
UNIT 7 OTHER INFORMATION RELATED LEGISLATIONS

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7.0 OBJECTIVES

In Unit 6 you have learnt about library legislation in Indian states. Library legislation generally refers to legislation relating to public libraries. Apart from public libraries act it is necessary to know various other acts that concern library activities and services. After reading this Unit, you will be able to:

- explain the concept, need and purpose of right to information (RTI);
- describe in detail the provisions of RTI;
- explain the concept of intellectual property rights (IPR);
- discuss how libraries are concerned with these rights; and
- describe acts related to intellectual property in India.

7.1 INTRODUCTION

A library deals with information available through Internet, World Wide Web, books, patents, and various other documents. Use of all these is governed by national and international laws. Many a time libraries provide information in the form of photocopies. Even providing photocopies is bound by law. Providing a single copy of a journal article for personal use is legal. However, providing a single duplicate copy of a copyright book even for personal use is illegal. Similarly, downloading something from a website without the permission of the concerned authority may lead to infringement of copyright. Many libraries bring out publications from time to time. Printing of a map in the publication without the proper permission of the appropriate authority may land the librarian in the court. A library contains books, periodicals, newspapers, and lots of other documents

that contain information. The Government of India has passed the Right to Information Act 2005. As a result, a citizen can ask for any information from a library. Now, a question may arise in the mind of a librarian – can all the information available in the library be passed on to the user? The answer is – No. A library may hold documents that are top secret, secret, confidential, and so on. This apart, the library may also have books, films, paintings, etc. banned by the government. It is not necessary that all libraries will have such documents. But, some libraries may have. The librarian of such a library should have a clear idea what documents of the library can be issued, what cannot be. He should also have clear knowledge of the various acts that relate to information.

In this Unit, we are going to deal with the Acts related to the use of information. While discussing these Acts, we shall highlight (i) **salient features** of the Acts, (ii) their utility **in libraries**, and (iii) their **importance as reference sources**.

7.2 RIGHT TO INFORMATION ACT

Before going into the details of the Act, let us first of all try to understand what is ‘right to information’. The term has been defined in the Right to Information Act 2005 as follows: “The right to information is a fundamental human right which is made up of different rights and responsibilities, namely:

- Every person’s **RIGHT** to request information from the government – and even private bodies in some cases;
- The **DUTY** of the government to provide the requested information, unless defined exemptions apply; and
- The **DUTY** of the government to proactively disclose information that is of general public interest without the need for requests from citizens.” [Debasher p.3]

The Constitution of India is totally silent about the right to information (RTI). However, the Honourable Supreme Court of India (SC) has long recognised RTI as a fundamental right essential for democratic functioning of the country as well as an integral part of the right to freedom of speech and expression guaranteed by the Constitution (Article 19) and a necessary part of the right to life (Article 21) [Debasher p.3].

The right to access information lies in the fact that government information belongs to the people. It is owned neither by the public body who holds it nor by the government who has generated it. It is a fact that information is generated with public money by public servants and is held by the public body for the people. This shows that a citizen has the right to access to information relating to government’s policies, decisions, actions, as well as decision making processes. A citizen has even the right to access to information held by private bodies or individuals in certain cases.

It is to be noted that right to information is not absolute. There are certain information which cannot be passed on to the public for various reasons. We shall try to pinpoint this type of information.

A question may arise to a citizen as to the need of RTI act. An example is being quoted below from Debasher’s book to substantiate the need of RTI act.

A school run by a private trust in Gujarat was charging fees from the students even though the school was receiving support from the State Government and was not supposed to collect any fees from the students. A parent used the RTI Act passed by the Government of India to ask the principal of the school to provide him with the copies of the circulars or government orders that permitted the school to collect fees. Following the RTI application, the principal could not produce any government circular or order and admitted in writing that the school did not have any authority to collect fees from the students except for computer classes which the trust had begun at its own expenses. Needless to say, now the students are not asked to pay any fee.

The power of the RTI Act is evident from the example given above. The students were freed from the burden of paying fees to the school. Earlier, there has been cases when non-deserving candidates were promoted or offered posts keeping aside the deserving candidates. Today, the deserving candidates can take the help of RTI Act for justice. Because of the RTI Act, the authorities have become careful today and think twice before doing any irregularities.

Gradually the power of RTI Act is unfolding as people are becoming more and more aware of it. A time will come in future when the instances of irregular as well as illegal practices will come down sharply because of RTI Act.

7.2.1 Salient Features

The Right to Information Act, 2005 (No. 22 of 2005) received the assent of the President of India on the 15th June, 2005 and was subsequently published for general information. The Act comprises six chapters. A brief description of all the chapters is provided below.

Preliminary (Chapter I)

It provides meanings of appropriate terms like Government, Central Information Commission, Central Public Information Officer, Chief Information Commissioner, Information Commissioner, competent authority, information, prescribed, public authority, record, right to information, State Information Commission, State Chief Information Commissioner, State Information Commissioner, State Public Information Officer, and third party.

We are all familiar with the term ‘information’. However, we should be familiar with the connotation of the term ‘information’ as given in the Act. Because, the scope of the term has been spelt out quite elaborately here and not generally available in our conventional reference sources. We also should be clear about the meaning of ‘right to information’ as given in the Act.

According to the Act, information ‘means any material in any form, including records, documents, memos, e-mails, opinions, advises, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force’ [Debasher p. 52]

The meaning of ‘right to information’ as given in the Act is reproduced here - “right to information” means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to –

- i) inspection of work, documents, records;
- ii) taking notes, extracts or certified copies of documents or records;
- iii) taking certified samples of material;
- iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.[Debasher p.53]

Right to Information and Obligations of Public Authorities (Chapter II)

The Chapter details the obligation of public authorities, designation of Public Information Officers, how to obtain information from public authorities, disposal of requests, exemption from disclosure of information, grounds for rejection to access in certain cases, severability, and the third party information. Here the terms 'severability' and 'third party' need explanation. Severability generally means capability of being divided or dissociated. Suppose, there is a piece of exempt information, wherein there is a portion that is disclosable. This particular portion is 'severable' We get a clear idea as to the term in Section 10 of the Act, which states "Where the request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information." [Debasher p.58]. Third party "means a person other than the citizen making a request for information and includes a public authority" [Ibid. p 53.]. Section 9 of the Chapter devoted to exemption from disclosure of information is also important for us which we shall discuss under the heading Utility in Libraries. Third party information is defined as information related to supplied by a third party for which a request has been received by the Central/State Public Information Officer. S/he will inform the third party before providing the information.

The Central Information Commission (Chapter III)

It is fully devoted to the Central Information Commission and spells out the constitution of the Commission, terms of office and conditions of service of the Chief Information Commissioner.

The State Information Commission (Chapter IV)

It deals solely with the State Information Commission and describes the constitution of the Commission, terms of office and conditions of service of the State Chief Information Commissioner and the State Information Commissioner, and the grounds and procedures of their removal from the office.

Powers and Functions of Information Commissions, Appeal and Penalties (Chapter V)

It describes the powers and functions of the Central Information Commission and State Information Commission. The Act has provided for Appeal as well as Penalties.

Miscellaneous (Chapter VI)

The Chapter encompasses a number of items such as protection of action taken in good faith; overriding effect of the Act; bar of jurisdiction of courts; non-applicability of the Act in the case of certain organisations such as security and intelligent organisations; monitoring and reporting of the implementation of the provisions of the Act by the Central Information Commission or the State Information Commission; role of the appropriate Government in the preparation of educational programmes and performing of related activities to make public aware of the provisions of the Act; power of the appropriate Government to make rules; power of the competent authority to make rules; laying of rules before each House of Parliament; power of the Central Government to remove difficulties in giving effect to the provisions of the Act; etc.

