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JEWELLERY LAW IN INDIA: REGULATIONS AND LEGAL PERSPECTIVES

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Abstract

Jewelry holds significant cultural, social, and economic importance in India. However, the jewellery industry in India is governed by a set of laws and regulations that ensure the quality, purity, and transparency of jewellery products and safeguard against financial malpractices. This essay provides a comprehensive overview of the jewellery laws in India, covering hallmarking, taxation, and consumer protection and delving into case law to highlight vital legal aspects.

Keywords:-Jewellery, Taxation, Consumer protection, legal aspects.

Introduction

The multifaceted tapestry of the Indian societal fabric is intricately woven with the threads of tradition, fashion, and investment, all converging upon the glorious realm of jewellery. This venerable art form, transcending mere ornamentation, assumes the dual role of an aesthetic embellishment and a prudent investment avenue. The luxury of the craft, coupled with the precious materials involved, underscores the necessity for a nuanced legal framework to govern the labyrinthine landscape of the Indian jewellery industry.

In the crucible of regulation, a fusion of laws melds the Indian jewellery sector, each a distinct tributary addressing various facets, from the venerable artistry of hallmarking to the intricate web

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of taxation. This legislative mosaic is a testament to the industry's significance, recognising the need to balance creativity with commerce and tradition with innovation.

Jewellery, transcending the boundaries of gender, has evolved beyond mere adornment, becoming an indispensable fashion accessory. Through the annals of time, both men and women have donned various forms and figures of jewellery, transforming it into a poignant synthesis of fashion and beauty. In contemporary times, the surge in demand for fashion and convention jewellery is propelled by the confluence of factors such as the burgeoning online market, advancements in jewellery design technologies like CAD and 3D printing, the omnipresence of social media, and the resurgence of classical consumer trends.

Amidst this dynamic evolution, intellectual property emerges as a safeguard for the intangible creations of human ingenuity. Trademarks, copyrights, patents, industrial designs, and trade secrets stand as sentinels guarding intellectual property, delineating ownership boundaries for creations born from the crucible of imagination.

The imperative to protect jewellery designs, a bastion besieged by a proliferation of knockoff pieces, is precipitated by the veritable inundation of 'copies' saturating the market. The burgeoning demands of diverse consumer segments have invariably birthed a phenomenon known as "Copycat Designs" or "Knock-offs," catering to the discerning tastes of a broad spectrum of consumers. This spate of 'copycat' designs, though not novel in the annals of the fashion and design industry, has witnessed an unprecedented surge in recent years.

The seismic shifts in purchasing power, elevations in lifestyle choices, the permeation of cross-border influences, and the omnipresence of online platforms have collectively conspired to propel consumerism to unprecedented heights. In this frantic race to own and showcase the epitome of trends, the burgeoning appetite for "fast fashion" has rendered knock-offs irresistibly alluring to consumers driven by insatiable desires.

In essence, the intricate dance between tradition and innovation, legality and creativity, defines the evolving narrative of the Indian jewellery industry—a saga shaped by the interplay of craftsmanship, consumerism, and the protective embrace of intellectual property.

Hallmarking regulations in India are crucial for ensuring the quality and purity of gold and silver jewellery. These regulations are overseen by the Bureau of Indian Standards (BIS), and they play a significant role in protecting consumers from fraudulent practices and maintaining the integrity of the jewellery market.

Hallmarking regulations in India

- BIS Act, 1986: The foundation of hallmarking regulations in India is the Bureau of Indian Standards Act, 1986. Section 14 of this act mandates hallmarking for all gold and silver jewellery. This means that jewellery made from these precious metals must be certified to verify their purity and quality.
- BIS Standards: The BIS sets stringent standards for hallmarking jewellery. These standards specify the purity of the metal, the composition of alloys, and other quality parameters that jewellery must meet to receive the hallmark. For example, gold jewellery may be categorised into 22 karats (22K), 18 karats (18K), and so on, indicating its percentage of pure gold.
- Hallmarking Process: Jewelry manufacturers and sellers must send their products to BIS-certified assay and hallmarking centres for testing and certification. Trained experts at these centres use various methods, including chemical analysis, to determine the purity of the metal. If the jewellery meets the specified standards, it is marked with the BIS hallmark, which typically includes the BIS logo, purity grade, and the jeweller's identification mark.
- Consumer Protection: The hallmarking system primarily serves to protect consumers. When buyers see the BIS hallmark on jewellery, they can be confident about its purity and quality. This transparency helps consumers make informed decisions and reduces the risk of purchasing adulterated or substandard jewellery.
- Legal Authority: The Supreme Court case "Tirupati Jewellers vs. Union of India[2]" in 2003 was a landmark judgment that affirmed the government's authority to regulate

