

Theoretical Foundation and Contemporary Application of the Concept of "Social Engineering" to Intellectual Property (Amendment) Act, No 08 of 2021

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Abstract - Justice is a universal aspiration, and the feeling of injustice is a powerful human emotion. However, injustice is essentially a conflict, and a society without justice as a governing principle is an unstable society bound together by some form of coercion. Moreover, law and justice are subjected to different interpretations over time, but the common standard has not been changed. That is, the diversity of justice does not always coincide with the consensus of law and society. Alternatively, one person's request for legal justice may contradict another person's request. Intellectual Property plays a vital role in modern economies as a valuable intangible asset. Particularly, copyrights and related rights can be considered as one of the most viable intellectual property rights which can easily be acquired as well as unduly exploited. Digitization makes it easy to make unauthorized copies of copyrighted works in seconds. Inevitably, the misuse of property rights will challenge the skills and interests of dedicated owners to create that work with financial intent. The main purpose of this article is to explore the possibility of access to intellectual property in the face of the visually impaired community, and to identify and validate the changing nature of copyright and related rights challenges in the age of digitization. It discusses the involvement of the domestic law-making mechanism in recent developments in the protection of copyright and related rights in a digital environment to achieve these objectives. Finally, this article seeks to identify gaps in the Sri Lankan law and to develop copyright and related rights law to strike a balance between the rights of owners, the general public, and the visually impaired community. This research is a legal inquiry into the inextricable link between law and society throughout the theoretical foundation and contemporary application of the concept of "Social

Engineering" to intellectual property (Amendment) Act, No 08 of 2021.

Keywords— *intellectual property rights, social engineering, sociological jurisprudence, copyright*

I. INTRODUCTION

The idea of "social utility" is that the good of most societies leads to the happiness of the majority. According to "Roscoe Pound," in the transition from a conflict-ridden society to modern society, the Law was changed based on social expectations. Also, the function of Law later integrates to perfect the maximum strengths and efficiencies of a human-made society in a highly competitive race to achieve unlimited needs. Thus, social engineering has become the foremost spirit of the school of sociology, which gradually developed after Auguste Comte, who planted the seeds of sociology.

The Law of sociology is built on the premise that "law" should always be discussed in a social context. According to Auguste Comte, "law is a tool used to satisfy human needs," and Rudolf Von Jhering recognizes that the Law must also act as a mediator, balancer, and harmonizer in society. Similarly, philosophers such as Rudolf von Jhering, further developed the theory of utility and rights. Roscoe Pound recognized the legal and judicial process of making laws according to social aspirations as a social engineering method. Pound's task was to find a new way to achieve social goals based on the Rule of Law, and he believed that the Rule of Law was not just a set of legal rules but an entire legal system. Accordingly, the sociological school emphasizes the need for more organized and legal authorities to build a more realistic legal environment.

Regarding this situation, Prof. Hari Chand's opinion can state as follows. "Just like an ordinary engineer, a lawyer is also involved in engineering. The shape and purpose of social engineering are to persuade a lawyer to shape and change the Law. That is, the primary purpose of the Law is to balance the rights that are recognized. As Pound identified, the rights of society are of three kinds. They can express Individual, Public and Social interests.

Of the above rights, social rights are in constant conflict with individual rights. The subject area of intellectual property can describe as a key area of Law in which such conflicts exist. The concept of "copyright" originated in the Chinese printing industry centuries ago and later evolved into intellectual property law. There is a constant conflict between the rights of author and reader's rights, and in many cases, less attention is paid to the rights of the reader.

II. RESEARCH METHODOLOGY

This research is normative research which is primarily based on an extensive literature review. The research comparatively studies the application of the concept of "Social Engineering" to Intellectual Property (Amendment) Act No 08 of 2021. The purpose of selecting Comparative methodology is to identify the recent development in this field and discuss its applicability into the Sri Lankan context. As primary sources, International Instruments, Legislations and case law such as the WIPO copyright treaty of 1996, WIPO performance and phonograms treaty, Intellectual property Act No 36 of 2003 and Intellectual Property (Amendment) Act No 08 of 2021 in Sri Lanka have been used in this research. Furthermore, journal articles, Web resources, and textbooks are referred to as secondary sources to enrich the research.