7.2.2 Utility in Libraries

The Act has two-fold utility in libraries. Firstly, it can be used as a good reference source, and secondly it will act as a guide to inform us as to the information that can be disclosed to the citizens.

We have already pointed out that there may be some information which is not disclosable to the public. Section 8 of the Act has pinpointed the non-disclosable information which reads as follows:

- 1) “Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen —
 - a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
 - b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
 - c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
 - d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
 - e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
 - f) information received in confidence from foreign Government;
 - g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
 - h) information which would impede the process of investigation or apprehension or prosecution of offenders;

- i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

- j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer, or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament of a State Legislature shall not be denied to any person.

- 2) Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.
- 3) Subject to the provisions of clauses (a), (c), and (f) of sub-sections (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under Section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for this Act” [Ibid p.58].

Keeping the above in view, the librarian has to decide the documents whose content cannot be disclosed to the citizens. Even in an open access library these documents will have to be kept under lock and key. Take the case of a banned book. As long as the ban is in force, it should be kept under lock and key. Once the ban is lifted it can be placed on the open shelves.

Though it is not clearly stated in the Act, but it may be assumed that the Act takes it for granted that a public organization (a government department, an institution, etc.) is likely to possess documents (files, books, periodicals, video recordings, etc.) whose contents are not disclosable to the citizens. These documents might have been generated by the organization itself or acquired from outside. It is possible that a document from the very moment of its generation contained information not disclosable to the citizens. There may be documents which were banned quite sometime after their release. For example, the book *Lajjâ* by Taslima Nasrin was banned by Bangladesh Government after thousands of copies were sold. By the time it was banned a number of libraries might have purchased the book. Now, the question arises, if a book or document is banned

after it has been procured by a library, what the library will do with the document. Normal practice suggests that the document is to be withdrawn immediately from circulation, and from open shelves. Subsequently, it should be placed under lock and key. During Hitler's regime banned books in Germany used to be burnt. Should we follow the same practice with the banned books or documents? Possibly, not. Because, the ban on the book may be lifted after sometime. For example, *PatherDâbi* by the noted novelist Sarat Chandra Chattopadhyay was banned during our freedom struggle. The ban was lifted after independence. Had the book been burned by the libraries, today we would not have any copy of the book.

There are various other cases where a citizen can ask for the file or any other information from a library. Suppose a library has purchased a number of computers from a particular supplier. Any other competitor who had quoted may ask for the file to find out how the particular supplier was selected. He may even take legal action if there is any anomaly in the selection of the supplier. A candidate who has not been selected for a library position may also ask for the file to see if fair selection has been made.

7.2.3 Importance as a Reference Source

The Act is an important source of information and the librarian will have to do some extra work to provide information relating to this Act. Suppose the information a citizen is looking for is available from the Information Commissioner of a particular state. Now, it will be the duty of the librarian to tell the citizen the name of the Commissioner, his address and his/her phone number. The Act does not provide this. The librarian himself will have to gather the information to provide reference service.

The type of queries a librarian may receive is as follows:

- i) Whom should I approach for the information I need?
- ii) What type of information can I get by virtue of this Act?
- iii) How long it will take to get the solicited information?
- iv) How should I make a request for particular information?
- v) Am I to pay some fees for the information?
- vi) Can I get some information free of cost?
- vii) Can I ask for any amount of information?
- viii) What do I do if I do not get the information I requested?
- ix) Can I make an appeal, if I am refused the information I solicited?

All these queries can be answered using the Act available on the government website and the book by Debasher [Details given in the Reference].

Self Check Exercise

Note: i) Write your answers in the space given below.

ii) Check your answers with the answers given at the end of the Unit.

- 1) Show with an example that RTI Act helps even common people.

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2) What is a banned book? What should a library do with a banned book?

7.3 INTELLECTUAL PROPERTY RIGHTS

First of all, let us understand the concept ‘intellectual property’. *The Concise Oxford Dictionary* defines it as ‘property that is the result of creativity, e.g. patents or copyrights’. According to World Intellectual Property Organization (WIPO), intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce’.

‘IP is divided into two categories: **Industrial property**, which includes inventions (patents), trademarks, industrial designs, and geographic indications of source; and **copyright**, which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and those of broadcasters in their radio and television programs’.

An **invention** patented by a patentee, a **novel** penned by an author, a **painting** drawn by a painter, a **photograph** snapped by a photographer, and so on are all intellectual properties.

Let us now try to understand the concept ‘intellectual property rights’ abbreviated as IPR. According to WIPO ‘Intellectual property rights are like any other property right. They allow creators, or owners of patents, trademarks or copyright works to benefit from their own work or investment in a creation. These rights are outlined in Article 27 of the Universal Declaration of Human Rights, which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions. The importance of intellectual property was first recognized in the Paris Convention for the Protection of Industrial Property (1883) and the Berne Convention for the Protection of Literary and Artistic Works (1886). Both treaties are administered by the World Intellectual Property Organization (WIPO).

Under IPR, we shall consider two acts which are of relevance to us. The Copyright Act, 1957, and the Patents Act, 1970.

7.3.1 The Copyright Act, 1957

First of all, let us try to understand the concept 'copyright'. We all know that authors write books, painters paint pictures, musicians compose songs, photographers take photographs, and so on. Literary people, musicians, and artists produce varied types of creations by virtue of their mental capabilities. Generally, they sell their creations to earn money. Creators are all talented people. It is the duty of the society to see that these talented people get the reward for their creations throughout their life whereby they are enthused to produce more. To ensure that the creators can earn money and pursue their noble profession, they are given exclusive right by governments to publish, reproduce or sell an original work. This exclusive right is called copyright.

The duration of copyright is not fixed. For example, in our country the copyright of a book remains in force till 60 years after the death of the author. It varies from country to country.

Infringement of copyright is but a common phenomenon. In photocopying shops, books after books are photocopied at the request of students in flagrant infringement of copyrights. Apart from this, dishonest publishers print books in great demand without informing the authors. This type of books are called pirated books. When Taslima Nasrin's *Lajjâwas* banned in Bangladesh, thousands of pirated copies appeared in the market soon afterwards. From the sale of the pirated books the author does not get any royalty. The entire money earned from the sale of pirated books goes to the dishonest publisher.

Salient Features

The Copyright Act, 1957 came into effect from January 1958. This Act has been amended in 1983, 1984, 1992, 1994, 1999, 2010 and 2012. The amendment of 1994 has been the most substantial. Prior to the Act of 1957, the law of copyrights in our country was governed by the Copyright Act of 1914. This Act was essentially the extension of the British Copyright Act, 1911 to India. Even the Copyright Act, 1957 borrowed extensively from the new Copyright Act of the United Kingdom of 1956. The Copyright Act, 1957 continues with the common law traditions. Developments elsewhere have brought about certain degree of convergence in copyright regimes in the developed world.

The Indian Copyright Act today is compliant with most international conventions and treaties in the field of copyrights. India is a member of the Berne Convention of 1886 (as modified at Paris in 1971), the Universal Copyright Convention of 1951 and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement of 1995. Though India is not a member of the Rome Convention of 1961, the Copyright Act, 1957 is fully compliant with the Rome Convention provisions [Copyright Act].

