

## **L.11. GOPALAKRISHNAN, N.S.—Protection of Property and Criminal Law. A Study with special reference to intellectual property—1989—Dr. K.N. Chandrasekharan Pillai.**

Institution of property is a prerequisite for any legal system to function properly. Property relations play a pivotal role in the growth and development of a society. So, it is in the interest of society that property has to be protected. Protection of property can be effectively ensured through criminal law while civil law can lay down the rules governing the possession and holding of property. The protection afforded through criminal law to property in general and intellectual property in particular in the light of new technological development has been critically analysed with a view to deducing the governing principles.

The concept of property has to collect its meaning and content from the socio-economic political system. The vast technological developments which took place in the nineteenth and the twentieth centuries made property to be in search for new meanings. New items of property which thus came to be embraced by the concept of property demanded an overstretching of the traditional law. However, it was found inadequate to afford adequate protection to these new forms of property. This forced the law-makers to come out with new legal norms to protect these new forms of property. In this background the development of the new concept of property was examined.

It is found that having regard to the origin of the institution of property the concept of property has been identified as the satisfaction of the self of an individual in the society. It is taken as an extension of the personality of the individual. Though criminal law has not defined the concept of property, the courts in India have interpreted it to contain the emerging new forms of property. Thus a thing having any value to the individual has been recognised as property for affording protection. It was also made clear that the property sought to be protected must be in possession of a person or he must have ownership. This reinforces the basic theory of recognition of property as an extension of the personality of an individual.

It has been concluded after a detailed examination that our Constitution while recognises the need for protecting a certain limit of personal property for the proper development of the personality of the individual in the society, gives much stress on the need for retaining the property for the common good.

On examination the provisions in the I.P.C. are found inadequate to protect the new forms of property emerging out of the technological development especially in the area of intellectual property. So new legislation have been enacted with a view to protecting intellectual property.

It is based on the same philosophy of recognition of property, i.e., the extension of the personality of the individual, that intellectual property also received recognition. The intellectual labour of an individual is respected just like the physical labour spent for gaining property. Generally copyright, patent, designs and trade-mark are identified and grouped in this category. Examination of the origin and development of these items of property reveals that it is based on the public interest that these items are recognised and protected as property. While rendering protection to public interest adequate steps are taken to protect individual interest also. In cases of copyright, patent and design, in addition to the public interest of development of the society in cultural and industrial sectors,

the intellectual labour of individual is also identified in recognising them as property. On examination of the new forms of property such as performers' rights, computer programmes, man-made living microorganism etc., it is found that our laws are yet to catch up with the pace of technological developments. The laws not available in our country are found insufficient to protect these forms of property. This situation calls for a comprehensive legislation to contain the problems attendant with the protection of new forms of property.

Though it is well recognised that criminal law has a major role in protecting the society by affording protection to person and property, this has not been adequately utilised in case of intellectual property. Disregarding the public interest involved in recognising and protecting these forms of property legislatures as well as judiciary views them as private matter.

On examination of the existing provisions it is found that there is no uniform approach adopted towards different property offences. It is therefore suggested to provide compensation to the victims by giving a portion of the fine extracted from the offender. Even after identifying the technical nature of the offences committed in these areas, the traditional investigative machinery has been used to detect the crimes. This often resulted in acquittal of the offender for lack of evidence. The problem will be acute when we have to tackle the offences against the emerging new forms of property—video piracy, violations against computer programmes etc. of lot of expertise and training is required for detecting crimes in this area. So it is also suggested to create a special wing of investigating machinery.

In short a comprehensive legislation incorporating the principles discussed above including the special procedure and rules of evidence has to be enacted and implemented at the earliest so that the new forms of property could be afforded ample protection by the criminal law.