

HYDERABAD

# THE PROTECTOR OF THE INTANGIBLE

IF THERE EVER WAS A SUPERHERO FOR ARTISTES IN TODAY'S WORLD IT IS A LAWYER WHO CAN NAVIGATE THE COMPLEX WORLD OF INTELLECTUAL PROPERTY RIGHTS! **RUPAM JAIN** CATCHES UP WITH THE BIGGEST NAME IN THIS FIELD FROM TOLLYWOOD, THE INIMITABLE **KRISHNA GRANDHI**



**W**HERE the mind is without fear, said Rabindranath Tagore. His stories, born out of his mind, brought us joy, satisfaction and a rich culture of appreciating art; it earned him immense respect, and the recognition as one of the most prominent, influential and intelligent authors of his time. But, back in the day, the world didn't know Rabindranath's intelligence can be quantified, and used to create wealth. Of course, Rabindranath Tagore is a Nobel laureate, but the point we are trying to make here is that, the concept of Intellectual Property was as alien as aliens are to humans... well, until recently.

We met Krishna Grandhi, founder of *Grandhi Law Chambers (GLC)*, a multi-disciplinary law firm in Hyderabad, for an unusual conversation on a Sunday afternoon over a cup of tea — that went cold and was ignored soon enough — as the conversation picked up momentum. Grandhi tells us, "When we think of 'property', we think of real estate, things that belong to us, things that we can touch and feel and see. Creations of the mind do not strike us as property because they are intangible. But the mind has power to create — and if it has come up with an idea and thinks of a way to implement that idea — that is what Intellectual Property (IP) is. Simply put, it is the concept that human intelligence can also be quantified into some sort of a legal right; that you can actually capture what's in the human mind and put a legal name to it, give it certain protections under the law and let people exploit it to create revenues."

However, to this end, knowledge about law is essential. It helps you understand policies better, and that is very important. Having a basic

understanding of the legal system helps one be a better person, in Grandhi's opinion. And when there is no age limit thus far, why not take the opportunity and study law? "Okay, that's only a suggestion. The decision is yours," he clarifies, smiling.

Interestingly, Krishna Grandhi has been trying to do just that. Leave the decision-making to his clients, unlike many lawyers who insist on making the 'right' decisions for you. "We give our clients as many options as legally available and leave the final decision to them. It's our responsibility to explain why we are proposing a strategy, and the pluses and minuses of either taking the strategy or rejecting it. We present a 360degree view to the clients. Our role is advisory, to assess the risk versus benefits and make the client feel armed with information, because when you have a lot of things unknown and you have to make a decision, the thought always remains a big 'what if'. But when you are armed with information, you feel confident of taking a decision."

As the conversation gets back to IP, Grandhi tells us about patent, trademark, copyright, design and trade secrets, giving the example of the formula for *Coca Cola*, for the latter. *The Coca Cola Company's* formula for *Coca Cola* syrup is a closely guarded trade secret. 'Company founder Asa Candler initiated the veil of secrecy that surrounds the formula in 1891 as a publicity, marketing, and intellectual property protection strategy,' states *Wikipedia*, adding, 'While several recipes, each purporting to be the authentic formula, have been published, the company maintains that the actual formula remains a secret, known only to a very few select (and anonymous) employees. "The company could have applied for a patent, but they decided it was more prudent and financially viable to not disclose its formula. They have been successful in making it work and how!" explains Grandhi.

Intellectual Property has become a hot topic of discussion because while earlier it was viewed from a more academic sense, it has come to be looked upon as ways to create wealth. IP enforcement and protection have gained prominence because of digital transformation. It is so much easier to copy/ plagiarize protectable information; hence it's more important than ever to protect IP from all sorts of attacks. "We work with a lot of celebrities, create strategies and leverage law in order to come up with the most valuable creation; all the way to actual litigation of fights when they get into trouble. We also appear on behalf of celebrities at lower/high courts, as well as educate them on law and the legal system."