Two new treaties, collectively termed as Internet Treaties, were negotiated in 1996 under the auspices of the World Intellectual Property Organization (WIPO). These treaties are called the 'WIPO Copyrights Treaty (WCT)' and the 'WIPO Performances and Phonograms Treaty (WPPT)'. These treaties were negotiated essentially to provide for protection of the rights of copyright holders, performers and producers of phonograms in the Internet and digital era. India is not a member of these treaties; amendments are being mooted to make Act in compliance with

the above treaties in order to provide protection to copyright in the digital era [Copyright Act]

The Indian Copyright Act comprises 15 chapters. A brief description of each chapter is given below.

Preliminary (Chapter I)

It provides among others the specific meanings of the terms used in the Act. The terms are: adaptation, work of architecture, artistic work, author, broadcast, calendar year, cinematograph film, communication to the public, composer, computer programme, copyright society, duplicating equipment, work of sculpture, exclusive licence, Government work, Indian work, infringing copy, musical work, performance, prescribed, producer, reprography, sound recording, work, work of joint authorship, and publication.

The meanings are specific and at times quite elaborate and applicable for the Act. For example, an author means the author of a literary or dramatic work, composer of a musical work, artist, photographer, the producer of a cinematograph or sound recording, and the person who is responsible for computer-generated literary, dramatic, musical or artistic work.

Apart from the meaning, the scope of the following terms has also been given: computer, delivery, dramatic work, engravings, lecture, literary work, performer, photograph, plate, work of sculpture. For example, the scope of 'lecture' has been given as address, speech and sermon.

Besides the above, the Act spells out when a work is not deemed to be published or performed in public, when a work is deemed to be first published in India, the disputes that are to be decided by the Copyright Board, and so on.

Copyright Office and Copyright Board (Chapter II)

As per the Act, the Copyright Office shall be under the immediate control of the Registrar of Copyrights, and shall have two officials, i.e. Registrar and Deputy Registrars of Copyrights. The functions of the officials have been indicated. The constitution of the Copyright Board and its powers and procedures are described.

Copyright (Chapter III)

The third chapter is fully devoted to Copyright. According to the Act, copyright subsists in the following classes of work –

- a) original literary, dramatic, musical and artistic works;
- b) cinematograph films; and
- c) sound recordings.

It is better to know the meanings of some of the aforesaid words as given in the Act. In general dictionaries you do not get such detailed meanings.

Artistic work means

- i) “a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possesses artistic quality;

- ii) work of architecture; and
- iii) any other work of artistic craftsmanship”

Cinematograph film “means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and “cinematograph” shall be construed as including any work produced by any process analogous to cinematography including video films”.

Dramatic work “includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise but does not include a cinematograph film”.

Literary work “includes computer programmes, tables and compilations including computer literary data bases” .

*Note:*The interpretation of ‘literary work’ here excludes poetry, drama, fiction, essay, textbook, monograph, treatise, etc.

Musical work “means a work consisting of music and includes any graphical notation of such work but does not include any words or any action intended to be sung, spoken or performed with the music”.

Sound recording “means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced”.

We have already discussed the concept of copyright. Just see, in the Copyright Act of India, how the meaning has taken shape which is being reproduced here verbatim.

“For the purposes of this Act, “copyright” means the exclusive right subject to the provisions of this Act, to do or authorise the doing of any of the following acts in respect of a work or any substantial part thereof, namely:

- a) in the case of a literary, dramatic or musical work, not being a computer programme—
 - i) to reproduce the work in any material form including the storing of it in any medium by electronic means;
 - ii) to issue copies of the work to the public not being copies already in circulation;
 - iii) to perform the work in public, or communicate it to the public;
 - iv) to make any cinematograph film or sound recording in respect of the work;
 - v) to make any translation of the work;
 - vi) to make any adaptation of the work;
 - vii) to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi);

- b) in the case of a computer programme—
- i) to do any of the acts specified in clause (a);
 - ii) to sell or give on commercial rental or offer for sale or for commercial rental any copy of the computer programme:

Provided that such commercial rental does not apply in respect of computer programmes where the programme itself is not the essential object of the rental.”
- c) in the case of an artistic work—
- i) to reproduce the work in any material form including depiction in three dimensions of a two dimensional work or in two dimensions of a three dimensional work;
 - ii) to communicate the work to the public;
 - iii) to issue copies of the work to the public not being copies already in circulation;
 - iv) to include the work in any cinematograph film;
 - v) to make any adaptation of the work;
 - vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);
- d) In the case of cinematograph film—
- i) to make a copy of the film, including a photograph of any image forming part thereof;
 - ii) to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;
 - iii) to communicate the film to the public;
- e) In the case of sound recording—
- i) “to make any other sound recording embodying it;
 - ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions;
 - iii) to communicate the sound recording to the public.”

A special provision that exists regarding copyright in designs registered or capable of being registered under the Designs Act, 1911 has also been included.

Ownership of Copyright and the Rights of the Owner (Chapter IV)

An author of an original work is usually the owner of the copyright. He has certain rights, even he has the right to relinquish copyright. Ownership of copyright and the rights of the owner has been dealt in this Chapter. It includes assignment of copyright, mode of assignment, disputes with respect to assignment of copyright, transmission of copyright in manuscript by testamentary (gift of

copyright by the holder under the terms of a will) disposition, and right of author to relinquish copyright.

Term of Copyright (Chapter V)

The creator of a copyrightable work enjoys copyright throughout his life and also up to a certain period beyond his life. This is known as term of copyright which has been dealt in this Chapter. The Chapter includes term of copyright in published literary, dramatic, musical and artistic works; anonymous and pseudonymous works; posthumous work; photographs; cinematograph films; records; government work; works of public undertakings; and those of international organisations. The term of copyright varies from country to country. In our country copyright of literary, dramatic, musical and artistic works subsists until sixty years from the beginning of the calendar year next following the year in which the author dies. In other works copyright subsists until sixty years from the beginning of the calendar year next following the year in which the work is published. It is to be noted that even works published by the government, public undertakings, international organizations are very much covered by the Copyright Act.

Licences (Chapter VI)

“The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the right by licence in writing signed by him or by his duly authorised agent” [*Copyright Act, 1957*]. This Chapter of the Act deals with the particular topic of **licence**. It includes among others, licences by owners of copyright, licence in works withheld from public, compulsory licence in works withheld from public, and unpublished Indian works, licence to produce and publish translations, licence to reproduce and publish works for certain purposes, and finally termination of licences issued.

Copyright Societies (Chapter VII)

The Copyright (Amendment) Act, 1994 has made the provision of the copyright societies. A copyright society is a society registered under Sub-section (3) of Section 33 which reads as follows: “The Central Government may, having regard to the interests of the authors and other owners of rights under this Act, the interest and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of the relevant rights and the ability and professional competence of the applicants, register such association of persons as a copyright society subject to such conditions as may be prescribed: Provided that the Central Government shall not ordinarily register more than one copyright society to do business in respect of the same class of works”.

This Chapter dwells on registration of a copyright society, administration of rights of owner by a copyright society, payment of remuneration by a copyright society, control over the copyright society by the owner of rights, submission of returns and reports, and rights and liabilities of performing rights societies.