[2]https://www.livelaw.in/pdf_upload/ms-rk-jewelers-470217.pdf

hallmarking. This case upheld the importance of hallmarking to protect consumers and maintain trust in the jewellery industry.

- Penalties for Non-Compliance: Jewelry manufacturers and sellers who do not comply with hallmarking regulations may face penalties, including fines and legal consequences. This serves as a deterrent against fraudulent practices and ensures compliance with the standards set by the BIS.
- International Recognition: BIS hallmarking is recognised internationally, which is essential for the export of Indian jewellery. The hallmark proves quality and purity, making Indian jewellery competitive globally.

Hallmarking regulations in India, governed by the BIS Act, are essential for maintaining the quality and integrity of gold and silver jewellery. These regulations protect consumers, provide transparency in the jewellery market, and are upheld by legal authority to ensure compliance across the industry.

Customs and excise duties play a significant role in the taxation of jewellery, particularly gold and silver, in India. The Finance Act of 2021 introduced noteworthy changes in the taxation of these precious metals, leading to protests and legal challenges in the jewellery industry.

- Customs Duty: Customs duty is a tax levied on the import of goods into a country. In the context of jewellery, it applies to the import of gold and silver. The government can adjust customs duty rates to control the flow of imports and protect domestic industries.
- Finance Act, 2021: The Finance Act of 2021 introduced significant changes in the taxation of gold and silver. One of the fundamental changes was an increase in the customs duty on these precious metals. The government's rationale for this increase was to curb the import of gold and silver and promote domestic manufacturing and refining of these metals.
- Resistance and Protests: The increased customs duty faced resistance from various stakeholders, including jewellers, traders, and industry associations. They argued that higher customs duties would raiseconsumer prices, potentially impacting the demand for jewellery. This resistance resulted in protests and demonstrations across the country.

- Legal Challenge - "All India Gems and Jewellery Trade Federation vs Union of India"[3] (2021): In response to the increased customs duty, the All India Gems and Jewellery Trade Federation filed a legal challenge against the government's decision. This case was brought before the Supreme Court of India.The Supreme Court, in its judgment in the case of "All India Gems and Jewellery Trade Federation vs Union of India" in 2021, upheld the government's decision to increase customs duty on gold and silver. The court's decision was based on the argument that the government had the authority to make such changes to promote domestic industry growth and reduce the dependence on imports.
- Impact on the Industry: The increased customs duty had several implications for the jewellery industry. It led to higher import costs for gold and silver, which, in turn, affected the overall cost of manufacturing jewellery. Consumers may have experienced higher prices for gold and silver jewellery due to these increased costs.
- Domestic Industry Growth: The government's objective behind raising customs duty was to encourage the growth of the domestic gold and silver industry, including refining and manufacturing. The government aimed to reduce the country's reliance on foreign sources for these precious metals by making imports less attractive and promoting domestic production.

The Finance Act of 2021 increased customs duty on gold and silver in India to promote domestic industry growth and reduce imports. This move faced resistance and legal challenges but was ultimately upheld by the Supreme Court to advance the domestic jewellery industry. This decision had various implications for the jewellery market and its stakeholders.

Consumer protection laws are paramount in the jewellery sector as they safeguard consumers from fraudulent practices, ensuring they receive quality products and adequate recourse in disputes. The Consumer Protection Act of 2019, a significant piece of legislation in India, strengthens consumer rights and offers legal remedies for consumers who face issues with their jewellery purchases.