We move on to media and entertainment law, and Grandhi informs us that they are a collection of various kinds of law. There is no one single law in India or anywhere else in the world that's called media and entertainment law. There are multiple laws that serve the media and entertainment industry. For instance, if you want to be a very good media and entertainment lawyer, you have to be well-versed with the *Indian Contract Act*. Now, that Act



wasn't written for people in media and entertainment, but for contracts. However, they are a significant element of the media and entertainment laws. Then, there are criminal laws that also come into play in this sector, especially to do with infringement of information and copyrights.

GLC handles a long list of eminent personalities and organisations, including celebrities, energy companies, technology companies as well as finance bigwigs. Explaining their approach, Grandhi says: "Our clients come to us with a wishlist; sometimes not even knowing what the end product should be. We have had producers coming to us saying a certain actor is known to miss out on dates and they ask us to put in a clause (in the contract) ensuring that the actor makes it to the set on time, because it's the producers' money at stake. We have also had producers wanting us to mention a point in the contract that states the actor cannot take up similar role (say a cop role) in another film, for a stipulated period of time. They request for this so that they can make maximum profit from that particular role, what with digital/satellite rights involved. We have had companies asking us to put in a clause stating that if an employee decides to quit the company, he/she will have to give 6months' notice or pay a certain amount, and that he/she is not allowed to work within, say 20kms (just an example)."

He explains: "While it's certainly okay to have such a wishlist, our responsibility is to educate the client about what is possible and what is not possible under the law. *The Constitution of India* very clearly states the right to work and earn a living, as a fundamental right. Now, in asking for a clause such as the above, one is taking away the individual's right to work, which is unconstitutional. And here is where the difference between a guy with an LLB and the one who actually questions and explains law to clients comes into play. You cannot be afraid to tell the client like it is."

GLC is trying to change the trend of going to lawyers only when something goes wrong. "Trust me; it is expensive to handle damage and so much better to be prepared in advance. We have pulled out people from bad situations many-a-time. We have helped actors negotiate contracts, where the actor thought a contract was not necessary and word of



mouth was enough. But we managed to convince the actor/s that a contract is a must — and well, that's the reason he eventually even got paid!

In another instance, we advised against the branding of certain words in a trademark which we thought would be offensive to the general public (the artist didn't feel that way), and managed to convince him to not do it. I think it would have been a PR nightmare for them otherwise. In yet another instance, we have had a list of websites been taken down, those that were infringing/about to infringe on the intellectual rights of a client. We did it for the films *Taxiwala* and *Geetha Govindam*. We didn't stop at that though. We went a step further and collected the IP addresses, so even if the URLs change, we were still able to block them. I can state this with pride that we are one of the first lawyers in South India to get a court order to be able to block pirated movie content at the IP level."

With #MeToo having opened a can of worms, clauses related to sexual harassment have found their way into contracts. Production houses are now conscious of the things that can go wrong on a movie set because simple things can be taken out of context, and /or very complex things can be brushed aside, and the production houses do not want to have anything to do with it, or be dragged into or questioned for someone else's behaviour. While talking about the film industry, we

come to understand how copyright and derivative rights work. "When an author enters into a contract with a producer/production house/filmmaker to give the rights of his book to the other party to be made into a film, we advise the author to insist on derivative rights. It means that the author has the right to the credit not only for the book on which the film is been made, but also on say, prequels and sequels." Then there is also the concept of 'work for hire'.

How many times have we heard of dispute over credits? "When a writer/screenwriter/scriptwriter/screenplay writer is hired to write a particular story for a film, we have advised them to mention fair credits in the contract. It implies that though the writer is hired to write a particular story that he has been asked to (which could be somebody else's concept and ideas), he still deserves fair credits for the job he has done.

That brings us to how much copying is plagiarism! "It is a fluid concept," says Grandhi, continuing: "Look at plagiarism as a sliding scale from 0-10. Not all copying is plagiarism. The extent and degree of copying and the concept of assigning credit determines if its plagiarism or not. We usually tell our clients to stick to 0-2. However, remember that ideas by and itself are not protectable by copyright. If you write it, only then it's protectable." P

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