Rights of Broadcasting Organization and of Performers (Chapter VIII)

Broadcasting organisations and performers thereof also fall within the ambit of the Copyright Act. The Chapter embraces broadcast reproduction right, performer’s right, acts not infringing broadcast reproduction right or performer’s right, other provisions applying to broadcast reproduction right and performer’s

right. It is to be noted that “The performer’s right shall subsist until fifty years from the beginning of the calendar year next following the year in which the performance is made”. [*Copyright Act*]

International Copyright (Chapter IX)

There is no such act in the world that automatically protects an author’s writings. Protection of a work against illegal use in a country depends on its national laws. However, most countries in the world protect foreign works under certain conditions that have been greatly simplified by international copyright treaties and conventions [Copyright]. The Act has empowered our Central Government to extend the copyright to foreign works under certain conditions as laid down in the Act. There are provisions in the Act relating to works of certain international organisations. The Central Government has the power to restrict rights in works of foreign authors first published in India.

Registration of Copyright (Chapter X)

The Chapter encompasses such items as **register of copyrights** and entries therein, indexes, forms and inspection of register, correction of entries in the register, rectification of register by the Copyright Board. According to the Act, register of copyrights will be *prima facie* evidence of particulars entered therein; and the entries in the register of copyrights, etc, are to be published.

Infringement of Copyright (Chapter XI)

For a library and information professional this Chapter is most important since nowadays all major libraries have photocopying facilities and huge amount of photocopying takes place in libraries. If a librarian is not careful infringement can take place at any moment. In this chapter when **copyright is infringed** and **certain activities not considered infringement of copyright are elaborated**. Both are being reproduced here verbatim to make you aware of the facts.

When copyright is infringed –“Copyright in a work shall be deemed to be infringed—

- a) when any person, without a licence granted by the owner of the copyright or the Registrar of Copyrights under this Act or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority under this Act-
 - i) does anything, the exclusive right to do which is by this Act conferred upon the owner of the copyright,
 - or
 - ii) permits for profit any place to be used for the communication of the work to the public where such communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication to the public would be an infringement of copyright;
 - or
- b) when any person-
 - i) makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire,

- ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or
- iii) by way of trade exhibits in public, or
- iv) imports into India, any infringing copies of the work.

Provided that nothing in sub-clause (iv) shall apply to the import of one copy of any work for the private and domestic use of the importer.

Explanation: For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematograph film shall be deemed to be an “infringing copy”. [Copyright Act]

When copyright is not infringed

- 1) The following acts shall not constitute an infringement of copyright, namely:
 - a) “a fair dealing with a literary, dramatic, musical or artistic work [not being a computer programme] for the purposes of—
 - i) private use, including research;
 - ii) criticism or review, whether of that work or of any other work;”
 - aa) the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme, from such copy—
 - i) “in order to utilise the computer programme for the purposes for which it was supplied; or
 - ii) to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied;”
 - ab) the doing of any act necessary to obtain information essential for operating inter-operability of an independently created computer programme with other programmes by a lawful possessor of a computer programme provided that such information is not otherwise readily available;
 - ac) the observation, study or test of functioning of the computer programme in order to determine the ideas and principles which underline any elements of the programme while performing such acts necessary for the functions for which the computer programme was supplied;
 - ad) the making of copies or adaptation of the computer programme from a personally legally obtained copy for non-commercial personal use;
 - b) a fair dealing with a literary, dramatic, musical or artistic work for the purpose of reporting current events—
 - i) in a newspaper, magazine or similar periodical, or
 - ii) by [broadcast] or in a cinematograph film or by means of photographs.

[*Explanation:* The publication of a compilation of addresses or speeches delivered in public is not a fair dealing of such work within the meaning of this clause]

- c) the reproduction of a literary, dramatic, musical or artistic work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding;
- d) the reproduction or publication of a literary, dramatic, musical or artistic work in any work prepared by the Secretariat of a Legislature or, where the Legislature consists of two Houses, by the Secretariat of either House of the Legislature, exclusively for the use of the members of that Legislature;
- e) the reproduction of any literary, dramatic or musical work in a certified copy made or supplied in accordance with any law for the time being in force;
- f) the reading or recitation in public of any reasonable extract from a published literary or dramatic work;
- g) the publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for the use of educational institutions, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or dramatic works, not themselves published for the use of educational institutions, in which copyright subsists :

Provided that not more than two such passages from works by the same author are published by the same publisher during any period of five years.

Explanation: In the case of a work of joint authorship, references in this clause to passages from works shall include references to passages from works by any one or more of the authors of those passages or by any one or more of those authors in collaboration with any other person;

- h) the reproduction of a literary, dramatic, musical or artistic work—
 - i) by a teacher or a pupil in the course of instruction; or
 - ii) as part of the questions to be answered in an examination; or
 - iii) in answers to such questions.
- i) the performance, in the course of the activities of an educational institution, of a literary, dramatic or musical work by the staff and students of the institution, or of a cinematograph film or a [sound recordings] if the audience is limited to such staff and students, the parents and guardians of the students and persons directly connected with the activities of the institution [or the communication to such an audience of a cinematograph film or sound recording].
- j) the making of sound recordings in respect of any literary, dramatic or musical work, if—
 - i) sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work;

- ii) the person making the sound recordings has given a notice of his intention to make the sound recordings, has provided copies of all covers or labels with which the sound recordings are to be sold, and has paid in the prescribed manner to the owner of rights in the work royalties in respect of all such sound recordings to be made by him, at the rate fixed by the Copyright Board in this behalf:

Provided that—

- i) no alterations shall be made which have not been made previously by or with the consent of the owner of rights, or which are not reasonably necessary for the adaptation of the work for the purpose of making the sound recordings;
- ii) the sound recordings shall not be issued in any form of packaging or with any label which is likely to mislead or confuse the public as to their identity;
- iii) no such sound recording shall be made until the expiration of two calendar years after the end of the year in which the first sound recording of the work was made; and
- iv) the person making such sound recordings shall allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such sound recording:

Provided further that if on a complaint brought before the Copyright Board to the effect that the owner of rights has not been paid in full for any sound recordings purporting to be made in pursuance of this clause, the Copyright Board is, *prima facie*, satisfied that the complaint is genuine, it may pass an order *ex parte* directing the person making the sound recording to cease from making further copies and, after holding such inquiry as it considers necessary, make such further order as it may deem fit, including an order for payment of royalty;

- k) the causing of a recording to be heard in public by utilising it—
 - i) in an enclosed room or hall meant for the common use of residents in any residential premises (not being a hotel or similar commercial establishment) as part of the amenities provided exclusively or mainly for residents therein;
 - or
 - ii) as part of the activities of a club or similar organisation which is not established or conducted for profit;
 - iii) as part of the activities of a club, society or other organisation which is not established or conducted for profit;
- l) the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious institution;

- m) the reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the author of such article has expressly reserved to himself the right of such reproduction;
- n) the publication in a newspaper, magazine or other periodical of a report of a lecture delivered in public;
- o) the making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a public library for the use of the library if such book is not available for sale in India;
- p) the reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access:

Provided that where the identity of the author of any such work or, in the case of a work of joint authorship, of any of the authors is known to the library, museum or other institution, as the case may be, the provisions of this clause shall apply only if such reproduction is made at a time more than sixty years from the date of the death of the author or, in the case of a work of joint authorship, from the death of the author whose identity is known or, if the identity of more authors than one is known from the death of such of those authors who dies last;