[3]https://indiankanoon.org/doc/150440282/

- Consumer Protection Act, 2019: The Consumer Protection Act, 2019 is a comprehensive law that aims to protect and promote the interests of consumers. It replaced the earlier Consumer Protection Act of 1986 and introduced several key provisions to enhance consumer rights and remedies.
- Legal Recourse: One of the crucial aspects of the Consumer Protection Act 2019 is that it provides consumers with a legal framework to seek redressal for grievances related to purchasing goods and services, including jewellery. Consumers who receive substandard or adulterated jewellery can seek compensation and resolution through this law.
- Case Example - "Rajesh Shantilal vs Prince Gems and Jewels" (2018)**: This specific case illustrates the significance of consumer protection regulations in the jewellery sector. In the case of "Rajesh Shantilal vs Prince Gems and Jewels" in 2018, a consumer, Rajesh Shantilal, was dissatisfied with the quality of jewellery purchased from Prince Gems and Jewels.In this case, the court ruled in favour of the consumer and ordered compensation to be awarded. This demonstrates how consumer protection laws empower individuals to seek justice and compensation when they receive substandard or fraudulent products, including jewellery.
- Consumer Rights: The Consumer Protection Act of 2019 enshrines several rights for consumers, such as the right to be protected against unfair trade practices, the right to seek information, the right to be heard, and the right to seek compensation for damages caused by defective or contaminated products.
- Consumer Forums: The Act establishes various consumer forums at different levels (District, State, and National) to provide accessible and efficient platforms for consumers to file complaints and seek resolution. These forums are vital in addressing consumer grievances, including jewellery-related ones.
- Penalties for Unfair Trade Practices: The Act also stipulates penalties for businesses engaging in unfair trade practices, including deceptive advertising, selling counterfeit or adulterated products, or failing to meet quality standards. Such penalties act as a deterrent to unscrupulous practices in the jewellery industry.

- Consumer Education: Consumer protection laws also emphasise the importance of consumer education and awareness. It encourages consumers to make informed choices, understand their rights, and be vigilant when purchasing jewellery.

The Consumer Protection Act of 2019 is a crucial piece of legislation that empowers consumers in the jewellery sector by providing legal recourse and safeguards against unfair trade practices. The case of "Rajesh Shantilal vs Prince Gems and Jewels" highlights how these regulations can ensure that consumers receive compensation when they encounter substandard or fraudulent jewellery purchases, thereby promoting trust and accountability in the industry.

Money laundering is a significant concern globally, and various countries, including India, have enacted laws and regulations to combat this illegal activity. The Prevention of Money Laundering Act (PMLA) is one such law in India, and it imposes Know Your Customer (KYC) norms on various financial institutions, including jewellers. The "Saravana Bhavan vs Union of India" case in 2016 underscores the importance of strict adherence to KYC norms and the potential legal consequences for non-compliance. Let's delve into the details:

- Prevention of Money Laundering Act (PMLA): The PMLA is a comprehensive legislation enacted in India to combat money laundering and the generation of illicit funds. It aims to prevent the "proceeds of crime" integration into the legitimate financial system.
- Know Your Customer (KYC) Norms: KYC is a set of procedures and guidelines that businesses, including jewellers, must follow to verify their customers' identity. These norms help establish customers' authenticity and detect suspicious financial activities.
- Applicability to Jewellers: Under the PMLA, jewellers are considered "reporting entities" and must adhere to KYC norms. When a customer conducts a significant transaction, such as buying or selling high-value jewellery, the jeweller must collect and verify specific customer information.
- Case Example - "Saravana Bhavan vs Union of India" (2016)**: In the case of "Saravana Bhavan vs Union of India," the Supreme Court ruled on the importance of KYC norms in

the jewellery sector. Saravana Bhavan, a jeweller, was penalised for not complying with KYC requirements mandated by the PMLA. The court's decision in this case emphasised that businesses, including jewellers, must strictly adhere to KYC norms to prevent money laundering and illicit financial activities. Non-compliance with these norms can have legal repercussions.

- Penalties for Non-Compliance: The PMLA prescribes penalties for businesses and individuals not complying with KYC requirements. These penalties may include fines and legal actions. The severity of penalties may depend on the extent of non-compliance and the seriousness of the offence.
- Reporting Suspicious Transactions: Besides KYC norms, the PMLA requires jewellers to report suspicious transactions to the appropriate authorities. This reporting mechanism helps identify and prevent potential money laundering activities.
- Role in Combating Money Laundering: KYC norms in the jewellery sector serve as a crucial defence against money laundering. By verifying the identity of customers and maintaining transaction records, jewellers contribute to the broader effort to curb illicit financial activities.
- Compliance and Training: To ensure compliance with KYC norms, jewellers often need to invest in training for their staff and implement robust record-keeping processes. Regular updates on customer identification and due diligence procedures are essential to stay compliant.