III. INTELLECTUAL PROPERTY LAW

In Human history, historians have historically used imagination, innovation, and creativity to solve problems. Albert Einstein, the great genius of the 20th century, argued that imagination is more valuable than knowledge. Intellectual property is based on the power of the imagination and is an invisible and intangible property.

Professor W.R. Cornish's view on the importance of intellectual property law can quote as follows. "The subject (Intellectual property law) is growing in importance, to the advanced industrial countries in particular, as the fund of exploitable ideas becomes

more sophisticated and as their hopes for a successful economic future come to depend increasingly upon their superior corpus of new knowledge and fashionable conceits. There has recently been a great deal of political and legal activity designed to assert and strengthen the various types of protection for ideas."

Intellectual property is the product of human intelligence. Article 27 of the UDHR states, "every person has the right to defend the moral and physical rights of the scientific, literary or artistic production of which he is the author." There are three practical aspects of intellectual property. That is, how to acquire intellectual property, how to maintain it and additionally, how to protect. The World Intellectual Property Organization, based in Geneva, protects and promotes the intellectual property rights of its member countries and administers 26 international conventions on intellectual property, including the Universal Declaration of Copyright, the Trade Agreement on Property Rights (TRIPS).

The Intellectual Property Act No. 36 of 2003 has been introduced to provide legal protection to works of art produced by individuals or groups. The registration of intellectual property through this Act and power administration has been delegated to the Sri Lanka National Intellectual Property Bureau.

IV. INTELLECTUAL PROPERTY RIGHTS

Article 27 (2) of the Universal Declaration of Human Rights recognizes intellectual property rights as a fundamental right and other rights. Accordingly, every person has the right to enjoy the spiritual and physical benefits of a scientific, literary or artistic work created by his or her authorship. Furthermore, article 1 of the First Additional Protocol to the European Convention on Human Rights and the Byrne and Paris Conventions, recognized as the great pillars of intellectual property law, recognizes intellectual property rights.

Various arguments have been made for the justification of intellectual property rights and their security. However, from the perspective of a school of natural law, the creator of intellectual property has always embodied natural rights in his or her intellectual achievement. Therefore, society is morally obligated to present and execute that property right to him.

Nevertheless, in contrast to the approach to natural Law, utilitarianism argues that society needs those rights because of the contribution of intellectual

property to the general well-being of society. Utilitarianism argues that incentives should give to inventors and authors and that careless use of resources without property rights can lead to a common tragedy. This utilitarianism approach is most clearly stated in the United States Constitution "Us congress has to power "To promote the progress of science and useful arts by securing for limited times to authors and Inventors the exclusive right to their respective writing and Discoveries."

In addition, the theory of the granting of a monopoly to justify intellectual property rights states that the creator must benefit from his or her service. Therefore, based on the main arguments of Monopoly-Profit-Incentive and Exchange for Secret, it justifies the granting of exclusive rights to intellectual property. However, this theory is based on trade and commercial objectives rather than rights based on Natural Law.

V. COPYRIGHT AND PUBLISHERS' RIGHTS

Copyright is one of the branches of intellectual property law. The primary purpose behind it is to benefit the author through the exclusive legal rights of the individual, which encourages the creation of a more economically aesthetic intellect. By WIPO definition, copyright is simply the legal protection granted to the owner of the original work. Section 6 (1) of the Intellectual Property Act 2003 states that the concept "protects not only original intellectual creations but also derivative works as artistic, academic and scientific works under this Act."

In the case of *University of London Press Ltd v. the University Tutorial Press Ltd (1916)*, Judge Peterson defined intellectual creation as "not necessarily an original publication or a new concept, What is needed is not the freshness of the ideas in the design, but the novelty of the ideas presented." This concept was acknowledged locally by Judge Dheeraratne in *Wijesinghe Mahanamahewa v. Austin Canter (1986)* and later in *A. C. Alles v. Wasantha Obeysekera (2000)* in question

Just as intellectual property is a valuable intangible asset in the modern economic and social context, copyright and related rights can easily infringe upon in the face of the spread of modern digitalization. With the advancement of technology, the evolution of society is accelerating, and the need to protect copyright is increasing. Article 15 of ICESER states that the creator has the right to exploit his intellectual property, and also, society has the right to exploit the intellectual property. Here we must ask

how the rights that conflict with the scope of the publisher's intellectual property rights and the fair use of society in a digital environment are balanced and how this amended Act further enhances it. If the copyrights are divided into two basic stages, they can be divided into economic rights and moral rights. Economic rights are in the general sense, and moral rights are the right of the author to be the author of his or her work and resist distorting the work. These moral rights can be considered as paternal rights attributed to specific creations in addition to economic rights.