- q) the reproduction or publication of—
 - i) any matter which has been published in any Official Gazette except an Act of a Legislature;
 - ii) any Act of a Legislature subject to the condition that such Act is reproduced or published together with any commentary thereon or any other original matter;
 - iii) the report of any committee, commission, council, board or other like body appointed by the Government if such report has been laid on the Table of the Legislature, unless the reproduction or publication of such report is prohibited by the Government;
 - iv) any judgement or order of a court, tribunal or other judicial authority, unless the reproduction or publication of such judgment or order is prohibited by the court, the tribunal or other judicial authority, as the case may be;
- r) the production or publication of a translation in any Indian language of an Act of a Legislature and of any rules or orders made thereunder—
 - i) if no translation of such Act or rules or orders in that language has previously been produced or published by the Government;

or

- ii) where a translation of such Act or rules or orders in that language has been produced or published by the Government, if the translation is not available for sale to the public:

Provided that such translation contains a statement at a prominent place to the effect that the translation has not been authorised or accepted as authentic by the Government;

- s) the making or publishing of a painting, drawing, engraving or photograph of a work of architecture or the display of a work of architecture;
- t) the making or publishing of a painting, drawing, engraving or photograph of a sculpture, or other artistic work failing under sub-clause (iii) of clause (c) of section 2, if such work is permanently situated in a public place or any premises to which the public has access;
- u) the inclusion in a cinematograph film of—
 - i) any artistic work permanently situated in a public place or any premises to which the public has access;

or

- ii) any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the film;
- v) the use by the author of an artistic work, where the author of such work is not the owner of the copyright therein, of any mould, cast, sketch, plan, model or study made by him for the purpose of the work;

Provided that he does not thereby repeat or imitate the main design of the work;

- x) the reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed:

Provided that the original construction was made with the consent or licence of the owner of the copyright in such drawings and plans;

- y) in relation to a literary, dramatic or musical work recorded or reproduced in any cinematograph film the exhibition of such film after the expiration of the term of copyright therein :

Provided that the provisions of sub-clause (ii) of clause (a), sub-clause (a) of clause (b) and clauses (d), (f), (g), (m) and (p) shall not apply as respects any act unless that act is accompanied by an acknowledgment—

- i) identifying the work by its title or other description; and
- ii) unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgement of his name should be made, also identifying the author.

- z) the making of an ephemeral recording, by a broadcasting organisation using its own facilities for its own broadcast, by a broadcasting organisation of a work which it has the right to broadcast; and the retention of such recording for archival purposes on the ground of its exceptional documentary character;
- za) the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any *bona fide* religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority.

Explanation: For the purpose of this clause, religious ceremony including a marriage procession and other social festivities associated with a marriage.

- 2) The provisions of sub-section (1) “shall apply to the doing of any act in relation to the translation of a literary, dramatic or musical work or the adaptation of a literary, dramatic, musical or artistic work as they apply in relation to the work itself .” [Copyright Act]

Besides the above, the Act elaborates as to the particulars to be included in records and video films at the time of publication. According to the Section 52B of the Act every copyright society appointed under section 34A shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, in such form and in such manner as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India. Finally the Act includes two more Sections relating to the importation of infringing copies; and resale share right in original copies.

Civil Remedies (Chapter XII)

Infringement of copyright is but rampant. To remedy the situation the Act has made certain provisions which have been discussed in this Chapter. They deal with civil remedies for infringement of copyright; protection of separate rights; author’s special rights; rights of owner against persons possessing or dealing with infringing copies; restriction on remedies in the case of works of architecture; remedy in the case of groundless threat of legal proceedings; and jurisdiction of court over matters arising under this Chapter. The Act has also made provisions for the owners of the copyright to be a party in the legal proceeding.

Offences (Chapter XIII)

Infringement of copyright is an offence in the eye of the law. The offences may be of varied nature which this Chapter deals with. First it dwells on offence of infringement of copyright or other rights conferred by this Act; followed by enhanced penalty on second and subsequent convictions; and thirdly knowing use of infringing copy of computer programme which is an offence. Subsequently the Chapter deals with the power of police to seize infringing copies; possession of plates for purpose of making infringing copies; disposal of infringing copies or plates for purpose of making infringing copies; penalty for making false entries in the register, etc., for producing or tendering false entries ; penalty for making false statements for the purpose of deceiving or influencing any authority or officer; penalty for contravention of Section 52A relating to the particulars that

are to be included in records and video films; offences by companies; and finally it deals with cognizance of offences.

Appeals (Chapter XIV)

Three sections of the Chapter cover appeals against certain orders of a magistrate; appeals against orders of the Registrar of Copyrights and Copyright Board; and lastly the procedure for appeals.

Miscellaneous (Chapter XV)

This is the last chapter of the Act and comprises six sections and includes miscellaneous items. According to the Act, the Registrar of Copyrights and Copyright Board will possess certain powers of civil courts; orders for payment of money passed by the Registrar of Copyrights and Copyright Board will be executable as a decree; action taken by any person in good faith will be protected; certain persons will be public servants; the Central Government will have powers to make the rules; and the last Section deals with repeals, savings and transitional provisions.

Utility in Libraries

The Act is of great use in libraries as described below. In addition, a reader may ask various questions about copyright. For answering those questions a copy of the Copyright Act should be kept in the library.

Importance as a Reference Source

The Act is a powerful reference source. It is useful both for the library staff and for the readers. In a library lots of photocopies are made. The library staff must know thoroughly about the infringement of copyright. If a reader is refused photocopies of certain copyright material, he may ask for explanation. At that time, the Act will be of great use.

Remarks – The meaning of ‘literary work’ given in the Act is incomplete in the sense that it does not cover literary works like poetry, drama, fiction, essays, textbooks, monographs, and treatises. Moreover, the Act is silent about the ‘thesis’ whose ownership is sometimes claimed by the university and also by the researcher who has written the thesis. It should have been clarified in the Act.

Self Check Exercise

- Note:** i) Write your answers in the space given below.
- ii) Check your answers with the answers given at the end of the Unit.
- 3) Enumerate the copyrightable material according to the Indian Copyright Act, 1956.

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4) What does an author mean in our Copyright Act ?

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5) Name the acts which generally do not constitute an infringement of copyright.

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6) A reader wants the photocopy of a full book. How will you decide whether or not the photocopy of the book can be supplied to him?

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7.3.2 The Patents Act, 1970

The first Patent Act of British India was titled as Indian Patents and Designs Act, 1911. That continued for about 60 years and amended as The Patents Act, 1970. The word 'Indian' and 'Designs' were dropped. Since 1970 it has been amended several times. It was last amended in 2005.

Salient Features

The Act is a lengthy document containing 23 chapters comprising 163 sections. This Act is not directly concerned with library activities. As such only a glimpse of the Act is provided here.

As usual Chapter I deals with preliminaries and provides among others the scope, definition and interpretation of a number of terms used in the Act. All inventions are not patentable, e.g. a man trap, devices that go against natural laws, abstract theories, inventions relating to atomic energy, etc. Non-patentable inventions have been listed in Chapter II. Application for patents (e.g. persons who can apply for patents, form of application, contents of specification, etc.) has been dealt with in Chapter III. The application and the complete specification are referred to an examiner by the Controller for his report. The examination and related activities involve a number of procedures which are all described in Chapter IV. The next chapter (Chapter IVA) dwells on exclusive rights of marketing.

The acceptance of a complete specification is advertised by the patent office. Within a specific period of time (In India it is four months extendable up to five months) a person can oppose the grant of patent. The procedure for opposition to the grant of patent has been elaborated in Chapter V.

Chapter VI deals with Anticipation. In patent law, anticipation means the publication of the existence of an invention that has already been patented or has a patent pending. On this ground a patent to an invention that has substantially the same structure and function as the earlier invention may be denied. The anticipation of an invention also occurs when the later invention is found to be a mere adaptation of an earlier patent which would be obvious to a person skilled in the art [Anticipation].

