the national strategic body for multi-disciplinary design and to get involved in promotion of design with the ultimate vision to make Indian Industry a design enabled industry

Recently in the year 2011 new Manual of Designs Practice and Procedure published by the Office of the Controller General of Patents, Designs, and Trade Marks was introduced.

Now after 2011 amendment in rules it is practising in course for Registration of Industrial Design and no further amendment was initiated.

### III- PROCEDURE FOR REGISTRATION OF DESIGN:-

This act defines better way of registration of Industrial Design procedure for applicants who are applying for registration to secure their industrial designs. By passing this act, it encourages new applicants to register their designs in order to protect it in legal way, or in case of any infringement occurs they can reach out courts under this act for the remedies as provided under this act. This act covers both civil and criminal remedies.

#### Criteria of design to be registered:

Before registration under this act, person needs to find what can be registered under this act, implies some criteria in order design to be registered. Some are as follows:

- A- Design must be new and original
- B- Design must be capable of being made and sold as an individual item
- C- Design should be private and unpublished; in case if it came into public domain the design cannot be registered.
- D- Design must be different from the existing registered design, if design is not distinguish in nature from the already existing design it cannot be registered 4

Provided that in case, If the design is able to satisfy above these criteria, it become register able under the act, the interested applicant have to file application, the Patent Offices located at Delhi, Mumbai and Chennai transmit such applications to the Patent Office, Kolkata for further processing and prosecution, addressed to Controller of Designs under the **section 5(2)** of the act which states that:

Every application under **sub-section (1)** shall be in the prescribed form and shall be filed in the patent office in the prescribed manner and shall be accompanied by the prescribed fee.

#### As application are two types:

- A- Ordinary application- An ordinary application does not claim priority.
- B- Reciprocity application- A reciprocity application claims priority of an application filed previously in a convention country.

Such an application shall be filed in India **under Section 5, 44 12** within six months from the date of filing in convention country. (This period of six months is not extendable.)

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4 - <https://www.slideshare.net/alinaangle963/design-act-2000>

Such Application for registration of a design is referred by the Controller of Designs to an Examiner of Designs for conducting examination as to:

A- Whether the application and the documents satisfy the formal requirement?

B- Whether such design as applied to an article is register able?

Now the Controller of Design shall examine the report of examiner under **section 5(1) Rule 18**. The Controller shall consider the report of Examiner on register ability of a design as applied to an article and if it is register able, the same shall be registered forthwith. The registration certificate shall be issued and sent to the applicant at the earliest.

Provided that If upon consideration of the report, the Controller is of the opinion that there are objection(s) adverse to the applicant or the application requires some amendment(s), a statement of objections shall be communicated to the applicant by the Controller.

(The communication shall be made either by registered post or electronic transmission.)

The objection can raised on the ground of novelty **under Section 4, 16, 21** of Design Act, 2000 and Originality which states as under **Section 2(g)** “Original” ‘in relation to a design, means originating from the author of design, and It includes the cases, which though old in themselves yet are new in their application.

In case, if the applicant fails to comply with the objections or fails to apply for a hearing within three months from the date of communication of statement of objections, the application shall be deemed to be withdrawn.

The period given for removal of objections shall not exceed the time period of six months from the date of filing of the application. (However, the period of six months can be extended for a further period not exceeding three months provided a request in Form-18 is filed before the expiry of six months.)

And in the last if the applicant complies with all the requirements laid down under the Act and Rules, communicated in the form of statement of objections, the application shall be registered forthwith.

**Publication:-**

Publication covered **under Section 7** of the act as stated below:

“Once an application is registered, it is published in the Patent Office Journal ordinarily within one month. The registration number is same as the application number”.

“The date of registration of an ordinary application is the date of filing of the application. In case of reciprocity application, the date of registration is the date of filing of application in the Convention Country”.