VI. CONFLICT BETWEEN INTELLECTUAL PROPERTY RIGHTS AND PUBLIC WEALTH

Jurisprudence can explain the relationship between intellectual property rights and human rights through two philosophical foundations from a legal point of view. The conflict approach points to the fact that intellectual property rights, which are individual, are constantly in conflict with common social rights. The general opinion is that intellectual property rights limit economic, social and cultural rights. It has become the basis of the conflict approach that it is appropriate to accept the commonwealth concept in any of these conflicts.

The Coexistence approach enforces intellectual property rights through human rights and cooperation. Attempts have been made to balance rights by providing the public with adequate access to intellectual property to resolve conflicts.

The General Comment No. 17 of the Committee on Economic, Social, and Cultural Rights, which aims to balance this conflict and promote public welfare, states that human rights should take precedence over intellectual property rights. The TRIPS Convention also used a favorable interpretation of the use of the intellectual property for human rights. Article 7 states that member states must contribute to protecting and activating intellectual property rights and the balance of rights.

The Intellectual Property Act 2003 has succeeded in enforcing fair use, compulsory licensing, protection term, and termination of rights to strike a balance between rights, giving the copyright authority and the social right to benefit from intellectual property. However, in *Lalitha Sarathchandra v. Upulshantha Sannasgala*, Honorable Judge KT Chithrasiri is engaged in a more detailed analysis in the Commercial High Court.

The doctrine of fair use permits copyright work, which would otherwise be construed as infringements. It provides an important exception and defense for a certain type of use of copyright works, which are considered fair under copyright law.

In the case of *Hubbard v. Vosper*, Lord Denning explained what the meaning of fair use is. According to him, "fair use is difficult to explain. You should first consider the number of pages you will be quoting. If it is a huge quantity, how can it be justified? Next, however, you have to ask what it is used for. If such an excerpt is made for comment or critique, it may be considered fair use. However, if that quote were made to express opposition, it would not be fair use. Likewise, it would be unfair to make a concise critique of a long quote. On the other hand, it is also fair to make a lengthy critique with a short quote.

However, *Triangle Publications v. Knight-Ridder News Papers case*, the U.S. Court of Appeals states in the "The question of fair use has been appropriately described as the most troublesome in the whole of copyright. Although no definition of fair use that is workable in every case has ever evolved, a frequently quoted definition of fair use is a privilege in others than the owner of a copyright to use the copyrighted material in a reasonable manner without his consent, notwithstanding the monopoly granted to the owner (by the copyright)."

The concept of fair use is also enshrined in the Intellectual Property Act of 2003. Article 9 of the Act introduces the concept of fair use of the reader and grants economic rights to the copyright holder of a work. Section 11 also sets out how it can be implemented. Mr. D.M. Karunaratne comments on Article 11: "The purpose of fair use of referred to in this section is merely a set of examples. They do not constitute an exhaustive list. Thus, these provisions are obviously open-ended". As a result of these provisions, the concept of fair use in the country was put into action, and under fair practice, the fair rights of the readership are often discussed.

Although Section 11 (1) of the 2003 Act refers to fair use, it does not define the limits of fair use. In the *Lalitha Sarathchandra v. Upulshantha Sannasgala* case, the respondent had to pay Rs. 2 million as compensation to the plaintiff for violating the authorship beyond this fair use. Also, the *University of London Press v. The University Tutorial Press* proceeded with the case. That opinion *Vasantha*

Obesekara v. A.C. Alles was also recognized locally in the case.

Article 12 contains a list of behaviors permitted within the "limits of fair use." This is very similar to sections 108 and 109 of the 1976 United States Copyright Act. However, the 2003 Act does not address the reader rights of the visually impaired community.