Certain inventions may be important from defence point of view. The publication of such patents will make the invention public which an enemy country can take advantage of. Thus there is need for secrecy. Chapter VII deals with provisions of secrecy for certain inventions.

The 8th Chapter is an important chapter from the viewpoint of the applicant. This particular chapter deals with **grant and sealing of patents and rights conferred thereby**. The process of getting a patent is a lengthy one. The moment an idea of a patentable invention comes to the mind of an inventor, he can file application for a patent. Then within a specified period, the inventor has to deposit the full specification of the invention. In the next step, the specification is sent to the examiner, who takes a long time to check whether the invention already exists in the world, or it is in the process of being patented. Apart from this, the examiner is to check all the claims made in the patent one by one. When the examiner gives the green signal, the specification is accepted by the patent office. Once accepted, a time of four to five weeks (it varies from country to country) is given for opposition. If there is no opposition, then the time comes for the grant and sealing of patents. Once the patent is granted 'the Controller shall cause the patent to be sealed with the seal of the patent office and the date on which the patent is sealed shall be entered in the register' [Patents Act]. The process may take easily four to five years or more. It is to be noted that the date on which the complete specification was filed will be the date of the patent.

It happens many a time that an inventor after filing the complete specification feels it necessary to improve or modify the patent. This improvement or modification is called **addition**, and the patent with addition is called the **patent of addition** which is the title of Chapter IX.

After the filing of the application or complete specification, at times need arises for amendment in the application or complete specification or both for various reasons. Under certain conditions the amendments are allowed. Chapter X describes how to apply for the amendment/s and the conditions under which the permission for the amendment/s may be granted.

For the non-payment of renewal fee within the prescribed period or the extended period (if there is any extension) the patent gets lapsed. The lapsed patent may be restored subject to conditions, by making an application within the prescribed period, and paying the unpaid renewal fee plus the additional fee. Chapter XI of the Act deals with this matter and describes the procedure for disposing

applications for restoration of lapsed patents, and rights of patentees of lapsed patents after its restoration.

A patentee may offer to surrender his patent at any time by giving notice in the prescribed manner to the Controller. The patent may be revoked if conditions laid down in the Act are fulfilled. It may be recalled that a patent on the use of turmeric as a wound healing agent was granted in USA. CSIR successfully challenged the patenting on the ground that the healing properties of turmeric had been 'common knowledge' in India for centuries. Subsequently the patent was revoked. The battle for the revocation of the patent on Basmati (US Patent No.5663484) is going on for a number of years. It is hoped that the battle will go in favour of India and the patent on Basmati Rice will be revoked. [TED Case Studies – Basmati]. Chapter XII tells you about the surrender and revocation of patents.

The next three chapters (XIII, XIV, and XV) deal respectively with register of patents, patent office and its establishment; and powers of Controller generally.

A register of patents is a register in which the particulars of a patent are entered, as the particulars of a book are entered in an accession register. No notice of any trust is entered in the register. It also provides details as to the registration of assignments, transmissions etc; power of registered grantee or proprietor to deal with patent; and rectification of register by High Court. It also points out that assignments, etc, will not to be valid unless in writing and registered; and the register is to be open for inspection.

As to Patent Office, the Act provides information as to its controller and other officers, patent office and its branches (on theoretical level), restriction on employees of patent office as to right or interest in patents, furnishing of certain information, preparation of certain documents, and conducting a search in the records of the Patent Office.

According to the Act, the Controller will have certain powers (list provided) of the Civil Court; power to correct clerical error in the patent, specification, etc. The Controller will also have the power to dispose the applications for extension of time.

Chapter XVI is devoted to working of patents, compulsory licences, licences of right and revocation. A patentee himself/herself can work with the patent if s/he so desires. It may also be given to a person if s/he makes an application after the expiry of three years from the date of sealing of the patent subject to certain conditions. The applicant will also have to pay the price to get a compulsory licence. If the price of the patent is high, the applicant can point out the same to the Controller. If the Controller is satisfied with all the matters contained in the application he may order the patentee to grant a licence upon such terms as he may deem fit. Compulsory licences have been described in six different sections covering such areas as matter taken into account for granting compulsory licences, endorsement of patents with the words "Licences of Rights" (two sections) and its effect, power of the Controller to adjourn applications for compulsory licenses, etc. in certain cases, as well as in granting compulsory licences, terms and conditions of compulsory licences, and finally special provision for compulsory licences on notifications by the Central Government. Subject to the conditions

laid down in the Act, a non-working patent can be revoked. Other sections dwell on the procedure for dealing with applications under sections 84, 86 and 89, and licensing of related patents. Section 98 provides that order for licence is to operate as a deed between parties concerned.

An invention may be used for the purposes of the Central Government, a State Government or a Government undertaking subject to certain conditions. Chapter XVII of the Act deals with this matter as well as acquisition of invention/s by the Central Government. First of all, the meaning of 'use of invention for purposes of Government' has been elaborated. In the next sections power of the Central Government to use inventions for purposes of Government, rights of third parties regarding the use of invention for purposes of Government, and acquisition of inventions and patents by the Central Government have been described. Reference to High Court of disputes as to use for purposes of Government occupies the last section.

Infringement of patents is not uncommon. The number of suits in the courts the world over concerning infringement of patents is also not small. Some suits may be genuine, some may not. This is the subject matter of Chapter XVII which has been dealt with in 12 sections. The Sections covers jurisdiction; power of court to make declaration as to non-infringement, and to grant relief in cases of groundless threats of infringement proceedings; defences, etc., in suits for infringement; reliefs in suits for infringement; right of exclusive licensee to take proceedings against infringement; right of licensee under section 84 to take proceedings against infringement; restriction on power of court to grant damages or account of profits for infringement, as well as to grant injunction in certain cases; certificate of validity of specification and costs of subsequent suits for infringement thereof; relief for infringement of partially valid specification. Lastly, it deals with scientific advisers who are to assist the court in matters relating to patents which involve mainly technology.

In suits relating to patents, the court after the completion of all the procedures announces its verdict. Obviously the verdict will normally go in favour of one party, and against the other. The party losing the case may make an appeal to the court. Chapter XIX deals with the **appeals**. It comprises two sections dealing with appeals and hearing of appeals.

Penalties involving fine, imprisonment or both are imposed for many offences committed in patenting acts. The acts that lead to offences have been detailed in Chapter XX. Some of them are: contravention of secrecy provisions relating to certain inventions; falsification of entries in the register, etc; unauthorised claim of patent rights; wrongful use of words "patent office"; refusal or failure to supply information; practice by non-registered patent agents; and offences committed by companies.

A patent agent (Chapter XXI) is an important person in the activities relating to patents and patenting. The activities involve among others- application for the grant of patent, restoration of lapsed patents, sealing of patents, leave to amend, compulsory licences or for revocation, notice of surrender of patents, etc. All these are verified and signed by the patent agent and subsequently communicated to the Controller. For registration as a patent agent certain qualifications are essential as prescribed in the Chapter. A patent agent is generally an advocate. The Chapter has eight sections dealing with: register of patent agents;

qualifications for registration as patent agents; rights of patent agents; subscription and verification of certain documents by patent agents; restrictions on practice as patent agents; removal from the register of patent agents and restoration; power of the Controller to refuse to deal with certain agents; savings in respect of other persons authorised to act as agents.