**Why publication is Necessary?**

The publication is done to give chance to others for the objection to rise against final registration before providing certificate. If no objection was raised during the period of publication the Certificate of Registration is provided to the Design Holder

**IV- CERTIFICATE OF REGISTRATION:**

“Upon registration, the Controller issues a certificate of registration to the proprietor of the design. The certificate is sent by registered post to the address for service. No hand delivery of certificate of registration is allowed”.

Now after the certificate of registration was received by the registered proprietor he/she must be aware about their Rights, as conferred under this act as stated below:

**V- RIGHTS OF DESIGN HOLDER OR REGISTERED PROPRIETOR**

Rights of registered proprietor- **Section 2(c), 11, 22 & 44**

The proprietor of the design gets exclusive right to apply the design to the article in a class in which the design is registered.

Registered proprietor can institute a suit for injunction as well as recovery of damages against any person engaged in piracy of the registered design. Such legal proceedings can be instituted from the date of registration and till the expiry of copyright. However, in case of reciprocity application, the registered proprietor can claim damages in only from the actual date on which the design is registered in India.

If any person commits piracy of a registered design, as defined in Section 22, he shall be liable to pay for a payment of a sum not exceeding twenty thousand rupees, recoverable as contract debt. However, the total sum recoverable in respect of any one design shall not exceed fifty thousand rupees.

The suit for injunction / damages shall not be instituted in any Court below the Court of District Judge.

Period of protection of Industrial Design defined under Section 11-The proprietor shall have copyright in the design for ten years from the date of registration.

(This period of ten years can be extended by five years, if the registered proprietor applies for extension in prescribed manner.)

### **Period of Extension:-Section 11 (2) by filling Form 3**

The copyright in a registered design may be extended by a period of five years, from the expiration of original period of ten years. An application for extension of copyright shall be filed before the expiry of the original period of ten years.

The Designs Wing shall complete the proceedings of extension of copyright in designs, within a week from the date of receipt of Form-3.

The fact of extension of copyright in a registered design is entered in the Register of Designs and is published in the Journal of Patent Office.

### **VI- PENALTY AND PUNISHMENT PROVIDED BY THE ACT:**

Now if we talk about the Punishment for the theft of an enlisted Design, On the off chance that anybody contradicts the copyright in a plan for the each negation he/she is at risk to pay an entirety not surpassing Rs. 25,000/ - to the enlisted proprietor subject to a greatest of Rs. 50,000/ - recoverable as contract obligation in regard of any one outline. The enrolled proprietor may bring a suit for the recuperation of the harms for any such repudiation and for directive against reiteration of the same. Add up to total recoverable should not surpass Rs. 50,000/ - as contract obligation as expressed under **Section 22 (2) (a)**. The suit for infringement, recuperation of harm ought not to be recorded in any court beneath the court of District Judge.

### **VII- CONCLUSION:**

India after the huge years of break since 1911, enacted new legislation for the protection of Design laws in India and provided better with simple approach of application to be registered through passing new act, 2000. This act also generalise various provisions regarding rights with remedies also establishing Design Controller with providing powers

and duty of the Controller, Examiner, importance of examiner's report, procedure for Objection can be raised by any person whosoever interested or feel to object the Design before Registration at the time of publication. This means this Design act, 2000 tries to simplify both the part concern to procedure of registration and infringement procedure. Also this act talks about the penalty for infringement. Being India is a very fast Developing Nation and protection of IPRs is very much needed, with the introduction of separate individual act for the protection each IPRs. Design act, 2000 is one the such act, which is been introduced by the government in the year 2000, as bill was initiated in the year 2001, as this act was passed for the compliance of TRIPs agreement and with the period of years and seek of further necessities this act amended several times, latest amendment made in the year 2011. Indian Government shall keep check time to time for the new better protection of design laws in India, in order to do this same, India needs to rectify its Design Law with relation International aspect or view of World and also need to take care of the Rights of Indian Citizens or Registered Proprietor. As governments need prepare better plans and polices for the better implementation of Laws and policies in India. Also needs to figure out more awareness to be spread among the creator who create or draw design which is unique in nature which should Registered in order to protect it from Infringer. In this way, Design laws in India should be protected more effectively and efficiently.

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