VII. RIGHTS OF THE VISUALLY IMPAIRED READER COMMUNITY

Referring to the Intellectual Property Amendment Act No. 08 of 2021, it can be understood that it is intended to facilitate the use of such print media for the visually impaired or those who cannot use the print media due to any visual or physical disability. By reading the passage, added to the sentence. It is further expanded through sections 2 (a) (b) and (c) of the amended Act.

Sri Lanka ratified the United Nations Convention on the Rights of Persons with Disabilities in 2008. Article 14 of Chapter 3 of the 1978 Constitution guarantees the right of every person to freedom of speech and freedom of expression, including the right to information. *Ninth Circuit's Robles v. In Domino's (2019)* case, the U.S. Supreme Court stressed that the visually impaired community must establish the right to access Web site information. Because of these facts, persons with disabilities should be treated as part of the special care of the Law. The central group in this dissertation, the "Visually Impaired Community," should examine whether Sri Lankan intellectual property laws can guarantee equal rights and opportunities in the use of the intellectual property.

Research shows that only 1% of works published in developing countries are published in the visually impaired community. The WIPO-controlled Marrakesh Agreement establishes a set of limitations and exceptions to traditional copyright law. It facilitates the production and exchange of "accessible models" specifically adapted for the visually impaired. According to Auguste Comte, "Law can be identified by analyzing the social context of a growing living organism according to a scientific methodology. It is also the responsibility of the individual and the state and society to study the Law of sociology. Accordingly, the Intellectual Property (Amendment) Act No. 08 of 2021 has been introduced to incorporate the Marrakesh Agreement ratified by Sri Lanka in 2016 into the country's legal system.

VIII. INTELLECTUAL PROPERTY AMEDMENT ACT NO.08 OF 2021 AND THE RIGHTS OF VISUALLY IMPAIRED READERS

2021 Amendment Act should balance the conflicting rights between intellectual property rights and the aspirations of society in general. The main point to be seen is the sentence added to section 5 (1) of the 2003 Act through the amended section 2 (1). It is further expanded through sections 2 (a) (b) and (c) of the amended Act. It can be understood that the Intellectual Property Act No. 08 of 2021 aims to facilitate the use of such print media for the visually impaired or those who are unable to use the print media due to some physical disability. Also, the word "author" has been replaced by "beneficiary" in the amended Act. Section 12 (a) 1 of the Act provides for "fair use and controls are vested in the competent authorities of Article 12 (2)

By the insertion immediately after the definition of the expression "author" of the following definition. "beneficiary person" means any person who (a) is blind; (b) has a visual impairment or a perceptual or a reading disability which cannot be improved to give visual function substantially equivalent to a person who has no such impairment or disability and is unable to read printed works to substantially the same degree as a person without any such impairment or disability; or (c) is otherwise unable, through physical disability to hold or manipulate a book or to focus or move eyes to the extent that is acceptable for reading, regardless of any other disability;" With such a broad definition, we can easily identify the marginalized visually impaired community, and this Umbrella Term also provides a strong backing to secure their rights.

By the insertion immediately before the definition of the expression "audiovisual work," of the following definition: – "' accessible format" means a copy of a work in an alternative form or manner which gives a beneficiary person access to such work, including to permit such person to have access as feasibly and comfortably as a person without any disability which a beneficiary person has. The accessible format copy shall be used exclusively by beneficiary persons. It shall respect the integrity of the original work, taking into consideration the changes needed to make the work accessible in the alternative format and of the accessibility needs of the beneficiary person;"

Thus, for those who cannot use the print media due to visual impairment or physical disability, an audio recording of any book can be released for their use.

Software is used for this purpose. Furthermore, the amendment states that such audio recordings can convenience the persons with special needs mentioned above without any payment.

It is important to understand that third parties make money illegally by distributing copyright electronically in digital systems. Intellectual property law must be able to strike a balance between the rights of the publishing owner and the rights of millions of users in the digital environment. By activating that mechanism, no one can misuse it for commercial purposes. Section 3 of the Amendment Act 2021 has been amended so that no one can misuse it for commercial purposes by activating that mechanism. It removes commercial or for-profit purposes through amendments to Article 12 of the Main Charter and new additions. It is also subject to the Director-General of Intellectual Property, which is an authoritative entity.