An applicant has to apply to many countries of the world for the grant of patent for his/her invention. A country where the inventor has applied will give protection to his/her invention. Other countries will not. If protection is not given to a patent by a certain country, the patent may be worked in that country without the payment of fees to the patentee. As an inventor of our country can apply for patenting his/her invention in another country. Similarly, inventors from other countries can also apply for patent in India. For this purpose, international arrangements are essential. Chapter XXII deals with this matter in seven sections and covers notifications as to convention countries, and also as to countries not providing for reciprocity; convention applications; special provisions relating to convention applications; multiple priorities; supplementary provisions as to convention applications; and other provisions of the Act to apply to convention application. As usual, the last chapter (XXIII) includes miscellaneous items and comprises 24 sections. The sections among others are: avoidance of certain restrictive conditions, fees, restrictions upon publication of specifications, confidentiality of the reports of examiners, publication of patented inventions, power of the Controller to call for information from patentees, evidence of entries, documents, etc, loss or destruction of patents, right of the Government to sell or use forfeited articles, etc.

Utility – Patent acts practically has no utility in academic and public libraries. It is useful in scientific and technological libraries where inventive activities are always on. Inventors need to know the inventions which are patentable, and which are not. They need a great deal of information about filing of application, opposition to grant of patent, addition, amendment, etc not only in India but also in other countries. The acts have great utilities in law libraries as well as personal libraries of lawyers where they are to use the acts in the patent-related suits in the court. Moreover patent agents, patent attorneys, inventors, etc also use patent acts heavily.

Importance – The Acts serve as very good reference materials for S & T libraries, law libraries, lawyers, patent agents, inventors and others dealing with patents.

Self Check Exercise

Note: i) Write your answer in the space given below.

ii) Check your answer with the answers given at the end of the Unit.

7) Discuss the utility of patent acts.

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7.4 INFORMATION TECHNOLOGY ACT, 2000

Information technology (IT) has generated a number of activities of its own and invaded practically all major human activities during the last few decades. Along with the helpful activities it has generated offences as well. All these developments have generated the need to pass an act related to IT. Many countries of the world have passed IT acts including our own. The salient features of the Act along with its utility and importance are given below.

Salient Features

The Information Technology Act, 2000 came into existence in our country on 9th June 2000. Since then it has been amended in 2006 and 2008. The Act has 13 chapters comprising 94 sections. A brief description of the chapters follows:

Preliminary (Chapter I)

As usual this Chapter indicates the extent, i.e. whole of India, date of commencement, and application of the Act. Section 2 of the Act provides definitions of certain terms used in the Act. The definitions of our interest as given in the Act are reproduced below [IT Act].

Computer ‘means any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetic, and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network’.

Data ‘means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts, magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer’.

Electronic record ‘means data, record or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer generated microfiche’.

Information ‘includes data, text, images, sound, voice, codes, computer programmes, software and databases or microfilm or computer generated microfiche’.

Originator ‘means a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person but does not include an intermediary’.

Digital Signature (Chapter II)

This chapter deals with the authentication of electronic records.

Electronic Governance (Chapter III)

The Chapter dwells on legal recognition of electronic records, as well as digital signatures; use of electronic records and digital signatures in the Government and its agencies (Section 6); retention of electronic records (Section 7); publication

of rules, regulations, etc., in Electronic Gazette (Section 8); and power to make rules by Central Government in respect of digital signatures. Also informs that Sections 6, 7 and 8 will not confer right to insist that the document should be accepted in electronic form.

Attribution, Acknowledgment and Despatch of Electronic Records (Chapter IV)

First of all the Chapter deals with, to whom, an electronic record should be attributed. As per the Act generally it should be attributed to the originator of the record. This apart, it deals with acknowledgment of receipt; and time and place of despatch and receipt of the electronic record.

Secure Electronic Records and Secure Digital Signatures (Chapter V)

First of all, it is better to have an idea of secure electronic record and secure digital signature.

As per the interpretation of the Act, a **secure electronic record** is one where any security procedure has been applied to the electronic record at a specific point of time. Such a record shall be deemed to be a secure electronic record from such point of time to the time of verification.

The interpretation of the **secure digital signature** as per the Act is as follows:

If, by application of a security procedure agreed to by the parties concerned, it can be verified that a digital signature, at the time it was affixed, was—

- a) unique to the subscriber affixing it;
- b) capable of identifying such subscriber;
- c) created in a manner or using a means under the exclusive control of the subscriber and is linked to the electronic record to which it relates in such a manner that if the electronic record was altered the digital signature would be invalidated, then such digital signature shall be deemed to be a secure digital signature.

This apart, the Chapter deals with security procedure.

Regulation of Certifying Authorities (Chapter VI)

The Chapter embraces a number of items relating to the Controller, other officers, licences, Certifying Authority and so on. It starts with the appointment of the Controller and other officers, and continues with such sections as the functions of the Controller, and recognition of foreign Certifying Authorities. As per the Act the Controller shall be the repository of all digital signature certificates issued under this Act. As to licences it deals with licence to issue digital signature certificates, application for licence, renewal of licence, procedure for grant or rejection of licence, suspension of licence, notice of suspension or revocation of licence. It also elaborates on the power of the Controller to delegate power to his juniors, his power to investigate contraventions, access to computers and data. As per the provisions of Act, the Certifying Authority is to follow certain procedures; and ensure compliance of the Act, etc., Lastly, it deals with the display of licence, surrender of licence, and disclosure to be made by the Certifying Authority.

Digital Signature Certificates (Chapter VII)

The Act provides that the Certifying Authority is to issue the digital signature certificate, it also elaborates on representations upon the issuance of digital signature certificate, suspension of digital signature certificate, revocation of digital signature certificate, and notice of suspension or revocation.

Duties of Subscribers (Chapter VIII)

As per the provisions of the Act, the subscriber will have to generate the key pair, accept the digital signature certificate, and retain the control of the private key.

Penalties and Adjudication (Chapter IX)

Computer offences are of varied nature. They may involve a stand alone computer, a computer system, or a computer network. All these may contain personal information, confidential information, and various other types of non-disclosable information or data.

Computer offences include among others unauthorised access to a computer, computer system, or a computer network; downloading, copying or extracting any data, information, and database from any of these; introduction of any computer virus or computer contaminant in any of these; damaging or causing damage to any of these; disrupting or causing disruption to any of these; denial of access to any of these devices; providing assistance to any person in accessing these devices; charging the services availed of by a person to the account of another person by tampering or manipulating with any of these devices, Section 43 of the Act deals with the penalties of all these offences. For any of the offences the offender shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected. The subsequent sections deal with penalty for failure to furnish information return, etc; residuary penalty, power to adjudicate, and factors to be taken into account by the adjudicating officer.

The Cyber Regulations Appellate Tribunal (Chapter X)

An appellate tribunal is an assembly of one or more judges that can hear appeals and review lower courts decisions. As per the Act the Cyber Appellate Tribunal comprises only one judge who is the Presiding Officer.

The Chapter deals with the establishment of Cyber Appellate Tribunal (hereafter called as the Tribunal) and its composition; qualifications required for appointment as the Presiding Officer of the Tribunal; his term of office, salary, allowances and other terms and conditions of service, resignation and removal; filling up of vacancies of the Tribunal; staff of the Tribunal; procedure and powers of the Tribunal; appeal to the Tribunal; an appellant's right to legal representation; application of Limitation Act, 1963 to an appeal made to the Tribunal; Civil court not to have jurisdiction; appeal to High Court; compounding of contraventions; recovery of penalty. The Act provides that orders constituting the Tribunal will be final and not to invalidate its proceedings.