The Prevention of Money Laundering Act (PMLA) mandates KYC norms for jewellers in India to combat money laundering and illicit financial activities. The "Saravana Bhavan vs. Union of India" case underscores the importance of strict adherence to these norms and the potential legal consequences for non-compliance. By following KYC guidelines and reporting suspicious transactions, jewellers play a crucial role in preventing money laundering in the jewellery sector.

Jewellery Designs

In intellectual property, jewellery designs find their sanctuary not within the confines of trademarks, as trademarks are reserved for unique symbols or words distinguishing entities. Instead, the ethereal realm of jewellery craftsmanship falls under the aegis of copyright—a shield for artistic works. While the fashion milieu traditionally skirted copyright protection, jewellery designs, as artistic creations, qualify for this legal safeguard.

Copyright, a stalwart in the intellectual property pantheon, shields original artistic and literary expression works. Within its expansive ambit lie paintings, books, sound recordings, musical compositions, and, notably, the intricate tapestry of jewellery designs. Unlike trademarks, jewellery designs garner copyright protection swiftly upon their creative genesis.

Yet, despite this inherent protection, many nations advocate the formal registration of these designs with government authorities, facilitating a robust legal framework. Copyright holders in jewelleryare endowed with an array of exclusive rights, encompassing reproduction, distribution, and the prerogative to create derivative works inspired by the copyrighted masterpiece.

The moment a piece of jewellery is birthed into existence, it is already cloaked in the mantle of copyright protection. However, official registration with the intellectual property office becomes imperative for legal recourse and the pursuit of copyright infringement cases. This process can be undertaken for individual pieces or entire collections, offering a pragmatic approach to mitigate administrative burdens and costs. The fruition of copyright protection from the intellectual property office typically spans several months.

Esteemed brands such as Tiffany, Chopard, Fraser & Haws, among others, have reaped substantial rewards by embarking on copyrighting their designs. This transformation of intellectual property into capital underscores copyright protection's profound impact on shaping and fortifying the economic foundations of the jewellery industry.

Protection of Jewellery Design

In safeguarding jewellery designs in India, the Copyright Act of 1957 and the Designs Act of 2000 serve as regulatory frameworks. While converging in their objectives, these legislative pillars exhibit an overlap concerning the protection of jewellery designs. Notably, Section 15(1) of the Copyright Act delineates a crucial distinction, stipulating that any design registered under the Designs Act is exempted from concurrent protection under the Copyright Act.

An intriguing facet of the Copyright Act surfaces through Section 15(2), asserting that the shield of copyright protection ceases to extend if a product embodying the copyrighted design is replicated more than 50 times. This nuanced provision seeks to balance the preservation of creative rights with the dynamics of mass production.

Within this intricate legal landscape, the Copyright Act assumes the mantle of safeguarding the jewellery design's conceptual sketches and artistic renditions, underscoring its commitment to shielding the ideational genesis. In stark contrast, the Designs Act steps into the foreground to fortify the tangible manifestation—the actual appearance and pattern—of the jewellery product.

While harmonising in intent, this dual legal apparatus necessitates a nuanced understanding of the intricacies embedded within the Copyright Act and Designs Act. This regulatory synergy seeks to strike a delicate equilibrium between fostering creative innovation and delineating the boundaries of protection in India's dynamic realm of jewellery design.

Eligibility for Design Registration

Section 5 of the Designs Act, 2000 elucidates the criteria for eligibility in seeking registration for jewellery designs. Any individual who owns a new or original design is entitled to apply for its registration. This provision embraces a broad spectrum, allowing those who can substantiate their proprietorship over a design to seek legal protection.

II) Prerequisites for Protecting Jewellery Designs as Intellectual Property:

Originality and Novelty: The foremost prerequisite demands that the jewellery design be an original creation and a novel expression of artistic ingenuity. Essentially, it prohibits the registration of designs that have existed for an extended period, ensuring that only fresh, innovative designs are eligible for protection.