An authorized entity shall

- I. be such persons or organizations as shall be prescribed by the Minister in consultation with the DirectorGeneral of Intellectual Property;
- II. make available to any beneficiary person copies of any work in an accessible format on a non-profit basis recovering only the cost of the production of such work in an accessible format;
- III. ensure that copies of any work in an accessible format are used only by a beneficiary person and take reasonable steps to prevent its entry into ordinary channels of business;
- IV. limit the supply of copies of any work in accessible format only to adapt, reproduce and issue copies of such work to the beneficiary persons or any other persons acting on behalf of the beneficiary person;
- V. discourage the reproduction, distribution and making available of unauthorized copies of any work in an accessible format; and
- VI. Maintain due care in, and records of its handling of copies of any work in the accessible format while respecting the privacy of a beneficiary person. "

Given the above, the Intellectual Property (Amendment) Act No. 08 of 2021 provides a high level of security for the author's economic and moral

rights while working to win the rights of the visually impaired community, which has hitherto been a gap in the Law, prioritizing the concept of equality without discrimination. Similarly, the state should establish a separate Police Bureau to implement the intellectual property law currently in force in the country. At the same time, a mechanism must be put in place to address the demands of communities such as the visually impaired, who are less likely than the average person to stand up for their rights.

Here I would like to draw your attention to the principle of equality enshrined in Articles 12 (1) and 12 (4) of the Constitution. Its essence is that equality before the law and eliminating disadvantages or inequalities that afflict a section of society must be eliminated. Here we can identify two strategies or tools to eliminate injustice and disadvantage, which are the intended objectives of core equality. These methods have provided relief to communities experiencing social and economic disadvantages through affirmative action and fair classification. In the judicial interpretation of Affirmative Action litigation, Reverse Discrimination (Reverse Discrimination = Positive Discrimination) claims their rights by claiming that they are at a disadvantage over the other. Granting facilities to institutions as a prelude to positive government intervention in protecting the rights of persons with disabilities No. 28 of 1996 and Gazette Notification No. 1467/15 of 17.10.2006 and Public Administration Circular No. 27/88 of 17.10.2006. It can be specified.

IX. RECOMMENDATIONS AND FUTURE STUDY REQUIREMENTS

The Intellectual Property (Amendment) Act No. 08 of 2021 further protects the copyright and further expands the access of the entire readership to intellectual creations. At the same time, the new Amendment Act has taken it to another level where it is possible to focus on the rights of the entire visually impaired community. And defining the jurisdiction of the law suits of the infringements of copyrights and related rights in a digital environment. This would immensely help to obtain a speedy and cost effective remedy in the infringement of copy rights and related rights.

Although the new Amendment Act authorizes the protection of copyright rights from third parties for commercial purposes, measures must be taken to

minimize the violation of those rights in a digital environment. It may be proposed to establish a collective management system on copyright and related rights, which is specifically intended for this purpose. It will act as a liaison between intellectual property owners and users.

Also in examining the legal framework of Sri Lanka, the remedies under Section 170 of the Intellectual Property Act are not sufficient to cover the rights violations that take place in a digital environment. Therefore, the redressal of those rights in digitization must be addressed.

Intellectual property is the ultimate result of one's mental manipulation. There are several mechanisms in place in legal systems around the world to secure the common good of society and to protect the rights of all in intellectual property law. Internationally, the above mechanisms must be incorporated into the Intellectual Property Act of Sri Lanka to maintain a balance between intellectual property rights and common rights.

Then a national policy on the intellectual property system should be put into action through a practical and efficient mechanism. As a developing country, Sri Lanka should take steps to integrate formal security systems into intellectual property systems by providing examples from developed countries.

X. CONCLUSION

Thus, intellectual property law and policymakers have made a positive effort to balance the conflict between public social rights and individual rights through the new Amendment Act, avoiding the tendency to neglect personal representation for the common good in the making of laws.

In Rosco Pound's statement, "The law must be stable, but it must not stand still," the Law is a static phenomenon, but it is not static, but realistic that Law must change it from time to time. Therefore, we can summarize the above as balancing the conflicting rights of rights and social rights, addressing the fundamental equality and justice, and positively manipulating the rights of the visually impaired.

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