Offences(Chapter XI)

A number of computer offences have already been enumerated in Chapter IX titled as Penalties and Adjudication. This chapter is exclusively devoted to offences and deals with tampering with computer source documents; hacking

with computer system; publishing of information in electronic form which is obscene; power of the Controller to give directions; directions of the Controller to a subscriber to extend facilities to decrypt information; declaration of a computer, computer system or computer network as a protected system; penalties for misrepresentation of facts, breach of confidentiality and privacy, publishing Digital Signature Certificate false in certain particulars, and publication for fraudulent purpose. The Act also deals with its application for offences or contraventions committed outside India; confiscation of any computer, computer system, floppies, compact disks, tape drives or any other accessories related thereto. According to the provisions of the Act the penalties or confiscation are not to interfere with other punishments. The last Section deals with the power of a police officer to investigate offences.

Network Service Providers not to be Liable in Certain Cases (Chapter XII)

According to the provisions of the Act “no person providing any service as a network service provider shall be liable under this Act, rules or regulations made thereunder for any third party information or data made available by him if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention”.

Miscellaneous (Chapter XIII)

As usual, the last chapter deals with miscellaneous items. The sections of the Chapter deals with the power of a police officer and other officers to enter, conduct search, etc; protection of action taken in good faith; offences by companies; removal of difficulties, if any difficulty arises in giving effect to the provisions of this Act; power of the Central Government to make rules; and the constitution of the Advisory Committee. The Act provides that it will have overriding effect; the Controller, Deputy Controller and Assistant Controllers will be public servants; the Central Government will have power to give directions; the Controller will have power to make regulations, and the State Governments will have power to make rules,

Check Self Exercise

Note: i) Write your answer in the space given below.

ii) Check your answer with the answers given at the end of the Unit.

8) Enlist the computer offences as given in the IT Act.

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7.5 SUMMARY

The concept 'right to information' and its need have been explained. The salient features, utility, and importance of the Right to Information Act has been described. Intellectual property rights involve two Acts, i.e. the Copyright Act, 1957 and the Patents Act, 1970. The Copyright Act, 1957 involves library activities to a great extent. Hence, it has been described in greater detail. The entire text of the infringement of copyright as well as non-infringement of copyright have been reproduced from the Act to make the students well aware of this. The Patents Act has been described briefly as it serves mainly as a reference source in a library. Information Technology Act has also been dealt with greater emphasis as computer offences can hit any library and librarians must be aware of computer offences and penalties thereof. In all, eight self check exercises have been included with answers. In the Acts appear a number of legal terms. For easy comprehension of students, the definition of a number of legal terms have been provided.

7.6 ANSWERS TO SELF CHECK EXERCISES

- 1) RTI Act is meant for every citizen of the country. It helps not only the rich and the elites but also the common people at the grass root level. The following incident shows how RTI helps even school students.

A private school at Kalol taluk at Panchmahal district in Gujarat was charging fees from the students even though the school was receiving support from the State Government and was not supposed to collect any fees from the students. Aslambhai, a resident of Kalol taluk made an RTI application to the Principal of the school asking him to provide copies of the circulars or government orders that permitted the school to collect fees. As expected, the Principal could not produce any government circular or order and admitted in writing that the school did not have any authority to collect fees from the students except for computer classes which was being run by the trust at its own expenses. Hereafter the students were not asked to pay any fee.

- 2) A banned book is one which is proscribed by the government for its offensive content. The moment a book is banned, it should be withdrawn from circulation, and kept under lock and key. When the ban is lifted it should be placed on the open shelves again for the use of the readers.
- 3) The copyrightable material according to Indian Copyright Act are as follows:
 - a) original literary, dramatic, musical and artistic works;
 - b) cinematograph films; and
 - c) sound recordings.
- 4) According to our Copyright Act an author means the author of a literary or dramatic work, composer of a musical work, artist, photographer, the producer of a cinematograph or sound recording, and the person who is responsible for a computer-generated literary, dramatic, musical or artistic work.
- 5) The following acts generally do not constitute an infringement of copyright, namely:

- a) a fair dealing with a literary, dramatic, musical or artistic work [excluding a computer programme] for the purposes of-
 - i) private use, including research;
 - ii) criticism or review, whether of that work or of any other work.
- 6) First of all you will have to find out whether the author is alive. If he is, then there is no question of supplying the photocopy. If he is not, then it is to be found out when he died. Suppose he died on 7 July 1950. We can easily see that 60 years have elapsed since his death. Hence, the photocopy can be given.
- 7) Patent acts are hardly used in academic and public libraries. It is mainly useful in technological libraries and some scientific libraries where researches are going on for inventing something new. Inventors need to know the inventions which are patentable, and which are not. They need a great deal of information regarding filing of application, preparation of the specification, opposition to grant of patent, addition, amendment, surrender, etc not only in India but also in other countries. The acts have great utilities in law libraries as well as personal libraries of lawyers where they are to use the acts in the patent-related activities and suits in the court. Moreover patent agents, patent attorneys, inventors and many other people engaged in patent-related activities use patent acts heavily.
- 8) Computer offences as provided in the IT Act are as follows: The offences include among others unauthorised access to a computer, computer system, or a computer network; downloading, copying or extracting any data, information, and database from any of these; introduction of any computer virus or computer contaminant in any of these; damaging or causing damage to any of these; disrupting or causing disruption to any of these; denial of access to any of these devices; providing assistance to any person in accessing these devices; charging the services availed of by a person to the account of another person by tampering or manipulating with any of these devices; tampering with computer source documents; hacking with computer system; publishing of information in electronic form which is obscene.

7.7 KEYWORDS

- Adjudicate** : To put on trial.
- Appellant** : A party that appeals a decision of a lower court.
- Convention Application** : An application made in a convention country for a patent in respect of an invention.
- Convention Country** : ‘Any country outside India which affords to applicants for patents in India or to citizens of India similar privileges as are granted to its own citizens in respect of the grant of patents and the protection of patent rights’ [Patents Act]. Usually, the Central Government by notification in the *Official Gazette*, declares such a country as a convention country for the purposes of this Act.

Creator	: One who creates. In the case of copyright, the term includes among others author, composer of music, painter, sculptor, photographer,
Exempt Information	: A piece of information which is exempt from disclosure, that means the information cannot be disclosed.
Fiduciary	: Of or relating to the nature of a legal trust.
Geographical Indications of Source	: In these cases, the sources are identified by geographical names, such as Darjeeling tea.
Information Technology	: The branch of technology that deals with the use of computers and telecommunications to store, retrieve and transmit information.
Interoperability	: The ability to exchange and use information usually in a large heterogeneous network comprising several local area networks.
Key Pair	: It consists of a private key for creating a digital signature and a public key to verify the digital signature.
Leave	: Permission to do something.
Patentee	: An inventor to whom a patent is granted. If an inventor is an employee of an organization, and the patent application is filed in the name of the organization then the organization will be the patentee.
Private Key	: It is the key meant for the creation of a digital signature.
Public Key	: It is the key meant for the verification of a digital signature.
Savings	: Exceptions.
Specification	: According to patent law, a specification is a document prepared by the applicant for a patent of invention that provides an explicit and detailed description of the nature and use of an invention.
Third Party Information	: Any information dealt with by a network service provider in his capacity as an intermediary.
Tribunal	: An assembly of one or more judges that can conduct judicial business.

7.8 REFERENCES AND FURTHER READING

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