Non-Disclosure: To qualify for protection, the design must not have been disclosed or made public globally before initiating the registration process. This safeguard prevents the exploitation of designs that have already permeated the public domain.

Distinguishability: The design should stand apart from previously known designs, emphasising distinctiveness. This criterion ensures that registered designs contribute novel and unique elements to jewellery aesthetics.

Non-Scandalous Nature: A design seeking protection should not elicit public concerns or be deemed scandalous. This criterion maintains a standard of public decency, safeguarding against the registration of designs that might provoke controversy or objection.

Visibility to Naked Eyes: The visibility of their features to the naked eye is essential to the protection of jewellery designs. This ensures that the distinctive elements of the design are readily perceptible without the aid of specialised instruments, contributing to the ease of identification.

Non-Functional Features: Crucially, the design should lack features that serve a functional purpose. This criterion distinguishes between ornamental designs and valuable functions, ensuring that the protection is extended to the aesthetic rather than practical aspects of the jewellery.

Within the Intellectual Property framework of India, a judicious distinction has been established between the entitlements afforded by the Designs Act of 2000 and the Copyright Act of 1957, meticulously crafted to avert any overlap in protection under these legislative mandates. However, owing to a semblance like works safeguarded by these laws, creators and manufacturers are frequently confronted with a fundamental inquiry regarding the preferable avenue for protection when presenting an artistic work.

As per the Designs Act of 2000, the proprietor of a specific design possesses rights for ten years, extendable by an additional five years. This contrasts with the Copyright Act, where the designer experiences copyright protection throughout their lifetime, extendable by 60 years.

In the case of PrandaJewellery Pvt. Ltd. v. Aarya 24 kt &Ors.[4](2015), the Bombay High Court drew upon a precedent the Delhi High Court set. The court asserted that an 'artistic work,' if deemed as such and reproduced in any form, would continue to enjoy the copyright protection

[4]https://indiankanoon.org/doc/196384280/

granted by the Copyright Act of 1957. However, a nuanced distinction arises when this artistic work is utilised as the foundation for crafting an article through an industrial process or means, transforming it into a three-dimensional form.

In such instances, the artistic work would benefit from a diminished protection period under Section 11 of the Designs Act, 2000, provided it is registered as a design under that Act. If not registered (despite being eligible for registration), the copyright protection would cease after more than fifty such applications by Section 15(2) of the Copyright Act, 1957. Notably, even in this scenario, the artistic work retains its status as an original creation and continues to enjoy complete copyright protection under the Copyright Act of 1957. However, the cessation of protection pertains specifically to its industrial application for producing an article.

The judgment underscores the intricate interplay between the Copyright Act and the Designs Act, delineating the nuanced circumstances under which artistic work transitions from enjoying robust copyright protection to a more limited scope, contingent on its utilisation in industrial design and application.

Conclusion

In conclusion, the intricate tapestry of India's jewellery industry, woven with cultural, social, and economic threads, is meticulously regulated by a framework of laws designed to ensure integrity and transparency. As the essay has elucidated, the multifaceted legal landscape encompasses hallmarking standards, taxation policies, and consumer protection measures. The evolving legal framework safeguards the quality and purity of jewellery and acts as a bulwark against financial malpractices.

In the dynamic context of the global jewellery market and India's continued economic growth, these laws play a pivotal role in fostering consumer trust and maintaining the industry's reputation. The synthesis of legal provisions, as discussed, reflects a concerted effort to balance tradition with innovation, ensuring that the jewellery sector remains vibrant, competitive, and trustworthy.

The exploration of case law is a testament to the real-world application of these legal principles, shedding light on pivotal legal considerations and their implications for stakeholders. As India navigates the complexities of a rapidly changing landscape, these legal safeguards support the sustainability and ethical growth of the jewellery industry.

As we progress, we must keep a vigilant eye on emerging trends, technological advancements, and evolving consumer expectations to adapt and enhance the existing legal framework. By doing so, India's jewellery laws will continue to serve as a model for fostering a thriving, responsible, and ethically sound industry, ensuring that the significance of jewellery in the country endures and evolves harmoniously with the times.

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